

## Administrative Justice Council

### Minutes

10:00-12:30pm, Friday 25<sup>th</sup> January

Clifford Chance

<b>Attendees:</b>	<b>Position/Organisation</b>
Sir Ernest Ryder (SPT)	Senior President of Tribunals
Andrea Coomber	Director, JUSTICE
Maurice Sunkin	Professor of Public Law and Socio Legal studies, Essex University
Richard Guyatt	Former Chair, Compulsory Purchase Association
Lady Anne Smith	President, Scottish Tribunals
Claire Blades	Market Development Manager, Citizens Advice
Daniel Flury	Deputy Director, HMCTS
Tom Thomas OBE	Deputy Chair, Civil Mediation Council
Tim Gilling	Director, Centre for Public Scrutiny
Donal Galligan	Director, Ombudsman Association
Professor Robert Thomas	Professor of Public Law, University of Manchester
Lucy Scott-Moncrief	Founding & Managing Director, Scott-Moncrief
Brian Thompson	Senior Lecturer in Law, University of Liverpool
Ray Burningham	Consultant
Lindsey Poole	Director, Advice Services Alliance
Warren Seddon	Director of Strategy and Insight, Parliamentary and Health Ombudsman
Niki Maclean	Director, Scottish Public Sector Ombudsman
Paul McFadden	Deputy Ombudsman, N. Ireland Ombudsman
Rhian Davies-Rees	Head of Welsh Tribunals, Welsh Tribunals
Ken Butler	Welfare Benefits and Policy Advisor, Disability Rights
Katrin Shaw	Director of Policy, Legal and Governance
Richard Mason	Deputy Director for Administrative and Civil Justice, MoJ
Michael Reed	Principal Legal Officer, Free Representation Unit
Luc Altmann (Observer)	Deputy Head of Insight, HMCTS
Walter Merrick CBE (Observer)	Board Chair, JUSTICE
Paul Yates	Head of Pro Bono, Freshfields
Diane Sechi	Solicitor, Simmons & Simmons
Paul Conroy	Director, LGSCO
Heidi Bancroft	Secretary to the AJC, JUSTICE
Stephanie Needleman (Observer)	Administrative Justice Lawyer, JUSTICE
Sally Hunt	Legal Administrator, JUSTICE
<b>Apologies:</b>	
Mr Justice Lane	President of the Immigration and Asylum Chamber of the Upper Tribunal
Mr Justice Supperstone	Judge in Charge of the Administrative Court
Angela MacDonald	Director General for Customer Service, HMRC

Karen Ashton	Head of Public Law and Community Care, Central England Law Centres
Sir Wyn Williams	President of Welsh Tribunals
Dr. Naomi Creutzfeldt	Senior Lecturer and Academic, Westminster and Oxford University
Caroline Sheppard OBE	Chief Adjudicator, Traffic Penalty Tribunal
Paula Stevenson	Head of Devolved Tribunals, Scottish Tribunals
David Slade	Justice Policy: Constitutional Affairs and Inter-Governmental Relations, Welsh Government
Ronan Toal	Barrister, Garden Court Chambers
Dr. Natalie Byrom	Director of Research and Learning, Legal Education Foundation
Claire Irvine	Head of Tribunals & Judiciary Branch, Department of Justice NI
Jo Hickman	Director of Public Law Project

### 1) Welcome and Introductions

The SPT welcomed attendees to the second Administrative Justice Council meeting.

### 2) SPT Update

The SPT provided attendees with an update since the last meeting. The MoJ had agreed to funding for the next two years; four new members had been selected to the Steering Group; an Advice Sector Panel had been established, the Academic Panel had organised three successful workshops and the Pro Bono Panel had commenced two research projects.

### 3) Tribunals modernisation

The SPT informed the Council that the jurisdictional responses to the 2018 [Judicial Ways of Working](#) survey had been published. They summarised judges' feedback on the modernisation programme for each jurisdiction.

#### a) HMCTS Update – Daniel Flury, Deputy Director

Daniel Flury gave an update on the tribunals modernisation programme:

- The [continuous online resolution](#) SCS pilot will take place at the end of February. They will invite 250 appellants to participate. The SCS panel will convene and will formulate a number of questions or seek further evidence from appellants. Appellants will have 10 days to respond and the panel will reconvene to make a decision. Both the appellant and DWP can accept or reject the decision or seek an oral hearing. Following evaluation of the pilot they will consider next steps (in April/May).
- Luc Altman, HMCTS Insights and Data Team informed members that he is devising an evaluation procedure and data collection mechanism to capture and share data. He would be happy to talk to members separately about his work.
- [Immigration and Asylum Tribunal](#) - first pilot commencing the following week in Taylor House, Manchester. 9 solicitor firms agreed to take part in the pilot.

DF agreed to have a follow-up meeting with interested members.

**Action:** Members to contact HB if they would like to attend a follow-up meeting with DF.

**a) Stakeholder Engagement Project - Diane Sechi, Pro Bono Panel**

DS introduced the Pro Bono Panel's [stakeholder engagement survey](#) for the online PIP form. The purpose of the form is to survey to see the capacity of front line agencies to provide online assistance and identify obstacles such as limited staff, equipment, time etc. The Council were supportive of the survey and agreed that it would be helpful to discover what assistance is available, challenges such as capacity issues and identifying areas which are advice deserts. The survey would be sent out to stakeholders and a report will be ready by the next Council meeting in July.

**b) Tribunals Modernisation Workshop – Professor Robert Thomas**

RT gave a summary of the two workshops held by the Academic Panel – [Tribunals Modernisation](#) and [Administrative Decision-making and Procedures](#). The tribunals modernisation workshop was attended by judges and academics and gave judges the opportunity to share their experiences and challenges working with the digital system.

The administrative decision-making was attended by a wide range of stakeholders and there were presentations on a range of themes on improving administrative decision-making. The presentation by the Behavioural Insights Team had been particularly insightful. The SPT suggested that Luc Altman's team in HMCTS host an event with them.

c) The SPT summarised the [Judicial Ways of Working](#) document which was attached as a paper.

**Action:** Luc Altman to host an event with the Behavioural Insights Team.

**4) Administrative Decision-making**

**a) Polluter pays proposal – Paul Yates, Pro Bono Panel**

PY presented the [Pro Bono Panel's proposal](#) for a polluter pays mechanism to be used as a financial incentive for better quality first-instance decision-making. They had done research into how mechanisms have been used generally in justice systems, and looked at previous proposals on polluter pays in the administrative justice system. They were not proposing linking the mechanism to the appeal outcome (as new evidence comes to light during the appeal process), but rather to initial decisions which are unlawful and/or where there is material breach of the procedural rules. They also proposed a flat fee, rather than an adverse costs system (which had been proposed previously).

The SPT informed the Council that the potential next step was to establish a working party and then come back with a more detailed proposal. He had received interest from two tribunals – upper tribunal land and tax.

The Council agreed in principle to the proposals, and raised issues for the working party to consider, including whether the fee would be high enough to make a difference and whether any new mechanism would be challengeable in the absence of primary legislation – Lady Smith drew attention to a Scottish decision (Taylor v Marshalls Food Group 1998 SC 841) on this topic. There was a discussion about cultural change and the Council agreed that this mechanism could be one

tool (amongst others) that could potentially bring about behavioural change. The consensus was to set up a working party.

The SPT alerted the Council to a new Master of the Rolls working party on ADR chaired by Miss Justice Elizabeth Laing. He invited expressions of interest.

**Actions:** a) HB/PY to set up a working party; and b) Members to send expressions of interest on the new working group to HB.

#### **5) Ombudsman Landscape – Donal Galligan, Ombudsman Association**

- a) **Ombudsman Reform Workshop** – A [summary](#) of the Sheffield workshop had been circulated as a paper. Discussions included the draft Public Ombudsman Reform Bill, the universal right to complain, coverage (including gaps), governance and oversight, powers elsewhere in UK and own initiative powers. A draft Sheffield ‘manifesto’ will be published and circulated to the Council.
- Warren Seddon, Director, PHSO, informed the Council that they have recently agreed to work with members of the Health and Social Care Regulators Forum to develop a set of complaints standards in this sector that could then be adapted more widely across PHSO’s parliamentary jurisdiction. This would be on a non-statutory basis initially, although PHSO has called for powers in this area to be included in the draft PSO Bill in line with the role the Scottish Ombudsman has taken in this area. He would update the Council on progress in the next meeting.
- The Ombudsman Association would be hosting their annual event in Belfast on 20<sup>th</sup>-22<sup>nd</sup> May.

**Action** – Warren Seddon to give an update at the next meeting.

#### **b) Ombudsman and Tribunals Familiarisation programme**

DG reminded members of his earlier proposal to set up a familiarisation programme between ombudsman and tribunals. He would be trialling a pilot with the SEND tribunal and Local Government and Social Care Ombudsman (LGSCO) and would provide an update at the next Council meeting.

#### **6) Homelessness – Paul Conroy, LGSCO**

PC gave an [overview of the LGSCO](#) and the complaints on housing and homelessness. Interested Council members would contact him if they would like to discuss any of the areas in more detail and bring back any themes for discussion to the next meeting.

#### **7) Advice Sector Panel – Lindsey Poole, Advice Sector Panel**

The newly formed panel had held two meetings. They had agreed their terms of reference and had identified four key areas which they needed to narrow down into specific projects: tribunals and representation; lesson learning mechanisms; digitisation and access to early legal advice. They were working with the other panels particularly on digitisation and how it impacts client groups.

Resources were an issue and the SPT welcomed any assistance from the Council. Members who would like to speak to the panel or provide support, to arrange through HB.

**Action:** Members to contact HB if they would like to assist the panel.

### **8) Governance**

The website would be launched on 5<sup>th</sup> January. It would include all documentation including minutes, business plans and reports. The revised [Business Plan 2018-19](#) had been circulated and the 2019/20 plan would be available in July 2019. The SPT invited members to send items for the steering group to consider to HB.

Next meetings – 12<sup>th</sup> July (tbc) and 31<sup>st</sup> January. Venue – outside London.

**Action** – Administrative justice items to be sent to HB for consideration by the Steering Group.

### **9) AOB**

MS volunteered to lead a discussion on administrative data at a future meeting.

Heidi Bancroft  
Secretary to the AJC

\*[hyperlinks](#) to papers on website