

## Administrative Justice Council meeting

### Minutes

11:00-13:00, Friday 5<sup>th</sup> July

Allen & Overy

#### Attendees

Sir Ernest Ryder (SPT)	Senior President of Tribunals
Andrea Coomber	Director, JUSTICE
Caroline Sheppard OBE (CS)	Chief Adjudicator, Traffic Penalty Tribunal
Lindsey Poole (LP)	Director, Advice Services Alliance
Donal Galligan (DG)	Director, Ombudsman Association
Jo Hickman	Director, Public Law Project
Katrin Shaw	Director of Policy, Legal and Governance, Welsh Public Services Ombudsman
Michael Reed	Principal Legal Office, Free Representation Unit
Paul Yates (PY)	Head of Pro Bono, Freshfields
Paula Stevenson	Head of Devolved Tribunals, Scottish Government
Rhian Davies-Rees	Head, Welsh Tribunals
Diane Sechi (DS)	Solicitor, Simmons & Simmons
Dr. Naomi Creutzfeldt (NC)	Senior Lecturer and Academic, Westminster University
Professor Robert Thomas	Professor of Public Law, Manchester University
Rosemary Agnew (RA)	Scottish Public Service Ombudsman
Paul McFadden	Deputy Ombudsman, Northern Ireland Ombudsman
Paula Waldron	Head of Administrative Justice, MoJ
Dr. Natalie Byrom (NB)	Director of Research, Legal Education Foundation
Maurice Sunkin	Professor of Public Law and Socio Legal studies, Essex University
Warren Seddon (WS)	Director of Strategy and Insight, Parliamentary and Health Ombudsman
Claire Blades	Market Development Manager, Citizens Advice
Emma Foxall (Observer)	Deputy Ombudsman, Housing Ombudsman
Daniel Flury (DF)	Deputy Director, Tribunals, HMCTS
Luc Altmann (LA)	Deputy Head of Insight, HMCTS
Mr Justice Lane	President of the Immigration and Asylum Chamber of the Upper Tribunal
Brian Thompson	Senior Lecturer in Law, Liverpool University
Ken Butler	Welfare Benefits and Policy Advisor, Disability Rights
Heidi Bancroft (HB)	Secretary to the AJC, JUSTICE
Sally Hunt	Legal Administrator, JUSTICE
Helen Rogers (Observer)	Senior Pro Bono Manager, Allen and Overy

<b>Apologies</b>	
Karen Ashton	Head of Public Law and Community Care, Central England Law Centres
Lady Anne Smith	President of Scottish Tribunals
Richard Guyatt	Former Chair, Compulsory Purchase Association
Tim Gilling	Director, Centre for Public Scrutiny
Sir Wyn Williams	President of Welsh Tribunals
David Slade	Justice Policy: Constitutional Affairs and Inter-Governmental Relations, Welsh Government
Ronan Toal	Barrister, Garden Court Chambers
Niki Maclean	Director, Scottish Public Sector Ombudsman
Mr Justice Supperstone	Judge in charge of the Administrative Court
Claire Irvine	Head of Tribunals & Judiciary Branch, Department of Justice NI

## 1. Welcome and Update from Sir Ernest Ryder, Senior President of Tribunals

The SPT gave an update on activity since the last meeting in January: he had spoken with the new Under Parliamentary Secretary of State Paul Maynard MP (and hoped to engage with him on administrative justice issues); HMCTS had been presenting the modernisation programme around the country and DF had hosted a meeting with interested Council members; the SPT had given a [presentation](#) at the Ombudsman Association Annual conference in May which, as a consequence, has sparked cross ministerial interest in the way in which ombudsman and tribunals work together; and the Online Courts and Tribunals Procedures Bill is at report stage at parliament (and there will be an increase on judicial representation on the body).

In terms of the AJC, two new working groups had been set up – the Polluter Pays working group and the Ombudsman and Tribunals familiarisation working group. The Secretariat is working on a stakeholder engagement plan on how we communicate with stakeholders outside the Council; and we are hoping to produce an annual report in the autumn. The draft material will be ready by October and will be circulated for comments.

The SPT informed the Council that the funding application to Nuffield had been unsuccessful and they were seeking alternatives. He would be grateful for any suggestions. He informed members that the next meeting will take place in Edinburgh on 31<sup>st</sup> January 2020.

**Action:** Members to send funding suggestions to HB.

## 2. Research

### a) Academic Panel – Dr. Naomi Creutzfeldt, Westminster University

Dr. Naomi Creutzfeldt (NC) gave an update on the activity by the Academic Panel since the last meeting. The panel held an Academic/Practitioner Pop-up event in February, where they exchanged ideas and introduced academics to real life work by practitioners. A number of academics also joined the Ombudsman and Tribunals familiarisation working group.

NC informed the Council of the funding they had received from the Arts and Humanities Research Council for workshops throughout the year. They had already held a workshop on mapping administrative justice in Wales combined with the Academic Panel meeting in the afternoon. The next steps will be to hold a workshop in October on Ombudsman and Tribunals familiarisation, followed by a workshop in Edinburgh after the Council meeting. They welcomed any ideas on a topic.

NC is keen to involve PHD students in their events and hoped to create a hub of researchers and PHD students and to create post doc opportunities to assist with AJC research priorities.

**Action:** Members to send suggestions of topics for future workshops to HB or NC.

**b) Stakeholder Engagement Survey – Diane Sechi, Simmons & Simmons**

Diane Sechi gave an update on the [Stakeholder Engagement Survey](#) led by the Pro Bono Panel. She reminded the Council that the concern was about the capacity to assist appellants to access the digital format for online appeals forms, in particular the SSCS1. They had received around 370 responses and she gave an overview of the results. The responses revealed concerns with funding, digital illiteracy and social vulnerabilities.

The next step would be to fully analyse all the data with the Academic Panel, and to produce a report. She had also had a meeting with London funders who were interested in funding front line agencies as a result of the survey.

Luc Altmann (LA) was interested to see the data on the stakeholder engagement survey to get a view of how representative it is.

**Action:** DS to send the data of the survey to LA.

**c) Evaluating the impact of Court and Tribunals reform in England and Wales on the access to and the fairness of the justice system – Dr. Natalie Byrom, Legal Education Foundation**

Dr. Natalie Byrom (NB), Director of Research at the Legal Education Foundation, gave a presentation on the findings from her secondment to HMCTS as Expert Advisor on Open Data and Academic Engagement. The presentation focussed on recommendations made by NB in a report to HMCTS which set out the data and methods needed to evaluate the impact of the reform programme on access to and the fairness of the justice system.

The recommendations were based on extensive stakeholder consultation with the judiciary, policy makers, national and international experts in evaluation, public justice system digitisation, public law and equality and diversity monitoring. Over 60 stakeholders were interviewed and a report was prepared based on these discussions, which was used as a basis for public consultation. Key findings can be found [here](#).

In her presentation, NB highlighted [next steps](#) and priorities for ensuring that the court reform programme delivers on its aim of improving or maintaining access to justice.

The Council was supportive of the work and asked questions about the evaluation. Questions and comments included the user satisfaction of video hearings, the offer to share data and experience from the traffic penalty tribunal and the importance of trust in the system.

LA informed members that he and DF have agreed on the research required for the development of the next wave of tribunal logic models. They considered the service design to be as important as the evaluation.

### **3. Ombudsman and Tribunals Familiarisation Working Group - Donal Galligan**

Donal Galligan (DG) gave an update on the Tribunals and Ombudsman Familiarisation Working Group, the minutes of which were circulated as a paper. The Group had good representation and it is an excellent example of cross-panel working. The SPT had highlighted the potential scope of co-operation in his speech at the Ombudsman Association Conference.

DG summarised the key areas of discussion including training of staff and the PHSO's on accreditation program. The Group had also discussed the benefit of mapping the landscape UK wide in order to get a better understanding of the landscape and to identify where the gaps lay. They had also discussed having an academic observer as they move forward and apply the programme elsewhere. Diane Sechi had kindly offered for academics to shadow work in her law centre to gain an overview of the entire customer journey.

Next steps were for a Memorandum of Understanding between the LGSCO and SEND tribunal and a workshop in the autumn. There was a discussion about the possibilities of running a few pilots. Potential options to be explored further, alongside the LGSCO and SEND Tribunal, included the PHSO with a relevant tribunal, a similar project in Wales, and / or expanding the initial work the Housing Ombudsman had undertaken with the Property Chamber.

### **4. PHSO Complaints standards – Warren Seddon, PHSO**

Warren Seddon (WG) from the Parliamentary and Health Ombudsman (PHSO), gave an overview of the complaints standards being developed by the PHSO in partnership with a range of other bodies. They had an agreement from the Health and Social Care Regulators Forum to develop England complaints standards for the NHS in England, based on the model that already exists in Scotland. They aim to publish the draft standards in January/February and have been invited to lay their report before Parliament to prompt a discussion about how the standards can be used more widely across its UK Government jurisdiction. They also hope to secure parliamentary support for the standards to be made statutory via complaints standards powers being incorporated into the final Public Service Ombudsman Bill. WG would circulate the draft standards before the Edinburgh meeting in January.

WS also highlighted the PHSO's accreditation programme which they were looking at how they can roll it out more widely, likely once the complaint standards are complete and have been incorporated. He welcomed input from the Council on how wide this work could go and he would provide an update on the complaints standards for discussion at the next meeting. The SPT encouraged WS to work with DG on how the work fits in with the familiarisation project.

RA informed the Council that the Scottish Public Services Ombudsman are halfway through their review of the complaints standards for complaints handlers. She made some suggestions and was happy to share their experience.

**Action:** WS to circulate draft standards and give an update in the January meeting.

## **5. First Instance Decision-making**

### **i) Polluter Pays Working Group – Paul Yates, Pro Bono Panel**

Paul Yates (PY) gave an update on the polluter pays principle. He reminded the Council that one of the actions from last Council meeting was to set up a working group and he thanked members who had shown interest. They had met in April and had a wide ranging discussion, including consideration of the varying mechanisms employed by the various tribunals to resolve cases before a hearing. On the narrower polluter pays scheme (a fee that would be paid by the decision maker to HMCTS and will be tied to the first instance decision and/or compliance with procedure rules), they discussed the possibility of running a pilot in a one of the tribunals (without a fee) and the Asylum and Support Tribunal (AST) was suggested.

PY and HB had met Judge Gillian Carter, the Deputy Principle Judge at the AST, and PY was now seeking feedback from representatives from the Asylum and Support Appeals Project to ascertain whether in their view, there is an issue of incorrect first instance decision-making in Asylum Support applications. The SEND tribunal was suggested as an additional tribunal jurisdiction to consider.

The Pro Bono Panel will also look at the introduction of fee awards in the asylum and immigration tribunal to see whether there is evidence on whether they have made a difference to Home Office decision-making. They are also in discussions with the MOJ on whether the proposal could be construed as a fee and they are linked up with the Advice Sector Panel, who are looking at another option to improve DWP decision making.

### **ii) Advice Sector Panel project – Lindsey Poole, Advice Sector Panel**

Lindsey Poole (LP) gave an update on the Advice Sector Panel. They had decided to focus on the impact of poor decision-making and the cost to government of those incorrect decisions. Their particular concern lies with the number of people encountering these problems. She and HB had met the Behavioural Insights Team to discuss how they can look at behavioural changes for DWP decision-making but concluded that they would need DWP buy-in. They therefore decided to look at the economic aspect of poor decision-making, not just the procedural costs but also the cost to the individual. They have asked members to provide case studies to get some ideas on the stages the individuals are going through and the impact on their lives. Then they hoped to look at modelling and economic analysis. She had been in conversation with Disability Rights who are doing a report on a similar theme to see whether there is any cross-over.

### **iii) Tribunal Outcome Feedback – Luc Altmann, HMCTS**

Luc Altmann (LA) highlighted a new project being undertaken by HMCTS which looks at the reasons behind appeal decisions in the Social Security and Child Support Tribunal with the view of sharing the data with the DWP. They would look at a sample of decisions from the tribunal and try to identify themes for the reasons. The tribunal will tag the decision in a way that it can be analysed.

The Council had a discussion about DWP decision-making including the trend being used by the DWP of 'decision is lapsed' which masks poor decision making; DWP negotiating once an appeal is submitted and people accepting lower offers to avoid the tribunal; the need for decisions to be fed back to DWP and medical professionals; and a question on whether there is any quality assurance for first instance decisions. It was also suggested that the Council look at good decision-making and that the focus of the annual report is on improving decisions and lesson learning (rather than moving money around the system).

DF informed the Council that he had invited DWP to make a public statement on how they intend to improve their decision-making.

#### **6) UK AJI Research Roadmap – Maurice Sunkin, UK AJI**

Maurice Sunkin gave an overview of the United Kingdom Administrative Justice Institute (UK AJI) and its Research Roadmap. The UKAJI project was funded by Nuffield foundation to kick start empirical research on administrative justice. In 2014, they set out to create a community of those interested in administrative justice including academics and practitioners. They have a virtual hub and UKAJI's website provides a range of resources intended to be of value to the wider administrative justice community, including updates and news on developments, blogs, and links to current and past research. He was interested in comments and feedback from the Council on how the website could be improved.

The Research Roadmap was published in January 2018 and identified which areas of research are needed and obstacles. It identified three areas of priority: information (the need for information); new technologies (digitisation) and people (how users experience the system). The full report contains a broader description of the administrative justice landscape in 2018. He welcomed the work of the Academic Panel and AJC in bringing stakeholders together.

The SPT encouraged members to look at the full report on their website. He highlighted the need to put the AJC's work in the public domain by way the annual report and to understand that if we are not sustaining the public, the work would not be sustainable. Funding was also needed to continue to support the work of JUSTICE.

**Action:** Members to read the full UK AJI report on their [website](#).

#### **7) AOB**

Caroline Sheppard raised the issue of commercialisation of public functions and how it affects administrative justice. She suggested research in this area to establish where we lose people in these schemes. DG noted that there is a concern in the ombudsman community that when areas are taken out of the public sector, they should still be dealt with by an ombudsman and this did not always happen. RA suggested that research look at the reasons behind outsourcing.

The SPT agreed that if they could fund a researcher it could be a profitable area to look at.

The SPT thanked members for attending and to Allen and Overy for providing the venue.

Heidi Bancroft  
Secretary to the AJC