

Structural Tribunal Reform in Northern Ireland

Proposals by Brian Thompson | School of Law, University of Liverpool
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Although Brian Thompson is a Member of the Administrative Justice and Tribunals Council, he has written this report in his personal capacity and his views should not be taken to be those of Law Centre (NI) or the Administrative Justice and Tribunals Council.

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INTRODUCTION

1. Following the successful conference on 23 June 2010 which launched the publication of the report *Redressing Users' Disadvantage: Proposals for Tribunal Reform in Northern Ireland*¹ commissioned by Law Centre (NI) and funded by the Nuffield Foundation, follow-up research was proposed by Law Centre (NI) which was again awarded funds by the Nuffield Foundation. This particular strand of the second research project is directed towards making recommendations on structural aspects of tribunal reform in Northern Ireland.
2. The methodology for this research was that two workshops were held in February and April 2011, in which papers were discussed. Topics were identified in the first workshop and developed in the second. This paper is the result of a revision of the second workshop paper which was sent out to the workshop participants for comment. It should be made clear that the views expressed in this paper are those of the author, but the workshop participants played an important role in providing a robust critique.
3. I take this opportunity of thanking the following who participated in one or both of the workshops: Les Allamby (Law Centre (NI)), Marie Anderson (Deputy Northern Ireland Ombudsman), Siobhan Broderick (Northern Ireland Courts and Tribunals Service), Rt Honourable Sir Patrick Coghlin (Lord Justice of Appeal), Mark Finnegan (Special Educational needs and Disability Tribunal/ Northern Ireland Courts and Tribunals Service), Kevin Higgins (Advice NI), Louise Kyne (Citizens Advice Northern Ireland), Conall MacLynn (President of the Appeals Tribunal for Northern Ireland), Eileen McBride (President of Industrial Tribunals and the Fair Employment Tribunal), Gráinne McKeever (University of Ulster), Dr Kenny Mullan (Chief Social Security Commissioner for Northern Ireland), Paula Stevenson (Office of the Lord Chief Justice) and Ursula O'Hare (Law Centre (NI)).
4. The approach taken in these proposals is to seek to make changes which will be sufficiently flexible to accommodate anticipated and unexpected factors. For example, following the establishment of Her Majesty's Courts and Tribunals Service and the intention to unify the court and tribunal judiciaries in England and Wales, there will be implications for Scotland and Northern Ireland. A strong possibility is that reserved tribunals could become operational responsibilities of the devolved institutions. While change seems likely, it is not yet clear what form it will take and this has influenced the recommendation on creating a Northern Ireland Upper Tribunal (see paras. 30-36).
5. The proposals relate to three broad topics
 - Jurisdictions
 - Judicial Leadership
 - Overview

¹ G. McKeever and B. Thompson.

JURISDICTIONS

6. The workshop participants endorsed the approach of creating a flexible structure for tribunals which would allow for future development but would probably not be as detailed as the two tier structure in Great Britain in which each level or tier has internal divisions called chambers.
7. An existing example of this flexible approach in Northern Ireland is to be found in social security and child support with the Appeals Tribunal which incorporates five formerly separate tribunals. Indeed, the counterpart tribunal in Great Britain was part of the ‘inspiration’ along with Australian federal and state developments for the Leggatt Review’s proposals enacted in the Tribunals, Courts and Enforcement Act 2007. The Australians have coined the term ‘super tribunal’ for these structures in which multiple jurisdictions have been amalgamated in a flexible structure.²
8. The functions of a range of tribunals, excluding the Social Security and Child Support Commissioners³, can be transferred to the new structure which could be called the **Northern Ireland Amalgamated Tribunal** (NIAT). Judges and members appointed to the NIAT could include not only those initially appointed to the tribunals which are being transferred to the new structure, but also court judiciary.⁴ Having created a single tribunal ‘shell’ for the previously separate tribunals, the selection criterion for allocating judges and members to cases, would be the appropriateness of their expertise to the subject matter. In addition to continuing to allocate people to those jurisdictions to which they had initially been appointed, this would allow for flexibility in exercising that expertise in other appropriate jurisdictions. For example, a medical practitioner who had originally been appointed to the Appeals Tribunal to hear social security cases could be allocated to cases determining criminal injuries compensation. This could also apply to a lawyer appointed as a social security tribunal judge. Of course the point of tribunals is the expertise and it is not intended that this flexibility would dilute the specialist knowledge of tribunal judges and members by appointing them to areas outside their expertise. Rather, it is intended to allow for different possibilities to make the optimum use of this resource. Perhaps some full time tribunal judges could split their work between two tribunal jurisdictions which could allow them to develop and maintain the relevant specialist legal knowledge in those jurisdictions.
9. In the UK/GB First-tier Tribunal which is sub-divided into chambers, ‘ticketing’ is the term for deployment of judges and specialist members to other jurisdictions within the

² Judge Kevin O’Connor AM (President, Administrative Decisions Tribunal of New South Wales), ‘Super Tribunals or Specialist Tribunals: is there a best model for the delivery of quality administrative justice’ paper delivered Council of Australasian Tribunals (NSW Chapter) Annual Conference, 11 May 2007, and Professor P. Spender, ‘Access to Justice in the Super Tribunals’, Encyclopedia Britannica Online, <www.britannica.com/bps/additionalcontent/18/52223866/Access-to-Justice-in-the-Super-Tribunals>.

³ See the section on Onward Appeals at para. 21.

⁴ As has been done with the First-tier and Upper Tribunals, see ss. 4(1), 5(1) of the Tribunals, Courts and Enforcement Act 2007. It is not expected that many court judiciary would be appointed to the NIAT but it could be a useful point to assist in dealing with unusual circumstances.

chamber to which the judge or specialist member has been appointed, and ‘assignment’ refers to deployment to a chamber other than the one to which the person was appointed. If the proposed NIAT has a structure with no internal divisions, then perhaps ‘ticketing’ may be used to describe this flexible deployment. If the proposed NIAT does have chamber equivalents then both ‘ticketing’ and ‘assignment’ can be used.

10. An example of possible future developments which would be facilitated by the flexible structure of the proposed NIAT is provided by schools admissions and exclusions appeals. Currently the panels hearing these appeals are administered by the Education and Library Boards. Whether or not the wider reforms in education which would see the replacement of the Boards by an Education and Skills Authority are implemented, the reasons which underpin the transfer of tribunals from sponsoring Departments to the Northern Ireland Courts and Tribunals Service (NICTS) apply to schools admissions and exclusions appeals. Indeed this would assist a suggested possible further improvement: not only should tribunal members in the Special Educational Needs and Disability Tribunal have their jurisdiction in admission and exclusion appeals involving disability discrimination in Independent schools extended to all schools, but all other admission and exclusion appeals should be transferred to the NIAT. Thus the proposed NIAT allows for the matching of appropriately qualified and experienced tribunal members to the matters raised in cases, not only in current, but also in possible future jurisdictions.
11. The original proposals, agreed by ministers in the Northern Ireland Executive in summer 2009, envisaged the NICTS taking over responsibility for eighteen different tribunals (see Appendix 1). The third phase has not been implemented as planned.
12. If it is still planned to transfer the Planning Appeals Commission to the NICTS, the Australian experience demonstrates that a planning jurisdiction can be accommodated within an amalgamated tribunal.⁵

Internal divisions

13. On the assumption that Industrial Tribunals and Fair Employment Tribunal will be transferred to NICTS, the question arises as to whether or not these employment jurisdictions should be included within the proposed NIAT. In Great Britain it was decided not to include Employment Tribunals within the First-tier Tribunal, nor the Employment Appeal Tribunal (EAT) within the Upper Tribunal. Instead, it was decided that their administration would be carried out within the Tribunals Service and that their tribunal judges and members would be under the overall leadership of the Senior President of Tribunals but with ‘line management’ continuing to be carried out by the President of Employment Tribunals. There is no EAT in Northern Ireland and its possible creation is considered at paras. 33-34.
14. Employment Tribunals are party and party tribunals and it was presumably this factor and the volume of cases which led to their being retained within the tribunal system but excluded from the First-tier and Upper Tribunals. In Australia, super tribunals combine party and state with party and party tribunals in the Civil and Administrative Tribunals

⁵ See Appendices 2 and 3 for structure and jurisdictional lists of the Victorian and Western Australian state tribunals which include planning.

found in the states of Queensland, Victoria, Western Australia and also in the Australian Capital Territory. While these Civil and Administrative Tribunals do not have the equivalent employment jurisdiction, some of them have occupational regulation with registration and disciplinary powers, including the legal and medical/health care professions.⁶

15. In Northern Ireland, tribunals dealing with Gangmaster licensing have, as their judges, persons drawn from a panel of people who may chair Industrial Tribunals.⁷ So the employment jurisdiction has to that extent been included in the flexible structure approach, albeit a UK wide jurisdiction, adapted to Northern Ireland circumstances.
16. It is suggested that the two separate Industrial and Fair Employment jurisdictions be merged into an Employment Tribunal. This is a logical extension of the administrative organisation of the Office of Industrial Tribunals and the Fair Employment Tribunal. Should they simply be transferred to NICTS receiving its administrative support, or should they become part of the proposed NIAT? Are there any advantages to be gained from such inclusion, perhaps in allowing for the assignment of tribunal members to other tribunal jurisdictions and would it make any difference to incorporate as a tribunal or as a separate division?
17. The argument for an Employment jurisdiction to be included in the proposed NIAT is that it is consistent with the logic of an overall 'shell' structure into which components can be plugged. The distinctiveness of employment might be indicated by establishing not simply an Employment Tribunal but an Employment Division. A division would not require (nor bar) the merging of the separate Industrial and Fair Employment jurisdictions and indeed could allow for future development so as to encompass Employment and Police Appeal, and Reserved Forces Appeal Tribunals.⁸ In Leggatt's analysis, Employment was to be one of nine divisions of a generic tribunal because the differences between party and party tribunals and the more numerous party and state tribunals were outweighed by their similarities of being composed of legally qualified and expert members and having an approach to procedure which sought to facilitate self-representation.⁹
18. A counter-argument may be that the creation of the NIAT is a major development and although it is on a much smaller scale than the creation of the First-tier Tribunal in Great Britain (and Northern Ireland for seven reserved tribunal jurisdictions), this was a process in which the newly created Tribunals Service took over the administrative support for tribunals in phases. In Northern Ireland, the third phase of transfers of tribunals to NICTS, which includes the Industrial and Fair Employment Tribunals, has not yet been carried out and it is the jurisdiction with the second largest caseload. It might therefore be prudent, and in keeping with the key feature of flexibility, that the Industrial and Fair Employment Tribunals are transferred to NICTS but not included in the NIAT and, after a period of settling in, the position could be reviewed. In addition to determining if it

⁶ See Appendices 2-5 for the jurisdictional coverage of these different tribunals.

⁷ See Gangmasters (Appeals) Regulations (Northern Ireland) 2006, SR 2006, No. 189.

⁸ Sir A Leggatt, *Tribunals for Users- One System, One Service*, (Lord Chancellor's Department, 2001), paras. 3.21-24.

⁹ *Ibid.*, para.3.19.

would be appropriate to group tribunals together within internal divisions, and whether or not Industrial and Fair Employment Tribunals should be included (and whether those two separate jurisdictions should be combined into a single Employment Tribunal) there is also uncertainty as to whether reserved tribunals will be devolved in Scotland and Northern Ireland. This point will be addressed later.

19. The Scottish Committee of the Administrative Justice and Tribunals Council has also suggested a similar approach. There are seventeen devolved tribunals in Scotland and a Scottish Tribunals Service has been established which will, in time, have all of those tribunals transferred to it. They have not suggested a flexible modular structure, like the proposed NIAT, in which they would be incorporated, but simply a specialist body, the Scottish Tribunals Service, providing administrative support to the separate tribunals with judicial leadership provided by a Senior President of Scottish Tribunals and a governance structure designed to secure judicial independence. They propose, however, that the issue of chambers should be kept under review.¹⁰
20. One of the ways in which the different tribunals brought within the NIAT might be enabled to assist their users and to function more efficiently and economically is if their separate procedural rules can be reduced and standardised. In the GB/UK two tier system it has been possible to draft for each of the chambers a common set of procedural rules adapted to the requirements of each of the tribunal jurisdictions within the chamber. Building on that work, it might be possible to draft two sets of procedural rules for (a) the citizen and state tribunals and (b) the party and party tribunals. It is important that the rules are drafted to take account of the circumstances of unrepresented users.

Recommendation 1

A Northern Ireland Amalgamated Tribunal should be established. This generic tribunal will be able to accommodate existing tribunals and allow for future additions such as Schools Admissions and Exclusions Appeals and re-organisation such as merging the separate Industrial and Fair Employment jurisdictions into an Employment Tribunal. The inclusion of Industrial and Fair Employment Tribunals within the NIAT is recommended but that need not be done immediately upon its creation.

Recommendation 2

The legislation creating the NIAT should allow for the possibility of the NIAT to be organised through divisions or chambers and for designation of Deputy Presidents. It is not anticipated that this will be resorted to initially but affords flexibility for the future.

Onward appeals

21. In *Redressing Users' Disadvantage*, it was recommended that 'Tribunal users should have a right to an accessible and affordable appeal on a point of law'¹¹ so as to rationalise the four separate routes for onward challenge to a tribunal decision which are :

(i) *Specialist Tribunal*: from Appeal Tribunals to Social Security and Child Support

¹⁰ *Tribunal Reform in Scotland: A Vision for the Future* (2011), para. 4.53.

¹¹ Pages 65-7.

Commissioner, from Pensions Appeal Tribunal to Pensions Appeal Commissioner and from the Valuation Tribunal to the Lands Tribunal;

(ii) *High Court*: from Special Educational Needs and Disability Tribunal, Care Tribunal;

(iii) *Court of Appeal*: from Mental Health Review Tribunal, Lands Tribunal, Industrial and Fair Employment Tribunals;

(iv) *High Court*: judicial review where not included in (i)-(iii) above.¹²

22. In the UK/GB structure, a standardised appeal lies to the Upper Tribunal. It was wondered if an equivalent was appropriate for Northern Ireland as the volume of cases might not justify a specialist appellate tier. The arguments on the principle, caseload and the possible structure will now be considered.

Principle

23. The report of the Scottish Committee of the Administrative Justice and Tribunals Council (SCAJTC) has considered the issue of rationalising appeals from tribunals. The SCAJTC thought that standardising the route of tribunal appeals to a single body would:

- facilitate the development of expertise among appellate judges;
- make the appeal process more accessible to tribunal users;
- speed up justice in comparison to taking appeals to the Court of Session;
- streamline and simplify case handling processes, thus supporting the development of expertise among administrative support staff; and,
- make it easier for support organisations to provide advice to tribunal users who wish to appeal a tribunal's decision.¹³

24. In Northern Ireland, only one route for onward appeal is to a specialist tribunal, the other three are to the courts. From the perspective of the user, this is less accessible and certainly less affordable. The court procedures have not been designed with self-representation or lay representation in mind. Even with Guides and appropriate assistance from the judge conducting the procedure there are difficulties for the unrepresented users. In addition, the rules on costs mean that the losing party is liable for the winning party's costs. These factors may well act as a barrier to appeals.¹⁴ It is argued that users would also benefit from the extension of specialist expertise into appeals allowing for the development of coherent case-law which could promote clarity. They would also benefit from consistency in tribunal decision-making and initial decision-making in party and state jurisdictions.

Caseload

25. The tribunal jurisdiction in Northern Ireland which does have an appellate caseload is social security and child support where the Social Security and Child Support

¹² No appeals seem to be provided for from these tribunals: Criminal Injuries Compensation, Health & Safety, Planning Appeals Commission, Rent Assessment, Traffic Penalty. The court to which appeals from the Charity Tribunal lie is not specified in the Charities Act (NI) 2008.

¹³ *Tribunal Reform in Scotland: A Vision for the Future* (2011), para.4.57.

¹⁴ See K. Bell, *One VCAT: President's Review of VCAT*, (2009) pp. 57-8.

Commissioners had 300 cases in 2009-10. It is difficult to assess what the likely appellate caseload would be for the other devolved tribunal jurisdictions. In a sense it is a variation on assessing unmet legal need, as it is estimating the number of cases which might arise if a new easier, cheaper procedure was available instead of the current collection of four separate routes.

26. Some comparison can be drawn with Scotland where the SCAJTC compiled statistics on appeals against tribunal decisions in Scotland in 2009-10.¹⁵ After excluding appeals from Children's Hearings (775) on the basis that appeals were not restricted to law and also the long established relationship with the courts, where an appeal lies to the Sherriff Court and thereafter on a point of law or irregularity to the Court of Session, social security and child support would be the largest element in the caseload (564). The next largest group of cases concern immigration and asylum (242). These figures relate to 2009 and are High Court Review Filter applications, High Court Review applications and Permission to Appeal applications. The SCAJTC note that they are uncertain if the 242 figure includes 42 cases heard in the Court of Session in 2009-10 as they obtained the figures from different sources. From February 2010, Immigration and Asylum Chambers were added to the First-tier and Upper Tribunals with appeals on a point of law from the former to the latter. There are only two tribunals from which appeals reached double figures: Education Appeal Committees (39); and Mental Health (21). If one includes Employment Tribunals then 168 cases were heard by the Employment Appeal Tribunal (EAT) which had come from Scotland and ten cases were appealed to the Court of Session from the EAT. The total of appeals from tribunals in Scotland excluding Children's Hearing was 1,124. This is likely to be substantially more than would be generated in Northern Ireland, even taking into account the possibility of parties taking advantage of a more accessible and affordable right of appeal.

Possible structure

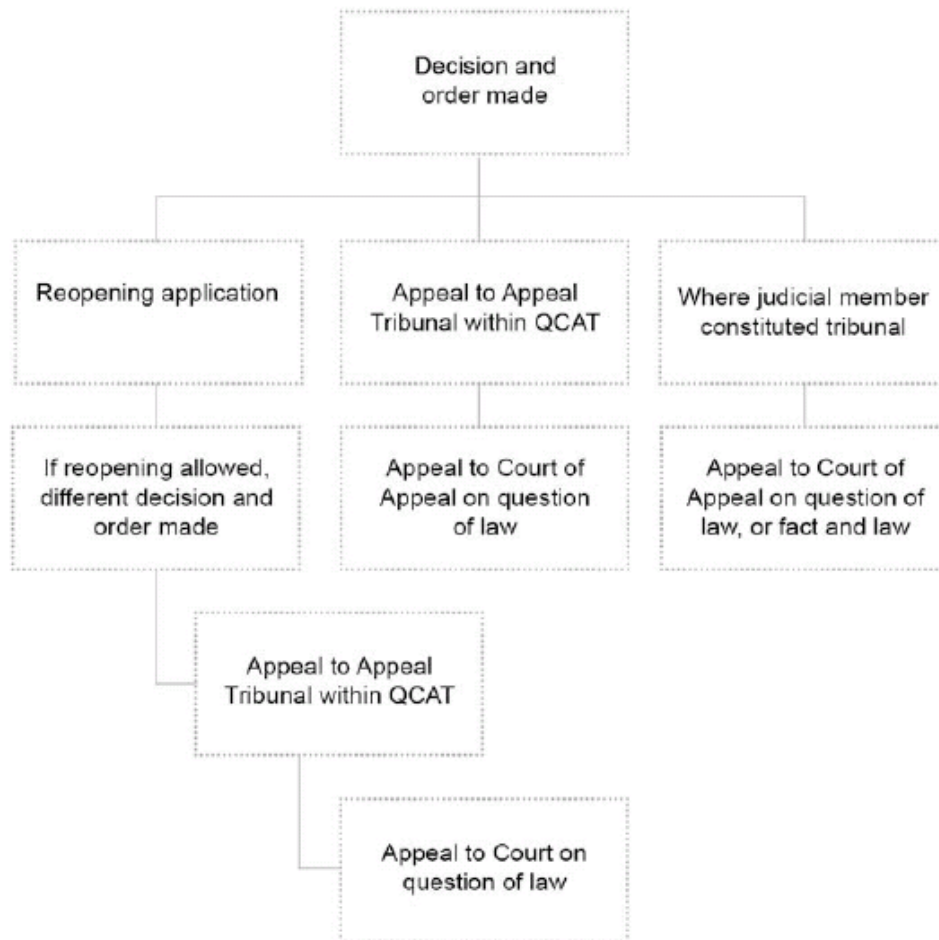
27. The SCAJTC thought it was preferable for a rationalised system of appeals from Scottish tribunals to be routed to a Scottish Upper Tribunal rather than to the other options of (a) the Sheriff Courts, or (b) the Court of Session or (c) the proposed National Sheriff Appeal Court in the Scottish Civil Courts Review.¹⁶ Given the likelihood of a smaller volume of appeals from tribunals in Northern Ireland, consideration is now given to appellate bodies both (a) within and (b) outside the proposed NIAT.
28. One of the recommendations made in relation to the Victorian Civil and Administrative Tribunal (VCAT)¹⁷ was that it should have provision for an internal appeal. The most recently established Australian super-tribunal, the Queensland Civil and Administrative Tribunal (QCAT), has provision for both an internal appeal and re-openings.

¹⁵ *Tribunal Reform in Scotland: A Vision for the Future* (2011), Annex 5, p.65. The SCAJTC advise that the data be approached with caution as they were compiled from previously unpublished statistics and are not comprehensive.

¹⁶ *Tribunal Reform in Scotland: A Vision for the Future* (2011), para. 4.62.

¹⁷ K. Bell, *One VCAT: President's Review of VCAT* (2009), pp. 55-61.

Appeals and re-openings



29. The particular point to note about these arrangements is hierarchy and competence. Decisions by judicial members of the QCAT may not be the subject of an internal appeal, but must follow an external route to the Queensland Court of Appeal. The principle would appear to be that appeals on a point of law should be heard by judges of a sufficiently senior level. (See also Appendix 6 for the Australian Capital Territory.)
30. The Upper Tribunal (UT) would also seem to follow that principle but it has judges initially appointed to the courts including the Senior President and a Lord Justice of Appeal, and three of the UT's four Chamber Presidents are High Court Judges and can draw on other court judges who are members of the UT by virtue of their court appointment. The majority of the UT's judges are experienced tribunal judges.

Evaluation and recommendation

31. It is suggested that, in addition to providing for appeals, the legislation for the NIAT should allow it to review its own determinations. If there are simple mistakes then it should not be necessary to require an appeal to reconsider the issue. This type of provision already applies to social security decisions.

32. The statistics suggest that currently the only significant volume of appeals on a point of law from a tribunal in Northern Ireland is to the Office of the Social Security and Child Support Commissioner, which is unsurprising given the caseload of the Appeals Tribunal. However, it is suggested that on the principle of access to justice all tribunal users should have the possibility of an accessible and affordable appeal on a point of law. Accessibility and affordability point in the direction of rationalising the existing routes to a standardised appeal and procedure to a tribunal. It is suggested that this confers benefits not only to parties through less cost and complexity, but also to the judges and NICTS administrators as it is not efficient for that type of appeal to be heard in the Court of Appeal. Instead, there should be the possibility of the Court of Appeal hearing appeals from the upper or second tier tribunal, those appeals requiring leave of the Commissioner as happens with the Social Security and Child Support Commissioners. As to the tribunal which should determine the proposed standardised appeal on a point of law, there are two possibilities: an appeal within the proposed NIAT; or a higher tier tribunal, similar to the UT, a **Northern Ireland Upper Tribunal (NIUT)**. It is structurally simpler to have an internal appeal, providing that the judges who determine these appeals have sufficient seniority. This can be achieved by legislating for the appointment of court judges to the proposed NIAT, following the example of the Tribunals, Courts and Enforcement Act 2007.
33. It is suggested that this may not afford sufficient flexibility to cope with future developments. If an Employment Appeal Tribunal is proposed for Northern Ireland by the Department for Employment and Learning following the exploration of this option,¹⁸ prompted by the strong support for it in responses to the consultation *Disputes in the Workplace*,¹⁹ then it would probably be better if that was a jurisdiction within a NIUT rather than an appellate division of the NIAT or a separate EAT.
34. In Scotland, the SCAJTC suggested that there should be a Scottish Upper Tribunal to which standardised appeals on a point of law from tribunals could lie. This could accommodate the Scottish jurisdiction of the EAT if that was devolved.²⁰ Of course, in Northern Ireland there is no EAT and so it is not a reserved jurisdiction. However, as it is possible that there will be devolution to Scotland and Northern Ireland of reserved jurisdictions of the First-tier and Upper Tribunals, the proposed NIAT could accommodate the transfer to it of these reserved First-tier jurisdictions:

<u>Chamber</u>	<u>Tribunal Jurisdictions</u>
Social Entitlement	Asylum Support
General Regulatory	Consumer Credit, Estate Agents, Information, Immigration Services
Tax	Tax
Immigration & Asylum	Immigration & Asylum

¹⁸ Department for Employment and Learning, *Disputes in the workplace: a systems review - policy response*, (2010), para. 6.5.

¹⁹ Department for Employment and Learning, *Disputes in the workplace: a systems review; report on the public consultation*, (2010), para. 6.8.

²⁰ *Tribunal Reform in Scotland: A Vision for the Future* (2011), para. 4.71.

35. Appeals from those chambers to the UT could be transferred to the NIUT. This could resolve the anomaly that appeals on *assessment* from the Pension Appeals Tribunal in Northern Ireland are reserved while appeals on *entitlement* are not, by authorising the judges who currently hear the two sets of appeals wearing different hats, to hear both assessment and entitlement appeals as judges of the NIUT. It may be thought useful to allow for cross-border co-operation so that judges of the UT in England & Wales and Scotland could be made available to the Lord Chief Justice of Northern Ireland following consultation with the relevant Chief Justice when allocating judges to cases within the NIUT.
36. Both entitlement appeals from the Northern Ireland Pension Appeals Tribunal and arrangements for cross-border judicial co-operation are likely to require Westminster legislation, with the latter topic probably involving legislative consent memorandums from the Scottish Parliament and the Northern Ireland Assembly.
37. One of the major innovations of the Upper Tribunal's jurisdiction is the inclusion of judicial review. This was created so that the expertise and experience of the Upper Tribunal could be used to strengthen further the development of a coherent body of law on the powers of those tribunal jurisdictions within the First-tier Tribunal. Is there a need to seek to do the same in Northern Ireland? The data on judicial reviews in 2009 and 2010 show that cases in some tribunal jurisdictions are in ascending numbers: mental health, planning and immigration. This is a total of under 20 across the two stages of judicial review. Immigration is not a devolved tribunal jurisdiction and, presumably, since the creation of the Immigration and Asylum Chambers in the First-tier and Upper Tribunals, the number of judicial reviews will decline due to the appeal on a point of law to the Upper Tribunal. This does not seem to suggest that, on volume terms, there is a need for diversion from the High Court. Neither does there seem to be a case for formalising the existing concentration of expertise of the High Court judges who regularly deal with judicial review.

Recommendation 3

The NIAT should have the power to review its own decisions at its own instigation or that of the parties.

Recommendation 4

Appeals on a point of law should lie from the NIAT to the Northern Ireland Upper Tribunal. This rationalisation of appeals and challenges to a single appellate tribunal will implement the 2010 recommendation of a right to an accessible and affordable appeal on point of law and, as with the NIAT, the flexibility of the NIUT will provide scope to cope with future developments which could include an EAT jurisdiction and the conferring of responsibility for current reserved appellate jurisdictions.

Recommendation 5

While the NIUT should also be able to review its own decisions, it is not thought necessary for the High Court to transfer judicial review to the NIUT but this should be kept under review.

JUDICIAL LEADERSHIP

38. In *Redressing Users' Disadvantage*, it was recommended that the Lord Chief Justice should be given a responsibility for tribunal judges and specialist members equivalent to that conferred on him as President of the Courts of Northern Ireland for the court judiciary by the Justice (Northern Ireland) Act 2002. If a NIAT is created then it is suggested that there should be a President of Tribunals who would be the President of the NIAT (and the NIUT if established) and to whom the Lord Chief Justice could be authorised to delegate the responsibility for tribunal judges and specialist members. Certainly deployment would be a sensible function to delegate but welfare, training and guidance might be treated as common across courts and tribunals, perhaps discharged through committees.

Complaints

39. The Lord Chief Justice has responsibilities in relation to complaints about the conduct of judicial office holders under the Justice (Northern Ireland) Act 2002, and while the legislation and Code of Practice include some tribunal judges and members there are omissions.²¹ The opportunity should be taken to include all tribunal judges and specialist members within the complaints arrangements.

40. Arrangements should also be put in place for the appraisal of tribunal judges and specialist members alongside those for training (initial and continuing), mentoring and welfare.

41. It is hoped that when it is time to draft a Tribunal Bill, the position will be clearer about the eight non-devolved tribunals operating in Northern Ireland²² and whether or not the Lord Chief Justice will have responsibility for their judges and specialist members transferred to him from the Senior President of Tribunals.

Recommendation 6

In extending to the Lord Chief Justice responsibilities for the welfare, training and guidance of tribunal judges and specialist members, all of these officers should be included within the arrangements for complaints against judicial officers.

Recommendation 7

The legislation should authorise delegation by the Lord Chief Justice of his powers in relation to tribunal judges and specialist members to the President of Tribunals.

Recommendation 8

Arrangements should be made for the conduct of the appraisal of tribunal judges and specialist members.

²¹ For example, Charity Tribunal, Rent Assessment Panel, Planning Appeals Commission, Traffic Penalty Tribunal.

²² In the First-tier Tribunal the Immigration and Asylum Chamber; Tax Chamber; Asylum Support in the Social Entitlement Chamber; Consumer Credit Appeals, Estate Agents Appeals, Information Rights, and Immigration Services in the General Regulatory Chamber of the First-tier Tribunal and Pensions Appeals in the Administrative Appeals Chamber of the Upper Tribunal.

OVERSIGHT

42. While Northern Ireland took the lead within the UK by being the first to merge the administration for courts and tribunals into a combined courts and tribunals service, it has lagged behind in its arrangements for overseeing civil, family and administrative justice. Criminal justice, for understandable reasons, has been exposed to more scrutiny, review and accountability but it has also been considered as a *system* in which different aspects and functions, from prevention and detection of crime to prosecution and trial of suspected offenders through to management and rehabilitation of offenders, can link back to crime reduction and prevention. Such a system review approach has begun to be developed in administrative justice where it is appreciated that in dealing with disputes between the individual and the state there are different methods of redress - complaints, ombudsmen, tribunals, inquiries and courts - and that they have inter-relationships which ought to be studied to discover and deal with gaps and overlaps. There is also, as with criminal justice, a loop so that redress provides lessons which can be used to inform action to prevent/reduce crime or in administrative justice to prevent/reduce disputes with public bodies as lessons can be used to improve administration. In social security, we have the President of the Appeals Tribunal and a Standards Committee separately commenting on standards of decision-making and there is also the role of the Northern Ireland Ombudsman in providing recommendations for redress for injustice caused by maladministration and for promoting good administration.
43. If the 20th century saw the rise of administrative tribunals as a major area of dispute resolution and removing some disputes from the courts, in other words a separation or divergence, it is suggested that in the 21st century we are going to experience a convergence between courts and tribunals and between civil and administrative justice. The Leggatt reforms of tribunals have continued a trend in which tribunals may be said to moving towards courts, with the requirement of legally qualified chairs in every tribunal who are renamed judges and with their specialist members enjoying judicial independence and being generally regarded as belonging to the 'judicial family'. Their training has been improved, covering both jurisdictional knowledge and general 'judgecraft' in conducting hearings. Case management techniques used in the courts are adopted where helpful in tribunals. This has not been all in the one direction, as it were 'judicialisation' of tribunals. The courts are experiencing an increase in the number of litigants in person as are administrative tribunals where the procedure is supposedly designed so that legal or other representation is not necessary, although success rates are higher in cases where tribunal users are represented. The number of represented users is set to decline given cutbacks in funding which will affect legal information, advice and support, whether in specialist law centres or organisations such as Citizen Advice or Advice NI. Law Centre (NI) is launching a Legal Support Project to provide pro bono representation at social security appeals and industrial tribunals from early 2012 in response to the demand for representation.
44. As the Australian material demonstrates, convergence can mean that some civil jurisdictions can be removed from the courts and given to tribunals, in particular small claims in disputes about consumer and credit matters and residential tenancies and guardianship. The rationale for this seems to be that tribunals can carry over from administrative into civil matters their advantages over courts of speed, cost, accessibility,

freedom from technicality and expertise. The Australians have also been developing ADR in their tribunals and seeking to meet the challenge posed by an increased number of self-represented users.

45. Just as it was suggested that a structure for tribunals in Northern Ireland should be flexible and capable of adapting to future developments, so it is suggested that civil, family and administrative justice in Northern Ireland should be kept under review. In England and Wales there are a Civil Justice Council and a Family Justice Council, both of which survived the review of arms length bodies. As is well known, the Ministry of Justice proposes to abolish the Administrative Justice and Tribunals Council (AJTC) although there is doubt as to whether the devolved administrations will seek to abolish the Scottish and Welsh Committees. Abolition of the AJTC does not mean abolition of all of its functions and the system approach to administrative justice; these will be brought within the Ministry.
46. The argument which is made here attends to the circumstances of Northern Ireland and looks to the future. The size of Northern Ireland means that it can respond to its particular circumstances and it is easier to take a system view and to take into account the gaps and overlaps between civil and family and administrative justice, to see if some issues are common and if initiatives and techniques could be shared.
47. Accordingly, it is suggested that the civil, (family²³) and administrative justice systems should have an oversight body with functions to include considering their accessibility, fairness and efficiency, and the power to make suggestions for changes and for research. A Northern Ireland Civil and Administrative Justice Advisory Committee (NICAJAC) would be chaired by the Lord Chief Justice and have representatives from court and tribunal judges, tribunal specialist members, users, legal and lay advisers and academics. The Committee could have two sub-committees, Civil and Administrative, which could carry out the detailed work. Only some members from each sub-committee would be on the main committee, thus allowing it to be less unwieldy. The NICAJAC could serve a co-ordinating and strategic role, and it is anticipated that while there are differences amongst the justice systems which must be attended to, there are also common concerns and a degree of convergence. All will be expected to develop ADR and the number of litigants in person/self-representing users may be expected to increase. There are also links between them, with judicial review in the High Court being part of both civil and family and administrative justice.
48. The Northern Ireland Ombudsman should be an ex officio member of the Administrative Justice Sub-committee and consideration should be given as to whether or not it would be useful for ex officio membership to be extended to the NICAJAC.
49. The Civil Justice Council has quarterly meetings. Their members are not remunerated apart from 'reasonable travel costs, tea and biscuits and heartfelt thanks'. In their annual reports for 2009-10, they give details on their structures and activities. The Civil Justice

²³ Logically Family Justice should be included but this is not recommended here as this field of justice has not had a review which makes such a recommendation, unlike administrative justice in *Redressing Users' Disadvantage*, and civil justice in the *Report of the Review of Access to Justice* (2011) para. 7.35 (see paras. 58-59 below).

Council has a set of standing committees which cover the following areas: consumer; costs and funding; dispute resolution; injury; and property. It also has oversight groups which cover topics across the fields of the committees in Business, EU & Comparative Law; Experts; and Pre-Action Protocols. These oversight groups are virtual, communicating by e-mail.

50. Topics which the proposed NICAJAC sub-committees would have in common could include:
- users' views;
 - procedural rules;
 - ADR;
 - access to justice.

Users' views

51. Courts and tribunals have liaison/user groups which provide the opportunity for users and their advisers to give their views on facilities and practices. There are challenges here as groups tend to be composed of users' representatives, so surveys of users must also be carried out. The data collected could include the advice and support available at court and tribunal premises for litigants in person/self-representing users. It should be supplemented by data on awareness of, and accessibility to, information, advice and support including representation. Requiring reports of users' views to be made to the NICAJAC provides an opportunity to have an overview across civil, family and administrative justice but also to enable a monitoring role over those users' views and of the responses made to them.

Procedural rules

52. In *Redressing Users' Disadvantage*, it was suggested that tribunal procedural rules should have an overriding obligation to deal with cases fairly and that consideration should be given to adopting generic rules which could be modelled on those of the First-tier and Upper Tribunals' chambers. It is suggested that the committee responsible for drafting the rules should either have lay members or at the very least access to the views of lay persons, since it is expected that the numbers of litigants in person and self-representing users will increase. Judges will still have to guide these parties in hearings but the availability of rules drafted so as to take account of these parties is most desirable.
53. The position of litigants in person and self-represented users may be said to 'bridge' procedural rules and ADR as both procedural rules and ADR will have to take into account parties who are not represented so as to address any 'inequality of arms' issues.

ADR

54. In civil, family and administrative justice, various ADR techniques are used. In Appendix 7, material from the Australian Administrative Appeals Tribunal is reproduced which describes:
- (1) the very successful conference technique which can finalise a matter without needing to hold a hearing; and
 - (2) the factors which favour the use of different ADR techniques.

55. It can be useful for a body to have oversight of the different justice systems, the better to learn which methods work and do not work and in which conditions.
56. In Administrative Justice, the scope of ADR would cover not only tribunals, but also the courts, ombudsmen and complaints and inquiries as well as the inter-relationships amongst the different methods of redress. This would enable it to build on the work being done in the mapping of administrative justice project being conducted by the Ministerial Reference Group, the establishment of which was announced by the Justice Minister at the 23 June 2010 conference. This group has a task- limited mandate and life and so the proposed Administrative Justice Sub-committee, with appropriate membership, could ensure that the group's experience and expertise is not lost. Might this sub-committee also need to take into account learning the lessons such as feedback from tribunals and recommendations for promoting good administration? Would it be useful for this sub-committee to conduct visits to observe tribunals at work and for these reports to be provided to the President of the proposed NIAT?

Access to justice

57. Another possible function which is common across the civil, family and administrative justices systems is access to justice. This is very broad and indeed could be said to encompass the previous three topics. It is suggested that it may be considered at two levels. The first is the provision of advice and support before and during hearings. In administrative justice, the scope of legal aid for representation before tribunals is very restricted, for example in Mental Health Review, where the liberty of an individual may be at stake but, as the companion research to this project by Gráinne McKeever²⁴ demonstrates, there are important concerns about awareness of the provision of advice and support for tribunal users, as well as the nature and extent of that provision. While there are some aspects distinctive to tribunal users and administrative justice, matters relating to improving administration and getting things right first time, there is wider benefit in the system approach to justice and it must be helpful to the Department of Justice that its policy functions can tap into informed, independent views. The second level is the higher one of evaluating the overall arrangements in providing access to justice.
58. The *Report of the Review of Access to Justice Northern Ireland* was published on 13 September. The Report supports starting an approach to administrative justice which adopts 'systems thinking':²⁵
- seeking the use of ADR to achieve early resolution;
 - recommending that in grants for advice and assistance in welfare matters there should be some provision of enhanced advice and advocacy²⁶ as it is appropriate that some disputes do require a hearing before a tribunal and that the user may in some cases need specialised assistance at the hearing; and

²⁴ *Supporting Tribunal Users: Access to pre-hearing information, advice and support in Northern Ireland.*

²⁵ Para 5.133.

²⁶ See paras. 5.32 and 5.118.

- having dispute resolution and feedback loops which allow lessons to be learned so as to improve public services and reduce the costs of handling complaints and legal actions.²⁷

59. The Report also recommends considering the creation of an inter-disciplinary forum through which civil justice matters can be addressed and sub-groups established to progress particular issues.²⁸ This suggested structure seeks to reduce excessive time burdens on the judiciary and to focus on action rather than being a talking-shop. Those principles also guide this paper's proposals for inter-disciplinary fora across civil, family and administrative justice, with attention devoted to common areas of concern, albeit approached differently in those different justice systems, and allowing for particular tasks to be pursued. The careful balance of considering matters generally and not becoming a talking-shop will be very important but careful integration with normal monitoring and review processes should allow for an early-warning about issues which allows task groups to be established to carry out action at a stage before the escalation of a problem into a crisis.

60. An example of this monitoring role which an Administrative Justice body could do - in addition to considering users' views and their experience about access to advice, assistance and their experience of courts and tribunals - is to consider the statistics about disputes involving individual departments and agencies, their own complaints systems, Ombudsman cases, tribunal cases, and judicial reviews. This could help identify trends and issues in promoting early resolution and better initial decision-making in public services. This is a development of the mapping of the administrative justice system work being undertaken by the Ministerial Reference Group which was welcomed in the Access to Justice Review report.²⁹

Recommendation 9

There should be an inter-disciplinary advisory body established to contribute to the oversight of tribunals and administrative justice but this body should be connected to other advisory bodies for civil and family justice so as to reflect the system approach which acknowledges the links, overlaps and gaps amongst the components of the legal system and to counteract undue focus on the criminal justice system.

Recommendation 10

This body, the Northern Ireland Civil and Administrative Justice Advisory Committee (NICAJAC) should be chaired by the Lord Chief Justice and have reporting to it sub-committees for Civil, Family and Administrative Justice. The chair and one member of each sub-committee shall be members of the committee which will meet biannually. The sub-committees could meet quarterly. The membership should include judges and legal practitioners and, reflecting users' interests at this peak level, advice bodies and academics engaged in research. The Northern Ireland Ombudsman should be an ex officio member of the Administrative Justice sub-committee and possibly of the main committee.

²⁷ Para 5.133.

²⁸ Para. 7.35.

²⁹ Para 5.117.

Recommendation 11

The common work which each sub-committee can conduct would include users' views, ADR, procedural rules and access to justice which can cover awareness of, and fairness and effectiveness of, advice and support before and during court and tribunal hearings and ADR. The work of the Ministerial Reference Group is an example of the work which could be done by the Administrative Justice Sub-committee; this sub-committee might also visit and report on the operation of tribunals.

APPENDIX 1

Tribunals, timetable for transfer to NICTS and caseload

Tribunal name	NI Department	Cases received 2009-10
FIRST PHASE August 2009		
Lands Tribunal	DFP	180
Care Tribunal	DHSSPS	10
Mental Health Review Tribunal	DHSSPS	319
Sch 11 HSS(NI) Order	DHSSPS	
Special Educational Needs & Disability Tribunal	DE	79
SECOND PHASE April 2010		
Appeals Tribunals	DSD	13,436
Rent Assessment Panel	DSD	19
THIRD PHASE April 2011		
Industrial & Fair Employment Tribunals	DEL	4,762
Planning/Water Appeal Commissions	ODFMDFM	575
Police Medical Pensions Appeal Tribunal	NIO	
NICTS		
Social & Child Support Commissioners		300
Pensions Appeal Tribunals		290
Traffic Penalty Tribunal		500
NI Valuation Tribunal		25
Criminal Injuries Compensation Appeals Panel Northern Ireland		612
New Tribunals		
Charity Tribunal		
Health & Safety Tribunal		
Ministry of Justice		
National Security Certificate Appeal Tribunal		

APPENDIX 2

The Victorian Civil and Administrative Tribunal (VCAT) established 1998

VCAT has three Divisions:

Civil

Civil Claims
Domestic Building
Owners Corporation
Real Property
Residential Tenancies
Retail Tenancies

Administrative

General List
Land Valuation
Legal Practice
Occupational and Business
Regulation
Planning and Environment
Taxation

Human Rights

Anti-Discrimination
Guardianship
Health and Privacy
Mental Health

APPENDIX 3

The State Administrative Tribunal (Western Australia) (SAT) established 2005

SAT has four streams:

Commercial & Civil

Strata Title
Commercial Tenancy
Consumer Credit
Local Government
Building Disputes
Road Traffic
Firearms
Residential Parks
(Long Stay Tenants)

Development & Resources

Development
Subdivision
Local Govt Non-Planning Applications
Local Govt Notices
Valuation of Land

Human Rights

Mental Health
Equal Opportunity
Guardianship &
Administration

Vocational Regulation

Security & Related Activities
Builders Registration
Legal Practice
Medical Practice
Nurses and Midwives
Real Estate &
Business Services Agents

APPENDIX 4

The Queensland Civil and Administrative Tribunal (QCAT) established 2009

QCAT has three divisions:

Human Rights

Guardianship
Children's Services
Anti-discrimination
Education

Civil

Minor Civil Disputes
Occupation Regulation
Building Disputes
Body Corporate &
Community Management
Manufactured Homes
Retirement Village
Retail Shop Leases

Administrative & Disciplinary

Administrative reviews
Disciplinary proceedings

APPENDIX 5

The Australian Capital Territory Civil and Administrative Tribunal (ACAT) established 2009

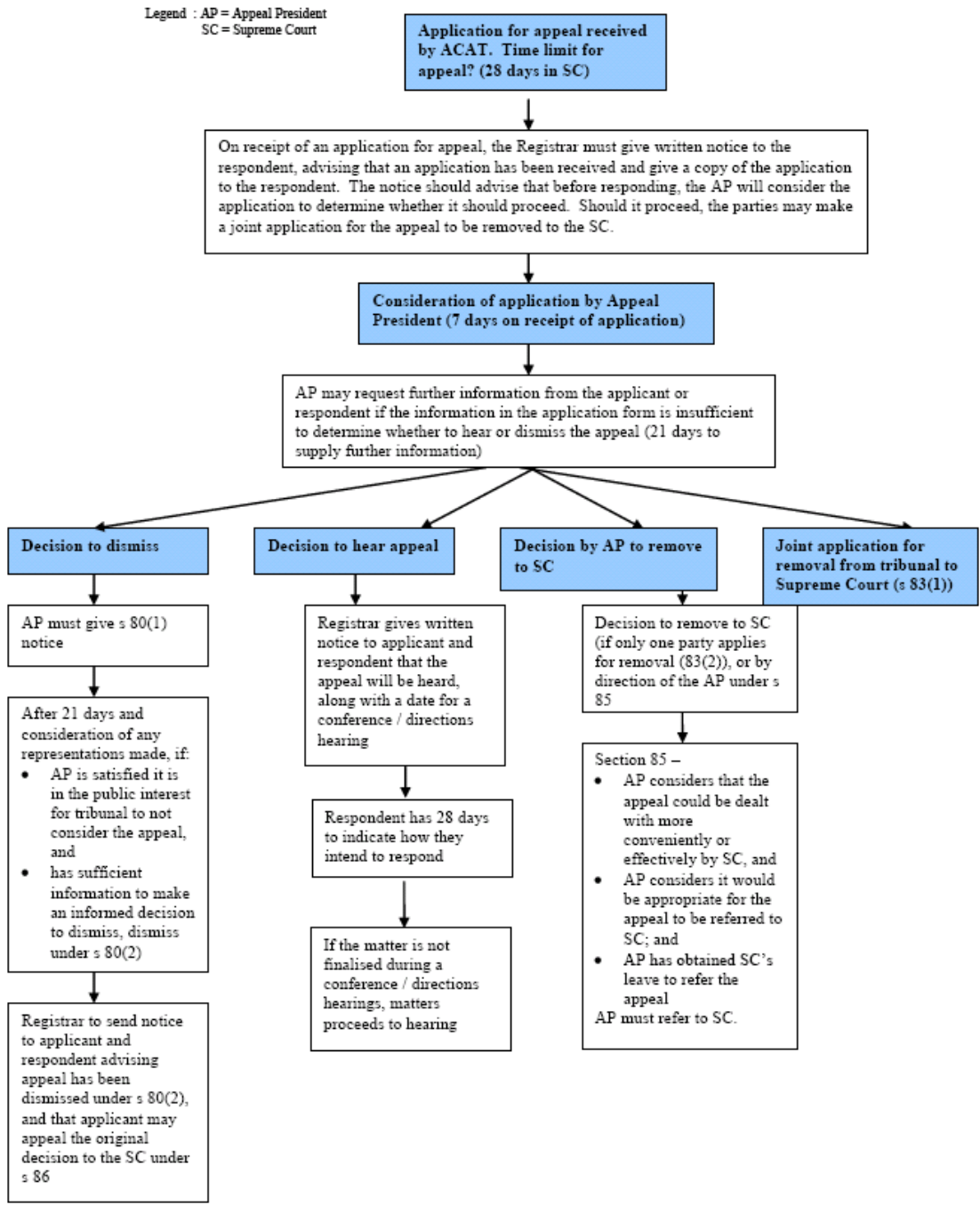
ACAT has taken over the work of these former tribunals and courts

- the Administrative Appeals Tribunal
- the Small Claims Court
- the Discrimination Tribunal
- the Guardianship and Management of Property Tribunal
- the Mental Health Tribunal
- the Residential Tenancies Tribunal
- the Liquor Licensing Board
- the Health Professions Tribunal
- the Legal Practitioners Disciplinary Tribunal

and its disciplinary jurisdiction also includes builders, electricians, plumbers and other licensed construction occupations, motor vehicle dealers, tobacco sellers, finance brokers, surveyors and architects. It also hears disputes about unit titles and all civil disputes for amounts under \$10,000.

APPENDIX 6

ACAT appeal flowchart



APPENDIX 7

Material on ADR at the Administrative Appeals Tribunal, a Commonwealth (federal) tribunal in Australia taken from their website:

www.aat.gov.au/StepsInAReview/AlternativeDisputeResolution.htm

The Material includes (1) a description of an ADR method conference which is very often used as a first stage (variants on it are also used in VCAT, SAT, ACAT and QCAT) and it is very successful in ‘finalising’ matters without the need to hold a hearing and (2) their guidelines on ADR and, in particular, the factors favouring particular ADR methods.

(1) Administrative Appeals Tribunal

Conference Process Model

Definition

Conferencing/conference is defined by the Tribunal as:

A meeting conducted by a Tribunal member or officer of the Tribunal (conference convenor) with the parties and/or their representatives.

Conferences provide an opportunity for the Tribunal and the parties to:

- discuss and define the issues in dispute;
- identify further evidence that needs to be gathered;
- explore whether the matter can be settled; and
- discuss the future conduct of the matter, including referral to further ADR processes or progress to a hearing, where settlement is not possible.

Conferencing may have a variety of goals and may combine facilitative and advisory dispute resolution processes.

The Conference Process

The process has multiple ‘stages’ and often involves more than one conference. The process is informal, flexible and its course depends on the assessment of the conference convenor as to what is appropriate for the particular case.

The conference convenor uses discretion to determine whether, and in what order, the stages are addressed. The conference convenor will:

- assist the parties to clarify their own interests and understand the interests of the other parties;
- identify and deal with case management issues; and
- make any appropriate referral to another ADR process.

The conference convenor will explain the procedure for the finalisation of the matter in the AAT should it not be resolved during the conference process and may give suggestions or

advice as to narrowing issues in dispute, ADR options, preparation for hearing and options for resolution.

1. Preparation and Explanation of Process

The conference convenor outlines the purpose and process of the conference including their role. The conference convenor also explains the process at the Tribunal if the dispute is not resolved.

2. Issue Identification

Each party, with the assistance of the conference convenor, outlines the dispute from his or her perspective. With the assistance of the conference convenor, the parties narrow the issues in dispute and clarify the legal framework within which the dispute is to be determined. There may also be a discussion about any further evidence that needs to be gathered.

3. Case management

At the end of the first conference, the matter may be listed for another conference or some other ADR process or proceed to hearing. Depending on the progress of the matter, the conference convenor may make directions after the first, second or subsequent conference. Directions are generally made in consultation with the parties.

4. Resolution

Using ADR techniques, the conference convenor will assist the parties to explore resolution options. This may occur during the first and/or subsequent conference(s).

5. Referral to other ADR processes

The conference convenor will consider the ADR referral guidelines and where appropriate make a referral to another ADR process.

If the matter has not resolved, the conference convenor will discuss with the parties the next steps to be taken, including the need to obtain any further material. If appropriate, directions may be issued by the Tribunal.

In all ADR processes the parties must act in good faith (section 34A).

(2) **ADMINISTRATIVE APPEALS TRIBUNAL**
ALTERNATIVE DISPUTE RESOLUTION (ADR) GUIDELINES
June 2006

Legislative Framework

Administrative Appeals Tribunal Act 1975, Section 2A: In carrying out its functions the tribunal must pursue the objective of providing a mechanism for review that is 'fair just economical informal and quick.'

ADR processes are defined in section 3(1) of the AAT Act as:

“procedures and services for the resolution of disputes, and includes:

- (a) conferencing; and
- (b) mediation; and
- (c) neutral evaluation; and
- (d) case appraisal; and
- (e) conciliation; and
- (f) procedures or services specified in the regulations;

but does not include:

- (g) arbitration; or
- (h) court procedures or services.

Paragraphs (b) to (f) of this definition do not limit paragraph (a) of this definition.”

Definitions and process models for the various forms of ADR processes are annexed to these guidelines.

Objectives of ADR Processes

There are a number of identified objectives that should inform the Tribunal’s use of ADR processes. ADR processes should:

- resolve or limit the issues in dispute;
- be accessible;
- use resources efficiently;
- resolve disputes as early as possible;
- produce outcomes that are lawful, effective and acceptable to the parties and the Tribunal;

- enhance the satisfaction of the parties.

As a general principle, all disputes are potentially suitable for referral to ADR.

Objective of ADR Referral Guidelines

These guidelines aim to:

- give effect to the Tribunal's legislative objectives through the utilisation of a range of ADR processes to respond to and meet the differing needs of the parties in each application;
- ensure consistency in ADR referrals made by Tribunal members and officers.
- educate parties in the expectations and procedures of the Tribunal in ADR referral.

Who will make a referral to an ADR process?

On receipt of an application, Registry staff will refer all applications to Conferencing unless the District Registrar forms the view there are compelling reasons to deviate from this practice. Thereafter, any Member or Conference Registrar may refer an application to an ADR process.

Most referrals to an ADR process will be made by the Conference Registrar after consultation with the parties at the first Conference.

General principles to consider when referring to an ADR process.

When deciding if an ADR process will assist in the resolution of the application, the Member or Conference Registrar must consider:

- Capacity of the parties to participate effectively
- Whether the parties are represented
- Context of the application including the history of past applications by the applicant
- Any identified need for urgency
- Number of parties involved in the application
- Complexity of the issues in dispute
- Bona fides of the parties
- Cultural factors
- The safety of the parties
- The likelihood of an agreed outcome or reduced issues in dispute
- Relative cost to the parties of an ADR process and a determination
- Case management requirements of the Tribunal
- Whether an ADR process might offer a more flexible solution than a determination
- Whether public interest issues require a determination.

Specific Considerations

When deciding which ADR process would be most appropriate the Member or Conference Registrar should exercise sound judgment and discretion, taking into account the following considerations:

- Attitudes of the parties
- Benefits of involving other persons in the ADR process
- Cost of each ADR process to the parties
- Stage of preparation of the application
- Progress of other applications which may impact on any decision
- Nature of the issues in dispute; ie: law, expert evidence, credit
- Impediments to settlement
- Any previous ADR attempts
- Availability of participants with authority to settle.

Selecting the most appropriate ADR process

Factors favouring Conferencing

It is standard practice to refer all matters to a Conference. If the matter remains unresolved, indicators for subsequent Conferences may be:

- further information or investigation is needed
- either party needs to take advice/instructions and reconsider the application in light of the discussion
- the parties are waiting for a decision to be made in an unrelated but relevant matter
- further applications need to be joined with the current application.

Factors Favouring Mediation

- The matter is complex or likely to be lengthy
- The matter involves more than two parties
- Desire of parties to keep the dispute confidential
- Commercial considerations are important
- There will be an ongoing relationship and future disputes could be limited by an exploration of the issues or explanation of the system
- An apology, concession or explanation from the Agency could assist resolution
- Flexible options need to be explored

Factors Favouring Conciliation

- Commercial considerations are important
- Desire of the parties to keep the dispute confidential
- The parties would benefit from advice on possible settlement options
- There is a conflict in expert opinion or evidence

Factors Favouring Neutral Evaluation

- Identification of a legal and/or factual issue that is decisive
- Agreement about the nature and impact of the issue
- Willingness to have application or identified issue evaluated
- Most investigations and gathering of evidence has been completed
- Convenience of evaluating on the papers without the need for parties to be present.

Factors Favouring Case Appraisal

- There is a dispute in relation to an evidentiary or factual issue
- The hearing is likely to be lengthy
- Parties willing to give proper consideration to appraisal of evidential arguments and prediction of outcome
- Additional independent investigation may assist in resolution
- Availability of an expert opinion may further negotiations
- Convenience of evaluating on the papers without the need for parties to be present.

Who is to conduct the ADR process?

In recommending to the State or Territory Coordinator a suitable person to conduct the ADR process, the Member or Conference Registrar making the referral will consider:

- relevant skills and knowledge
- expertise in the area of the dispute
- views of the parties
- any previous involvement in the dispute

Costs of the ADR Process

Where there is a direction to attend an ADR process and it will be conducted by a Tribunal Member or Officer, there will be no charge to the parties. However, they will be responsible for bearing their own costs of participating in the ADR process.

Where the parties request an external ADR Practitioner, they will be responsible for any associated costs.



Structural Tribunal Reform In Northern Ireland

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