

**Civil  
justice  
in  
England  
and  
Wales –  
beyond  
the  
courts**

**2009**

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*This Research Project has been coordinated by Dr Christopher Hodges and Dr Magdalena Tulibacka, of the European Civil Justice Systems Research Programme at the Centre for Socio-Legal Studies, University of Oxford, with the generous help from Which? and CMS Cameron McKenna in London*

**Mapping out non-judicial civil justice mechanisms in England and Wales**

# ENGLISH JUSTICE SYSTEM – BEYOND THE COURTS

## Mapping out the non-judicial civil justice mechanisms

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## INTRODUCTION

This project observes the civil justice system of England and Wales, seeking to map out the out-of-court (non-judicial) mechanisms of resolving civil disputes and providing redress. It looks at ADR mechanisms as well as Tribunals. The latter, although more 'judicial' in nature than ADR mechanisms (and in fact not formally ADR mechanisms at all), are nevertheless considered important for presenting the entire picture of civil justice not directly involving courts. For the same reason, small claims procedures (including the small claims track and the small claims procedure resulting from the implementation of the Small Claims Directive) are not covered here: they do involve courts.<sup>1</sup>

The aim is to develop an analytical framework and to assess the mechanisms for resolving civil disputes and providing redress which do not directly involve courts. Although the research has not been tailored particularly to consumer disputes (which involve a consumer as one party – the claimant, and a business as the other party – the defendant), it does contain analysis of mechanisms which serve the purpose of resolving such disputes. It does, however, go beyond the consumer dispute context and also analyses mechanisms used in business disputes (such as arbitration). The project does not go into administrative or criminal justice areas – although it does observe some mechanisms which provide administrative and criminal justice (such as public ombudsmen or some compensation schemes) as long as these resolve civil disputes or provide civil compensation as well.

~\*~

England and Wales have seen an extraordinary development of various public and private, governmental and non-governmental, mechanisms for resolving disputes and providing redress. Since the 1950s, numerous ombudsmen, tribunals, as well as industry-led schemes started appearing, with a particularly prolific period during the 1990s and beyond. Indeed, the process of creation and redevelopment of these schemes is by no means over. However, research conducted for the Citizens Advice Bureau indicated that in one year, 7.25 million people “who would have liked to receive advice on a problem, had no help

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<sup>1</sup> Thus, the structure of this project is different to the one adopted by the Leuven Study (2007) “Analysis and evaluation of alternative means of consumer redress other than redress through ordinary judicial proceedings (Final Report of 17 January 2007: [http://ec.europa.eu/consumers/redress/reports\\_studies/comparative\\_report\\_en.pdf](http://ec.europa.eu/consumers/redress/reports_studies/comparative_report_en.pdf)). The Leuven study covers ADR mechanisms, small claims procedures, collective actions and injunctive actions. It was commissioned by the European Commission’s DG SANCO to determine the position of consumers wishing to obtain access to justice through other means than ordinary judicial proceedings.

at all”.<sup>2</sup> Particular problems: especially related to lack of awareness of the availability of assistance and of the very existence of ADR schemes, were noted by research done in 2003 for the Department of Trade and Industry regarding consumer disputes.<sup>3</sup> Certainly, there is scope for reform of the non-judicial mechanisms providing civil justice.

The mechanisms of alternative dispute resolution, and specifically alternative means of consumer redress, have also been on the agenda of the European Union for some time. It has been argued that there are gaps in consumer redress and in enforcement of other areas of law (such as competition or IP law), both on the national and on the cross-border basis. The EU activities in the area consist of policy programmes, legislative measures, and last but not least – research projects. The Leuven Study on alternative means of consumer redress other than redress through ordinary judicial proceedings of 2007,<sup>4</sup> unsurprisingly reported significant differences in the mechanisms and procedures for non-judicial consumer redress across the EU Member States.<sup>5</sup> It is clear that, as the Final Report for the Study itself emphasized, the work on observing the structure, operation and procedures used by these varied national mechanisms has only begun.

Non-judicial mechanisms for resolving disputes are also on the agenda of the UN: the UN Secretary-General’s Special Representative on Business and Human Rights, in cooperation with the Corporate Social Responsibility Initiative at Harvard Kennedy School and with the collaboration of the International Bar Association and Compliance Advisor/Ombudsman of the World Bank Group initiated a world-wide project (‘BASESwiki’ – database format) gathering information about these mechanisms operating on the global, regional, national, local basis, as well as industry and company-specific schemes, and experts (see <http://www.baseswiki.org/En> for details).

It is hoped that this project will contribute to greater awareness and understanding of the types of mechanisms existing in England and Wales, *and to greater appreciation of features which determine their effectiveness and popularity.*

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<sup>2</sup> See the Citizens Advice Bureau *The 2008 – 2011 Citizens Advice service strategy: an overview*, available on the website of the Bureau: [http://www.citizensadvice.org.uk/index/publications/service\\_strategy\\_2008-2011.htm](http://www.citizensadvice.org.uk/index/publications/service_strategy_2008-2011.htm).

<sup>3</sup> Department for Trade and Industry, URN 03/1616; research conducted by independent consultants Margaret Doyle and Katrina Ritters, and Steve Brooker of the National Consumer Council.

<sup>4</sup> “*An analysis and evaluation of alternative means of consumer redress other than redress through ordinary judicial proceedings.*” A Study for the European Commission, Health and Consumer Protection Directorate-General, Directorate B – Consumer Affairs, prepared by The Study Centre for Consumer Law – Centre for European Economic Law, Katholieke Universiteit Leuven, Belgium, Prof. Dr. Jules Stuyck, Prof. Dr. Evelynne Terryn, Drs. Veerle Colaert, Drs. Tom Van Dyck, Mr. Neil Peretz, Ms. Nele Hoekx and Dr. Piotr Tereszkiwicz, Assisted by Ms. Beatrijs Gielen (available on [http://ec.europa.eu/consumers/redress/reports\\_studies/comparative\\_report\\_en.pdf](http://ec.europa.eu/consumers/redress/reports_studies/comparative_report_en.pdf)).

<sup>5</sup> For 28 national reports (EU Member States (25, including the UK) as well as the U.S., Canada and Australia), see: [http://ec.europa.eu/consumers/redress\\_cons/adr\\_en.htm](http://ec.europa.eu/consumers/redress_cons/adr_en.htm).



## **Methodology:**

While the first part of the Paper introduces the concept of civil justice, and focuses on the forms of non-judicial, out-of-court forms of dispute resolution and providing redress, the second part contains analyses of the respective mechanisms which function in England and Wales. These analyses follow the same research structure:

### **Statutory basis (legal basis)**

### **Links with government and funding**

### **Governance and structure**

### **Budget and expenditure**

### **Aims**

### **Procedure:**

- **who can apply for compensation/refer claims**
- **formal requirements and time limits**
- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**
- **results – compensation, other**
- **costs**

### **History (including any reforms, also ongoing reforms)**

### **Statistics**

### **Reported cases, problems, issues identified in academic writings**

## GOVERNMENTAL BODIES OVERSEEING THE JUSTICE SYSTEM:

### 1. MINISTRY OF JUSTICE

Established On 9 May 2007, merging the previously separate Department for Constitutional Affairs (former Lord Chancellor's Department) and parts of the Home Office responsible for criminal justice, prevention, sentencing, probation and prisons in England and Wales.

**Responsible for:** overseeing civil and administrative justice, including courts, tribunals, and other alternative dispute resolution mechanisms.

**The following are the components of the Ministry (bold components are those which are particularly important for this research project):**

- The National Offender Management Service: administration of correctional services in England and Wales through Her Majesty's Prison Service and the Probation Service, under the umbrella of the National Offender Management Service
- Youth Justice and sponsorship of the Youth Justice Board
- Sponsorship of the Parole Board, Her Majesty's Inspectorates of Prison and Probation, Independent Monitoring Boards and the Prison and Probation Ombudsmen
- **Criminal, civil, family and administrative law:** criminal law and sentencing policy, including sponsorship of the Sentencing Guidelines Council and the Sentencing Advisory Panel and the Law Commission
- The Office for Criminal Justice Reform: hosted by the Ministry of Justice but working trilaterally with the three CJS departments, the Ministry of Justice, Home Office, Attorney General's Office
- **Her Majesty's Courts Service: administration of the civil, family and criminal courts in England and Wales**
- **The Tribunals Service: administration of tribunals across the UK**
- **Legal Aid and the wider Community Legal Service through the Legal Services Commission**
- **Support for the Judiciary: judicial appointments via the newly created Judicial Appointments Commission, the Judicial Office and Judicial Communications Office**
- The Privy Council Secretariat and Office of the Judicial Committee of the Privy Council

- Constitutional affairs: electoral reform and democratic engagement, civil and human rights, freedom of information, management of the UK's constitutional arrangements and relationships including with the devolved administrations and the Crown Dependencies
- Ministry of Justice corporate centre: focused corporate centre to shape overall strategy and drive performance and delivery.

The Ministry oversees the implementation of the Civil Procedure Rules and their amendments. The Rules are made by the **CIVIL PROCEDURE RULE COMMITTEE** (advisory non-departmental public body). The MoJ is responsible for administering the committee; including arranging the appointment of members, maintaining the committee's freedom of information publication scheme and code of practice, and ensuring the committee's rules are made widely available.

The Ministry is also engaged in a programme of activities aimed at improvements in the operation of ADR mechanisms. See for example the Annual Pledge Report 2006/07 "Monitoring the Effectiveness of the Government's Commitment to using Alternative Dispute Resolution: <http://www.justice.gov.uk/docs/annual-pledge-report-2006-07.pdf>.

The Ministry has also been involved in Claims Management Regulation:

- Claims Management Regulation annual review 07-08: <http://www.justice.gov.uk/docs/claims-management-annual-review-08.pdf>
- Assessment of the Market for Professional Indemnity Insurance for Claims Management Businesses Authorised under the Compensation Act 2006: <http://www.justice.gov.uk/docs/cp0407-profind.pdf> (July 2007)

## 2. HER MAJESTY'S COURTS SERVICE (HMCS)

(<http://www.hmcourts-service.gov.uk/>) is an executive agency of the Ministry of Justice.

The aim is to "deliver justice effectively and efficiently to the public". The Court Service is responsible for managing the magistrates' courts, the Crown Court, county courts, the High Court and Court of Appeal in England and Wales. It carries out the administrative and support duties for the Court of Appeal, the High Court, the Crown Court, the magistrates' courts, the county courts and the Probate Service.

The following are key dates in the history of the HM Courts Service:

**1972** - The Courts Act replaces Assizes with Crown Courts

**1977** - Lord Chancellor's Department becomes a major Government Department.

**1995** - The Court Service launched as an executive agency of LCD. Its purpose was to handle the operational business of the Crown, county and Supreme courts.

**2001** - The Auld Review recommended the development of a single agency for the administration of justice, bringing together the Magistrates' Courts Service and Court Service into one administrative organization.

**2003 - June** The Lord Chancellor's Department renamed the Department for Constitutional Affairs (DCA), headed by a Secretary of State retaining the office of Lord Chancellor.

**2003 - November** the Courts Act 2003 sets out the framework for the new agency - Her Majesty's Courts Service.

**1 April 2005** - Her Majesty's Courts Service launched, linking the administration of Magistrates', Crown, county and Supreme Courts together for the first time.

### **3. HOME OFFICE**

The Home Office (<http://www.homeoffice.gov.uk/>) is one of the largest government departments, with a budget of just over £9 billion per annum (source – The Home Office Strategy 2008–11 *Working Together to Protect the Public*, <http://www.homeoffice.gov.uk/documents/strategy-08/strategy-2008?view=Binary>), responsible for the areas of terrorism, borders and immigration, policing, crime reduction, identity and passports. In 2007 the responsibility for prisons, probation, criminal law and sentencing was transferred to the Ministry of Justice (see above).

### **4. THE LAW COMMISSION**

[www.lawcomm.gov.uk](http://www.lawcomm.gov.uk)

The Law Commission is responsible for reviewing the existing law and recommending amendments. It is an independent statutory body established by the Law Commissions Act 1965. It deals with private and public law, with civil, administrative and criminal justice.

For an example of recent consultation concerning administrative justice see: "Administrative Redress: Public bodies and the Citizen" (Consultation paper 187 published 3.7.08): [http://www.lawcom.gov.uk/docs/cp187\\_web.pdf](http://www.lawcom.gov.uk/docs/cp187_web.pdf) (summary: [http://www.lawcom.gov.uk/docs/cp187\\_summary.pdf](http://www.lawcom.gov.uk/docs/cp187_summary.pdf) ).

## 5. ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL

<http://www.ajtc.gov.uk/index.htm>

Tribunals, Courts and Enforcement Act 2007 ch. 15:

[http://www.opsi.gov.uk/acts/acts2007/ukpga\\_20070015\\_en\\_1](http://www.opsi.gov.uk/acts/acts2007/ukpga_20070015_en_1)

Annual Report on tribunals: [http://www.council-on-tribunals.gov.uk/docs/ar\\_07.pdf](http://www.council-on-tribunals.gov.uk/docs/ar_07.pdf)

The Administrative Justice and Tribunals Council oversees the administrative justice system. The Council's aim is to ensure that the needs of the users are met in relationships with courts, tribunals, ombudsmen and providers of alternative dispute resolution mechanisms. The Council was established by the Courts, Tribunals and Enforcement Act 2007 ([http://www.opsi.gov.uk/acts/acts2007/ukpga\\_20070015\\_en\\_5#pt1-ch5-l1g44](http://www.opsi.gov.uk/acts/acts2007/ukpga_20070015_en_5#pt1-ch5-l1g44)) (Chapter 5 'Oversight of administrative justice system, tribunals and enquiries') (the same Act abolished the Council on Tribunals, which in turn was established in 1958 following the Franks Report on Administrative Tribunals and Enquiries of 1957). The Council is an advisory non-departmental public body. Schedule 7 of the Act regulates membership and operation of the new Council. Further information concerning the Council and the Tribunals can be found in a further part of this paper.

## 6. TRIBUNALS SERVICE

<http://www.tribunals.gov.uk/>

- Annual report 07-08:

[http://www.tribunals.gov.uk/Documents/Publications/239\\_008\\_TS\\_AR\\_final.pdf](http://www.tribunals.gov.uk/Documents/Publications/239_008_TS_AR_final.pdf)

The Tribunals Service was created on 3 April 2006 as an executive agency of the Ministry of Justice. It provides administrative support for the tribunals' judiciary who hear cases and decide appeals. Not all types of appeals are administered by the Tribunals Service. The areas covered are: Adjudicator to HM Lands Registry, Administrative Appeals, Asylum and Immigration, Asylum Support, Care Standards, Charity, Consumer Credit, Criminal Injuries Compensation, Employment, Employment Appeal, Estate Agents, Finance and Tax, Gambling, Gender Recognition, General Commissioners of Income Tax, Immigration Service, Information, Lands, Mental Health, Proscribed Organisations, Social Security and Child Support, Special Educational Needs and Disability, Special Immigration, Transport, War Pensions and Arm Forces Compensation (Source – Tribunals Service website).

"The Senior President of Tribunals is the judicial head of the Tribunals' judiciary. All judges are independent of Government. The administration and the judiciary work in partnership with one another to ensure that the public at large have an opportunity to exercise their rights and to seek effective redress against Government decisions. We also help to settle disputes between employers and employees. The need to reform the Tribunals system was initially set out in a review conducted by Sir Andrew Leggett – "Tribunals for Users – One system One Service". The Government is committed to providing better court and

tribunal public services and, as such, the Tribunals, Courts and Enforcement (TCE) Act 2007 puts in place a flexible tribunals' structure which will allow tribunals currently outside the Ministry of Justice to transfer into the new system, as well as allow new jurisdictions to be added. The primary objective in making these changes is to improve the Tribunal Services provided to our customers by:

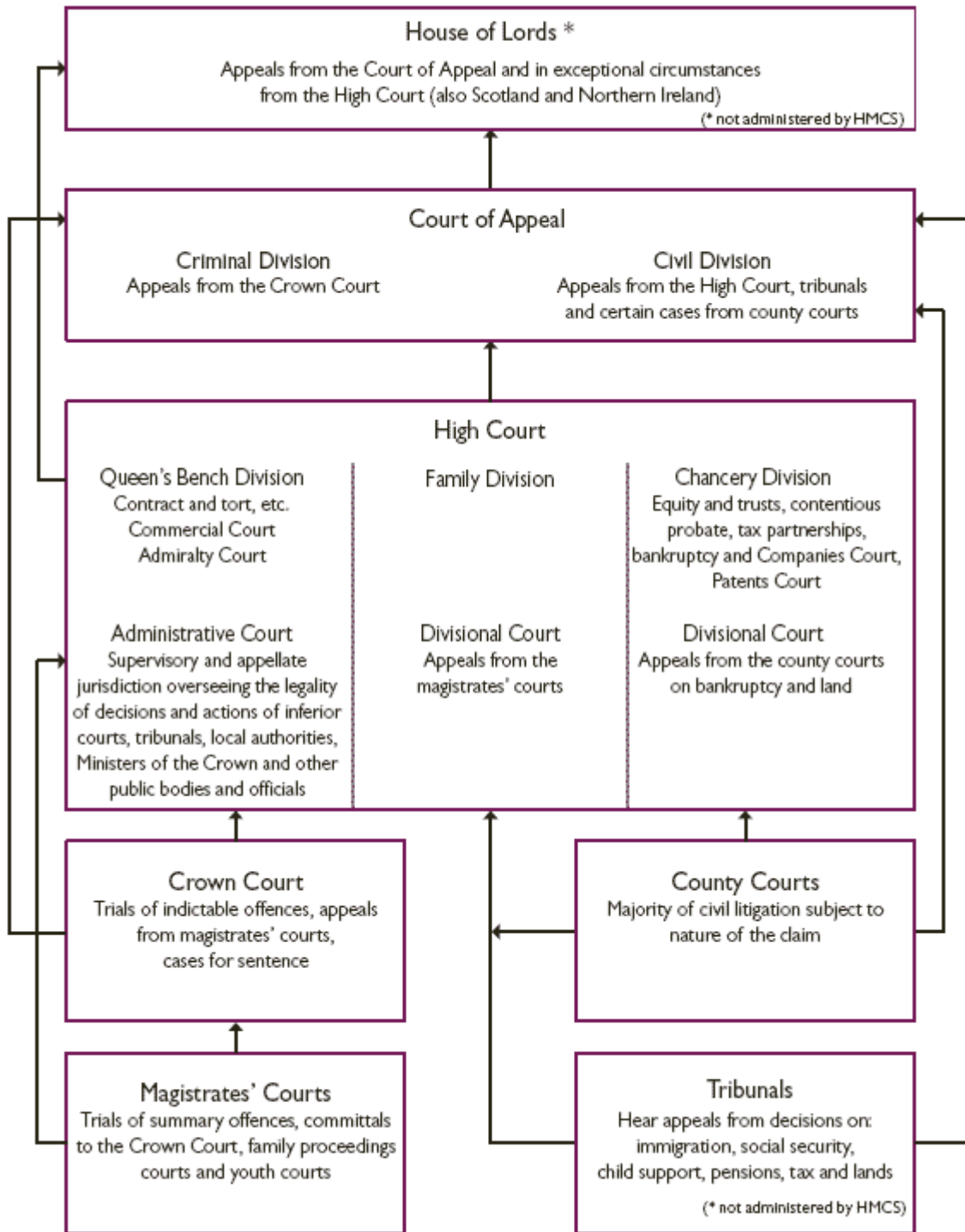
- Making clear the complete independence of the judiciary, and their decisions making, from Government.
- speeding up the delivery of justice;
- making processes easier for the public to understand;
- bringing together the expertise from each Tribunal.” (source – Tribunals Service website.

### **THE STRUCTURE OF THE COURT SYSTEM IN England and Wales: courts and tribunals**

Although judicial bodies are not a focal part of this study, it is instructive to briefly introduce their structure in England and Wales, especially that tribunals are also part of this structure.

The following diagramme presents the structure of the court system of England and Wales

(source: HMCS - <http://www.hmcourts-service.gov.uk/aboutus/structure/index.htm>)



## REGULATORY STRUCTURE AND ITS IMPACT ON CIVIL JUSTICE

The regulatory structure in England and Wales is transforming, and so are the powers of regulators with regard to dealing with law enforcement now also including the compensation orders (Regulatory Enforcement and Sanctions Act 2008 [http://www.opsi.gov.uk/acts/acts2008/ukpga\\_20080013\\_en\\_1](http://www.opsi.gov.uk/acts/acts2008/ukpga_20080013_en_1), especially Part 3 – ‘civil sanctions’).

Regulators have their own enforcement bodies or departments, but they also sponsor, appoint, approve, or remain in contact with dispute resolution and compensation schemes using ADR methods – including private schemes.

The Consumers, Estate Agents and Redress Act 2007 introduced new mechanisms of dealing with consumer disputes and providing redress in the areas of postal services, energy, and estate agents services. The National Consumer Council was established (with quite wide enforcement powers, including investigation of complaints, although mainly it is a consumer advocacy body). Part 2 of the Act provides the background for a comprehensive regulatory framework with regard to complaints handling and redress schemes in the sectors of energy, postal services and estate agents. These are further analysed in the relevant part of this report devoted to those specific redress schemes.

INQUESTS and their impact – possible compensation claims as follow-on actions? Useful for fact-finding?

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## THE STRUCTURE OF THE JUSTICE SYSTEM OF ENGLAND AND WALES:

### CIVIL JUSTICE:

Civil justice concerns a wide variety of issues: including tort and contractual claims, personal injury, medical (clinical) negligence, consumer law, employment law, housing, neighbourhood issues, divorce and relationship breakdown, children, discrimination, welfare benefits, homelessness, domestic violence, immigration and mental health issues.<sup>6</sup> Civil justice in England and Wales is administered principally by county courts and the High Court. The High Court deals with the more substantial and complex cases. County courts also handle family proceedings, such as divorce, domestic violence and matters affecting children.

Here is an excerpt from the government website explaining the gist of civil justice:

“Most civil disputes do not go to court at all, and most of those which do, do not reach a trial. Many are dealt with through statutory or voluntary complaints procedures, or through mediation and negotiation. Arbitration is also common in commercial and building disputes. Ombudsmen have the power to determine complaints in the public sector and, on a voluntary basis, in some private sector activities - for example, banking, insurance and pensions.

A large number of tribunals exist, most dealing with cases that involve the rights of private citizens against decisions of the state in areas such as social security, income tax, mental health and employment. Tribunals in England and Wales deal with over one million cases a year. For more information, follow the link below to the Tribunals Service.”<sup>7</sup>

Civil justice has undergone very comprehensive reforms on many levels: including civil procedure rules, court structure, arrangements of legal advice, assistance and legal aid, and mechanisms of Alternative Dispute Resolution. While within court-administered civil justice the emphasis has been on greater accessibility, decreased costs and complexity,<sup>8</sup>

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<sup>6</sup> These areas, apart from torts and contract claims added by the authors of this paper, have been listed in H. Genn, *Paths to Justice. What people do and think about going to law*, Oxford, Portland Oregon: Hart Publishing, 1999, and also listed in the Report of the 2006 English and Welsh Civil and Social Justice Survey by P. Pleasance, N. Balmer and T. Tam, Legal Services Research Centre, Legal Services Commission, 2007. The latter Report also lists complaints about police activities. !!!

<sup>7</sup> [http://www.direct.gov.uk/en/CrimeJusticeAndTheLaw/Thejudicialsystem/DG\\_4003283](http://www.direct.gov.uk/en/CrimeJusticeAndTheLaw/Thejudicialsystem/DG_4003283).

<sup>8</sup> See Reports by the Rt Hon the Lord Woolf, MR *Access to Justice: Interim Report*, Lord Chancellor's Department 1995, *Access to Justice: Final Report*, Lord Chancellor's Department 1996, *Modernising Justice*, A Consultation Paper, Lord Chancellor's Department, November 1998, HMSO, *Access to Justice Act 1999*, Civil Procedure Rules 1998 – see the website of the Ministry of Justice for updates on the rules: [http://www.justice.gov.uk/civil/procrules\\_fin/index.htm](http://www.justice.gov.uk/civil/procrules_fin/index.htm), see also the website of the Civil Justice Council

alternatives to court-made justice have also grown in prominence – also those encouraged by courts, or even organized and maintained by courts. Courts supported the use of ADR, especially mediation, in the following cases: *R (Cowl) v Plymouth City Council* [2001] EWCA Civ 1935, [2002] 1 WLR 803, *Dunnett v Railtrack plc* [2002] EWCA Civ 303, [2002] 1 WLR 2434, *Hurst v Leeming* [2001] EWHC 1051(Ch), [2003] 1 Lloyd's Rep 379, and also *Halsey v Milton Keynes General NHS Trust*, and *Steel v Joy and Halliday* [2004] EWCA Civ 576.

Indeed, those alternative mechanisms have grown in number and scope over the last thirty years. The Final Report by Lord Woolf mentioned that it was quite frequent for courts to make various attempts to encourage parties to use ADR.<sup>9</sup> CPR 1999 containing the overriding objective to for courts to “deal with cases justly” include as one of the elements of effective case management, “encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure” (Rule 1.4(2)e). Rule 26.4(1) provides that “a party may, when filing the completed allocation questionnaire, make a written request for the proceedings to be stayed while the parties try to settle the case by alternative dispute resolution or other means”. As mentioned in the judgement in *Halsey*, the “virtues of mediation in suitable cases are also recognised in the Chancery Guide (paras 17.1 and 17.3), the Queen’s Bench Guide (para 6.6), the Admiralty and Commercial Court Guide (para D8.8) and the Technology and Construction Court Guide (para 6.4). Judges in the Commercial Court routinely make “ADR orders” in the form set out in Appendix 7 to the Admiralty and Commercial Court Guide.” (para. 6). The Government also supports the use of ADR. In March 2001, the Lord Chancellor announced an “ADR Pledge”: all Government departments and Agencies made a number of commitments including that: “Alternative Dispute Resolution will be considered and used in *all* suitable cases wherever the other party accepts it”. In July 2002, the Department for Constitutional Affairs published a report on the effectiveness of the Government’s commitment to the ADR pledge. *Halsey* follows that the “report stated that the pledge had been taken very seriously, and identified a number of initiatives that had been introduced as a direct result of it. These included the following initiative on the part of the National Health Service Litigation Authority (“NHSLA”):

“The encouragement of greater use of mediation, and other forms of alternative dispute resolution, is one of the options considered by the NHSLA, who are responsible for handling clinical negligence claims against the NHS. The NHSLA is working with the Legal Services Commission to develop a joint strategy for promoting greater use of mediation as an alternative to litigation in clinical negligence disputes. Since May 2000 the NHSLA has been requiring solicitors representing NHS bodies in such claims to offer mediation in

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for current and past reforms of the civil litigation system and costs of litigation: <http://www.civiljusticecouncil.gov.uk/index.htm>.

<sup>9</sup> See Final Report, 1996, p. 11.

appropriate cases, and to provide clear reasons to the authority if a case is considered inappropriate” (para. 7).

Also, policy work and academic research have focused on people’s attitudes to justice and their use of the courts and alternative mechanisms. Academic research and policy papers in this area have been plentiful. Only a few are mentioned here. Professor Hazel Genn’s *Paths to Justice* (1999) assess people’s attitudes to litigation and access to justice in more general terms. Pascoe Pleasance’s *Causes of Action: Civil Law and Social Justice* (2006) follows similar research issues and methodology. It is based on the Report of the 2006 English and Welsh Civil and Social Justice Survey *Civil Justice in England and Wales* (2007).<sup>10</sup> Research into ADR mechanisms has been very extensive. The website of ‘ADRNow’ contains references to many research papers, some of which are also used in this report - [http://www.adrnow.org.uk/go/SubSection\\_38.html](http://www.adrnow.org.uk/go/SubSection_38.html). One of the most recent research papers concerns the mediation scheme in the Central London County Court (H. Genn, 2007). On the other hand, in spite of the proliferation of ADR schemes in England and Wales, research conducted for the DTI (now BERR) “Seeking Resolution: the availability and usage of consumer-to-business alternative dispute resolution in the United Kingdom”<sup>11</sup> concluded that in consumer disputes the use of ADR was highly unsatisfactory. The researchers concluded that its use depended on the issue involved (for instance the most common problems were home maintenance, repairs, electrical appliances and used cars – and there provision of ADR was negligible, although in the areas of travel, telecommunications and holidays the provision was fairly good), where the consumer was, and whether he could afford the fees. As a result, few consumer disputes use ADR schemes. The report mentioned lack of information about these schemes as one of the most important reasons for this low usage (the report was summarized on the website of ADRNow’: [http://www.adrnow.org.uk/go/SubPage\\_107.html](http://www.adrnow.org.uk/go/SubPage_107.html)). The website mentions the following recommendations by the Report: a number of key areas need to be addressed:

- improved consumer and adviser awareness and understanding of ADR
- clearer definition of the status of ADR outcomes
- easier enforceability of ADR agreements
- consistent and accessible quality assurance
- better funding provision.

In addition to generic measures applicable to the justice system in general, civil justice is becoming increasingly sectoralized: specific procedures, mechanisms and redress bodies have been established to address problems arising in specific sectors. In particular, consumer, employment, welfare issues, as well as competition law and intellectual

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<sup>10</sup> See the following website for a list of research documents and papers on ADR: [http://www.adrnow.org.uk/go/SubPage\\_107.html](http://www.adrnow.org.uk/go/SubPage_107.html).

<sup>11</sup> Department for Trade and Industry, URN 03/1616; research conducted by independent consultants Margaret Doyle and Katrina Ritters, and Steve Brooker of the National Consumer Council. It was published in January 2004.

property law have seen development of specialized civil justice arrangements. ADR mechanisms are particularly well suited to such sectoralization.

Civil justice in England and Wales is administered by the courts as well as a whole range of non-judicial bodies: tribunals, ombudsmen, and other ADR mechanisms (both governmental and non-governmental, some also organized and administered by industry; although many of those non-governmental and industry-led schemes are regulated or controlled by the state). Indeed, England and Wales has been a very good ground for development of such schemes, especially the independent ones. This research documents how diversified these schemes are – covering a great many areas of economy and social life, from internet services to funeral services. WHY? – REGULATORY CLIMATE WHICH ENCOURAGES THOSE SCHEMES? OR CIVIL COURTS AND LAWYERS TOO EXPENSIVE?

### ADMINISTRATIVE JUSTICE:

This research project is primarily devoted to civil justice. However, it does mention some mechanisms operating in the area of administrative justice, whenever they also have direct impact on civil justice. According to the explanation provided on the website of the Administrative Justice and Tribunals Council, administrative justice can be described as follows: “Government regulates various aspects of our everyday lives, making decisions in relation to individual people. ‘Administrative justice’ includes the procedures for making such decisions, the law that regulates decision-making (“the qualities of a decision process that provide arguments for the acceptability of its decisions” (Mashaw 1983: 24, Halliday and Scott 2008: 1))<sup>12</sup>, and the systems (such as the various tribunals and ombudsmen) that enable people to challenge these decisions. (<http://www.ajtc.gov.uk/index.htm>). Some of those tribunals and ombudsmen also take part in administering civil justice – and these are analysed here in more detail. It is also important to mention that those tribunals whose jurisdiction is mandatory in certain cases are **not** Alternative Dispute Resolution mechanisms.

It is instructive to introduce the structure of the administrative justice system at this point.

The administrative justice system is built on the following four pillars (source: the Law Commission ‘Administrative Redress: Public Bodies and the Citizen’ Summary of Consultation Paper 187, July 2008):

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<sup>12</sup> S. Halliday and C. Scott (2008) *Cultural Conceptions of Administrative Justice*, forthcoming as *A Cultural Theory of Administrative Justice*, in M. Adler (ed.) *Administrative Justice in Context*, Hart Publishing. At present available on the website of the Administrative Justice and Tribunals Council ([http://www.ajtc.gov.uk/adjust/08\\_12.htm](http://www.ajtc.gov.uk/adjust/08_12.htm)).

Pillar One	Pillar Two	Pillar Three	Pillar Four
Internal mechanisms for redress, for instance formal complaint proceedings	External, non-court avenues of redress – for instance public inquiries and tribunals	Public sector ombudsmen	Remedies available in public and private law by way of a court action

### CRIMINAL JUSTICE:

Again, criminal justice does not constitute a primary point of focus for this research project. However, it is instructive to present the key elements of the criminal justice system for the reasons of completeness. Criminal justice can be defined as a system of rules and practices by which public authorities exercise social control, deter crime, and sanction with criminal penalties those who breach the law. Criminal justice in England and Wales is administered by the Ministry of Justice, the Home Office and the Attorney General’s Office. These government departments oversee the work of the Criminal Justice System of England and Wales ([http://www.cjonline.gov.uk/the\\_cjs/](http://www.cjonline.gov.uk/the_cjs/)), the Crown Prosecution Service, the courts, and the National Offender Management Service. The criminal justice system is undergoing reform: the Office for Criminal Justice Reform (OCJR) is the cross-departmental team that supports all criminal justice agencies in working together to provide an improved service to the public.

In England and Wales, victims of crime are able to obtain compensation – this is provided by the Criminal Injuries Compensation Board which is analysed in this Report.

# ALTERNATIVE DISPUTE RESOLUTION

## GENERAL OVERVIEW AND METHODS:

CPR glossary defines ADR as: “collective description of methods of resolving disputes otherwise than through the normal trial process.” While within the CPR ADR is mostly understood as mediation, there are many more methods and mechanisms of ADR operation within England and Wales.

There are the following methods of Alternative Dispute Resolution operating in England and Wales<sup>13</sup>:

### A. ADJUDICATION

Adjudication is more informal than arbitration (see below). Similarly to the latter, it involves an independent third party, but the decision taken by the adjudicator does not have the same binding force as the decision of an arbitrator (normally, parties cannot go to court if they are dissatisfied with the decision of the arbitrator). Adjudicator’s decisions do not bind consumers in this way, although they usually bind businesses. Proceedings before an adjudicator are document-based (written rather than oral), and the adjudicator is an expert in the field.

Adjudication is used mostly if there is a need to use an expert who will rule on a technical issue. It is used for example by the following schemes and mechanisms (these schemes have been listed on ‘ADR now’):

- **CICAS** (Communications and Internet Services Adjudication Scheme) – an independent ADR scheme approved by Ofcom in consultation with the BERR (another ADR scheme also approved by Ofcom is Otelo). Under section 54 of the Communications Act all internet and telephone service providers must be members of one or the other scheme. Run By IDRS – dispute resolution service owned by the Chartered Institute of Arbitrators (<http://www.idrs.ltd.uk/index.asp> - see BUSINESSES PROVIDING ADR SERVICES). For more details on the CICAS see **Regulator Approved Industry Schemes**.

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<sup>13</sup> See the website of ‘ADR now’ – run by the Advice Services Alliance (SEE BELOW FOR ANALYSIS) – charity, umbrella body for not-for-profit advice services in the UK: <http://www.adrnow.org.uk/go/Default.html;jsessionid=a5B6fVcrBc87>, for references to academic and policy research into ADR schemes in England and Wales.

- **THE FURNITURE OMBUDSMAN** (former name – Qualitas - until 2006) – operated by FIRA (the Furniture Industry Research Association). It is an independent conciliation and adjudication scheme for disputes about purchases of new furniture, floor coverings, and kitchen, bedroom or bathroom installations. Around 250 retailers are registered with the Furniture Ombudsman.

The scheme has an independent advisory panel which includes representatives from Trading Standards, Citizens Advice and Which? Legal Services. The panel reviews adjudications, and offers an appeal process where consumers are not content with the adjudicator's decision. **See Private Ombudsmen.**

- **POSTAL REDRESS SERVICE (POSTRS)** – independent dispute resolution service run by IDRS (dispute resolution service provider - <http://www.idrs.ltd.uk/index.asp>). The Postal Redress Service helps settle disputes between customers or businesses about the receipt of mail from a licensed postal operator, or the purchase or use of licensed products or services (except for those products or services for which the customer has a contract with the member company). The law (Consumers, Estate Agents and Redress Act 2007, mentioned above) requires that all licensed postal operators be a member of an Alternative Dispute Resolution (ADR) scheme approved by the Postal Commission (Postcomm). Launched on 1st October 2008, POSTRS is currently the only approved scheme. The companies who are members are:

- DX Network Services Limited
- Royal Mail Group
- TNT Post UK Limited
- Intercity Communications Limited
- LDS Cambridge Limited
- Citipost AMP limited
- The Mailing House Group t/a Northern Mail
- Royale Research Limited t/a CMS
- Post 123

**See Regulator Approved Industry Schemes.**

- **Government–approved schemes for resolving TENANCY DEPOSIT DISPUTES:** **There are three such schemes at present.** On 6th April 2007 it became compulsory for all landlords and letting agents who take tenancy deposits to be a member of one of the three approved tenancy deposit protection schemes. Each scheme operates slightly differently, but all of them offer an independent ADR process for resolving disputes about deposits at the end of a tenancy.

- **SquareTrade:**

An independent organization based in the United States, which works in partnership with eBay. It offers two main products for buyers and sellers on the internet:

- A 'product care plan' for new and used electronic items, which can be bought by buyers or sellers. This promises to pay for repairs or to refund the cost price if a product bought over the internet is faulty
- An online dispute resolution scheme to resolve disputes between e-buyers and sellers

There is a large number of adjudicators in various sectors, and it is difficult to generalize as to their effectiveness or problems they encounter. Some problems were identified by case law in the construction industry. Construction adjudicators have for a long time faced a problem with recovering their fees. Philip Eyre wrote of "horror stories about Adjudicators never getting paid. The adjudication process requires certainty for Adjudicators to be promptly paid for work undertaken. There is no established procedure for Adjudicators to seek security for their fees 'up-front'."<sup>14</sup> In the judgement in *Christopher Michael Linnett –v- Halliwells LLP*<sup>15</sup> the Technology and Construction Court considered the issue whether a party who disputed the jurisdiction of the adjudicator throughout the dispute was obliged to pay his fees. The Court held that if a party participated in the adjudication in any form renders the party jointly and severally liable with the other party for the adjudicator's fee. It is, however, still likely that circumstances can arise where it is difficult for the adjudicator to recover his fees. As argued by Eyre, the Court did not devise a speedy and cost-effective procedure for recovery of the adjudicator's fees.

**In wider terms, adjudication means any type of mechanism where a third independent party decides on the best way to resolve a dispute. Thus, judges, arbitrators, and ombudsmen are all adjudicators.**

## **B. ARBITRATION**

In England and Wales (also Northern Ireland and in consumer disputes – Scotland) it is governed by the Arbitration Act 1996 ([http://www.opsi.gov.uk/acts/acts1996/ukpga\\_19960023\\_en\\_1](http://www.opsi.gov.uk/acts/acts1996/ukpga_19960023_en_1)).

'ADRNow' explain that the essence of arbitration is as follows: an independent and impartial third party considers both sides in a dispute, and makes a decision to resolve it. Both parties must agree to use the process, and normally the proceedings before the arbitrator are based on written documents. If there is a hearing, it is less formal than a hearing in court. The arbitrator's decision is usually legally binding on both sides, so

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<sup>14</sup> Article by P. Eyre, of Glovers Solicitors LLP, *United Kingdom: Cold Comfort For Adjudicators With Unpaid Fees*, of 13 March 2009, in Mondaq, ([http://www.mondaq.com/article.asp?articleid=76102&email\\_access=on](http://www.mondaq.com/article.asp?articleid=76102&email_access=on)).

<sup>15</sup> [2009] EWHC 319 (TCC).



neither of the parties can later refer the case to court. There are limited grounds for challenging the arbitrator's decision. As far as the arbitration process is concerned, it has been said that it has much in common with litigation.<sup>16</sup>

Arbitration is regulated in great detail in the Arbitration Act 1996. The Act contains provisions concerning:

- the requirements for arbitration agreements,
- very detailed requirements concerning arbitration panels and appointment of arbitrators,
- jurisdiction of the arbitral tribunal,
- arbitral proceedings, including legal representation, evidence, appointment of experts and advisers,
- provisions on arbitral awards – their content and binding force,
- appeals (very limited).

Arbitration is very popular in international disputes, commercial disputes (especially those between large corporations), but it is also commonly used in consumer disputes, and employment rights disputes. Arbitration very often results from arbitration clauses in contracts. These are binding and thus if there is a dispute the parties ought to refer the case to the arbitrator (arbitration panel). There is an exception for consumer disputes – there the consumer is not bound by an arbitration clause if the amount in dispute does not exceed the limit for small claims disputes (£5000 at the moment). Arbitral awards are binding on the parties, and they can be enforced in court. These awards are based on good practice and reasonableness as well as on the law. The awards usually include reasons for the decision.

Under the 1996 Arbitration Act there is very limited scope for appeal against an arbitrator's award. Usually, appeals can only be based on a claim that the arbitrator behaved unfairly (Source – 'ADRNow').

'ADRNow' website contains the following information concerning arbitration in England and Wales: "the parties to the contract can usually choose an arbitrator, providing they can agree on one! [IDRS](#), an independent body run by the Chartered Institute of Arbitrators, provides arbitration for consumer and business disputes. IDRS also runs tailor-made schemes for particular consumer sectors, such as the [ABTA arbitration](#) scheme for travel and holiday disputes" (the [ABTA arbitration](#) scheme has an appeal process, but there is a substantial fee which is not refunded even if the appeal is won).

"The other well-known use of arbitration is in employment disputes. The Advisory,

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<sup>16</sup> R. Clift, *Introduction to Alternative Dispute Resolution: A Comparison Between Arbitration and Mediation*, Hill Dickinson, available on the website: <http://www.civilmediation.org/downloads/15-nrc---a-comparison-between-mediation-and-arbitration---feb-06.pdf>.

Conciliation and Arbitration Service ([Acas arbitration](#)) is often used in collective disputes between unions and employers in large businesses. [Acas](#) also offers an arbitration scheme to handle individual unfair dismissal claims and claims related to flexible working requests, though this is not used very often.”

Costs of arbitration vary widely. Commercial arbitration which uses arbitration panels consisting of three arbitrators for instance can be very costly. Generally, private arbitration is expensive. “Acas arbitration is free to employers and employees. IDRS schemes run for trade associations or professional bodies, such as ABTA, are subsidized by the industry. They are either free to the consumer, or they require a proportionate registration fee based on the amount of the claim.” (‘ADRNow’)

Arbitration awards, especially in high value commercial disputes, may only be the beginning of the process leading to the winning party obtaining redress: unless the party holds security to cover the claim, the enforcement process can still be long and expensive.<sup>17</sup> Arbitration awards can be enforced in England and Wales as judgements, and internationally using the 1958 New York Convention.<sup>18</sup>

In spite of numerous advantages of arbitration over litigation, Clift pointed out the following weaknesses: arbitration is slow (it can take months or even years until the award is obtained, and even more time until it is enforced), adversarial, costly and risky (at p. 7).

### **C. MEDIATION**

It is a carefully managed process of negotiation between the parties. It is quite different from adjudication or arbitration, although sometimes it can be a preliminary step in other forms of ADR. Mediation became much more prominent within England and Wales with the recent reforms of civil procedure – the CPR introduced the opportunities for the court to encourage parties to mediate (using costs pressures, especially in commercial cases).

#### **General features:**

Mediators are independent and impartial, and their aim is to help the parties reach an agreement; they do not make decisions for the parties. Other common features of mediation are: it is voluntary, private, and confidential (unless both parties agree, issues discussed during mediation cannot be used in court). Here there is a difference with arbitration: although the latter is also confidential, there is no guarantee that it will

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<sup>17</sup> Ibid. R. Clift, at p. 6.

<sup>18</sup> Ibid. R. Clift, at p. 6. In 2005, around 136 nations were signatories.

remain so. If arbitral award is appealed in court, or enforced in court, the names of parties and some facts, as well as the award itself, may be disclosed to the public.<sup>19</sup>

### **Areas:**

As explained by 'ADRNow', "mediation is the most wide-ranging ADR process and is used in many areas, including:

- business
- consumer
- divorce and separation
- education
- housing
- international politics
- medical negligence
- neighbours
- personal injury
- small claims
- workplace
- young people at risk of homelessness
- youth crime

Mediation can be used in cases involving only two parties and those involving a large number of parties or entire communities." As far as civil and commercial cases are concerned, ADRNow mention the following areas:

- building works
- breach of contract
- debt
- personal injury
- clinical and professional negligence
- provision of goods and services
- rent deposits
- workplace and employment.

### **Proceedings and costs:**

Mediation normally takes place at a neutral venue, where the mediator and the parties establish the issues, the options and negotiate an agreement. The exact length and proceedings of the mediation depend on the issues at stake: for instance family or neighbourhood mediation require specific approaches. Commercial and civil disputes

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<sup>19</sup> R. Clift, *Introduction to Alternative Dispute Resolution: A Comparison Between Arbitration and Mediation*, Hill Dickinson, available on the website: <http://www.civilmediation.org/downloads/15-nrc---a-comparison-between-mediation-and-arbitration---feb-06.pdf>.

normally involve a meeting of the parties and their solicitors – although often each party is in a different room and the mediator ‘shuttles’ between the two rooms (‘ADRNow’ - [http://www.adrnow.org.uk/go/SubSection\\_14.html](http://www.adrnow.org.uk/go/SubSection_14.html)). Because it is possible to take one’s solicitor to the mediation meeting, a possible imbalance of power which tends to be a weakness of mediation can be remedied. However, this renders the process more expensive (ibid.). Indeed, mediation may be quite costly. Some organizations providing mediation services in civil cases charge £500 per party per day, and even more for high value cases (ibid.). Parties must cover the costs of the venue and their solicitors as well. Overall, the cost of mediation varies. Here are some examples provided by ‘ADRNow’:

“Most community mediation - used for resolving disputes between neighbours, for example - is free to the parties. Community mediation services are often funded by a local authority to provide mediation in the local area.”

“Civil and commercial mediation rates tend to be expensive and are usually based on the value of the dispute or claim. Mediations arranged through the National Mediation Helpline (<https://www.nationalmediationhelpline.com/index.php>) provided at a fixed, subsidised rate, which starts from £250 + VAT per party for a three hour session. If a party is eligible for legal aid, the solicitor can claim the cost of mediation from the legal aid fund.”

Small claims mediation is provided by a court-based mediation officer, and is free once the court application fee was paid. Some court-based schemes provide low-cost or free mediation. In England and Wales reasonable mediation costs, including help in preparing for mediation, the mediator's fee, administrative charges and the parties' costs, can be covered by Legal Aid for eligible clients. Although generally parties divide the mediation fees and charges equally, in some cases, particularly those between an individual and an organization, the costs of mediation can be paid by the organization because it has greater financial resources. It is important that the mediator is skilled and experienced enough to ensure that by footing the entire bill, the company does not gain an unfair advantage. Make sure you get some legal advice before agreeing to mediation in cases like these. The LawWorks (see below) mediation service provides free mediation in disputes where one or both of the parties are not eligible for Legal Aid, but is not able to afford a civil mediation provider. LawWorks is run by the solicitors and bar pro-bono unit, and can also provide free legal advice alongside the mediation.

### **Types of mediation:**

There are a number of types of mediation. Two most prominent are:

Facilitative mediation – here the mediator simply facilitates agreement between the parties.

Evaluative mediation – here the mediator takes a view and makes suggestions to the parties.

## Outcomes:

- paying compensation
- a refund
- an apology
- an explanation
- replacement goods/services
- a change in policy and/or behaviour

Source – National Mediation Helpline website:  
<https://www.nationalmediationhelpline.com/what-is-mediation.php>.

## D. CONCILIATION

It is similar to mediation. It is also sometimes similar to the negotiation stage of resolving a dispute, although in negotiations the negotiator is not impartial – he represents one of the parties to the dispute. The general features of conciliation are: an independent and impartial person assists the parties in reaching an agreement. Conciliation is private – so the terms of the settlement are not disclosed unless the parties agree.

There are three commonly used conciliation schemes (source – ‘ADRNow’ website: [http://www.adrnow.org.uk/go/SubSection\\_2.html](http://www.adrnow.org.uk/go/SubSection_2.html)):

- Acas conciliation in employment disputes – the parties do not meet, but the conciliator speaks to the employer and the employee separately, usually over the telephone. This scheme is funded by the Government (free to the parties). A signed agreement is binding on both parties – the employee and the employer.
- The Disability Conciliation Service – the parties usually meet face-to-face with a conciliator to discuss how to resolve the problem. This scheme is paid for by the Equalities and Human Rights Commission (free to the parties). The agreement is binding on both parties if the service provider and the person complaining sign the conciliation agreement on the day of the conciliation meeting.
- The Furniture Ombudsman scheme for disputes about furniture, fitted kitchens and bathrooms – the first stage of the procedure is referred to as conciliation, and involves a caseworker contacting both sides to try to resolve the dispute. This scheme is funded by FIRA (trade association of furniture retailers). It is free to consumers. A conciliated agreement is binding on the retailer if the consumer accepts it. If the consumer is not happy, s/he can request an independent inspection and adjudication.

Confusingly, the initial stage of some *internal* complaints procedures, such as the NHS complaints procedure, is often called 'conciliation'. In such cases, the conciliator will try to negotiate a way to resolve the dispute with both parties. However, the conciliator is not independent but instead represents the organization involved, either directly or

through a member organization (source – ‘ADRNow’ website: [http://www.adrnow.org.uk/go/SubSection\\_2.html](http://www.adrnow.org.uk/go/SubSection_2.html)).

### **Outcomes:**

“The sort of outcomes agreed through conciliation are likely to be similar to those in mediation and include:

- an apology
- an explanation
- compensation
- changes in practice and procedure
- agreements for future behaviour or communication.

Conciliation agreements can be made into legally binding settlements if both parties agree. “ (ADRNow).

### **E. EARLY NEUTRAL EVALUATION**

“In early neutral evaluation (ENE) an independent third party considers the claims made by each side and gives an opinion or evaluation. The opinion can be about the likely outcome of the case, or about a particular point of law. The third party can either be an expert in the subject of the dispute, or an expert in law (such as a barrister or a judge). The same opinion is given to both sides in the dispute.

The opinion is not legally binding – it is up to each side to decide how to respond. It may make you more determined to fight your case in court because you think you have a real chance of winning. Or it may make you more willing to negotiate a settlement because the outcome is too close to call.

ENE can help focus the parties' minds on realistic outcomes by giving them an objective view of their arguments. It is most often used in civil and commercial disputes, or contract disputes between large businesses.” (‘ADRNow’ - [http://www.adrnow.org.uk/go/SubSection\\_18.html](http://www.adrnow.org.uk/go/SubSection_18.html)).

### **F. MED ARB**

“Med-arb is a combination of mediation and arbitration, though not a blend. Each process is kept separate. Mediation is attempted first, and if no agreement results, the dispute will go to arbitration, where a binding decision will be issued. In some cases the same person acts as mediator and arbitrator; in others a different neutral person is brought in to arbitrate.

The idea of med-arb is to combine the advantages of both mediation and arbitration. If it

is possible, both sides will agree a settlement through mediation. If they can't agree, they both know that in the next stage an arbitrator will make a final decision for them.

The advantage of using the same person to mediate and to arbitrate in the same dispute is that the mediator/arbitrator will know the details of the case if they need to make a decision about the outcome. But this can also be a problem. One of the advantages of mediation is that both sides feel free to discuss the case, and to put offers on the table, while knowing that it will all remain confidential. Neither side can use any of this information in any court proceedings later, unless a judge orders it for a particular reason. In med-arb, if the same person acts as mediator and then as arbitrator, the information given in the mediation stage could well affect his/her ability to be completely neutral as an arbitrator.

If you are considering using med-arb, you should think very carefully about whether you want the same person or different people at each stage of the process, and agree this with the other side.” ([http://www.adrnow.org.uk/go/SubSection\\_18.html](http://www.adrnow.org.uk/go/SubSection_18.html))

#### **G. EXPERT EXAMINATION**

“In expert determination, an independent third party considers the claims made by each side and issues a binding decision. The third party is usually an expert in the subject of the dispute and is chosen by the parties, who agree at the outset to be bound by the expert's decision. It can be most suitable for determining technical aspects of a complex dispute.

In effect, expert determination is a form of arbitration or adjudication. Unlike arbitration, it is unlikely to be written into a contract before a dispute arises. The expert will probably be chosen, agreed and appointed jointly by both sides in order to settle the dispute without the time and expense involved in going to court. Like Early Neutral Evaluation, it is most likely to be used in expensive commercial disputes.” ([http://www.adrnow.org.uk/go/SubSection\\_18.html](http://www.adrnow.org.uk/go/SubSection_18.html))

#### **H. OMBUDSMEN**

[http://www.adrnow.org.uk/go/SubPage\\_35.html](http://www.adrnow.org.uk/go/SubPage_35.html)

See below for a detailed analysis of Ombudsmen in England and Wales.

**NOTE: Tribunals are not considered part of the ADR system, as in most cases their jurisdiction is mandatory.**

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## PROFESSIONAL ADR SERVICE PROVIDERS:

### Chartered Institute of Arbitrators

The Institute was founded in 1915 and now has 11,000 members in more than 100 countries, the CI Arb refers to itself as “a centre of excellence for the global promotion, facilitation and development of all forms of dispute resolution.” (<http://www.arbitrators.org/institute/introduction.asp>). “The Institute is a not-for-profit, UK registered charity working in the public interest through an international network of more than 30 Branches and Chapters. The CI Arb can operate across almost all business and commercial sectors (IDRS – see below). DRS-CI Arb, a division of the Institute, administers systems for the resolution of business and consumer disputes, providing a cost-effective and timely alternative to the Courts. DRS-CI Arb also offers nominating and appointing services for ad-hoc arbitrations, adjudications and mediations.

In accordance with the Royal Charter, the Institute provides the following services:

- ☐ “Education and training programmes for potential and practising arbitrators and users of the arbitral process, worldwide.
- ☐ Maintenance of a Register of Arbitrators, panel of Chartered Arbitrators and a Register of Expert Witnesses.
- ☐ Maintenance of a panel of mediators.
- ☐ Appointment and nomination service of suitably qualified persons to act as arbitrators and mediators.
- ☐ Nomination service of expert witnesses.
- ☐ Nomination of adjudicators for parties involved in construction disputes.
- ☐ Setting up and administration of small claims dispute resolution schemes.” (source - <http://www.arbitrators.org/institute/work.asp>).

See the 2006 Annual Report:  
[http://www.arbitrators.org/Member/m1/Resources/Annual\\_Report\\_2006.pdf](http://www.arbitrators.org/Member/m1/Resources/Annual_Report_2006.pdf).

### IDRS

(<http://www.idrs.ltd.uk/index.asp>):



IDRS provides dispute resolution services to individuals and businesses. It is a subsidiary of the Chartered Institute of Arbitrators (CI Arb). IDRS administers independent conciliation, mediation, adjudication and arbitration schemes to settle complaints and disputes involving individual companies, members of trade associations, professional bodies, and their customers. They are all tailored to the needs of the particular industry. All its neutrals are qualified members of the CI Arb and are selected from specialist panels (source – ADR now: [http://www.adrnow.org.uk/go/SubPage\\_2.html](http://www.adrnow.org.uk/go/SubPage_2.html)).

For instance, IDRS provides an independent consumer arbitration scheme for disputes about holidays which have been provided by ABTA members (they are the majority of tour operators and travel companies in the UK).

See the following link for an explanation of the procedure for making complaints: <http://www.cisas.org.uk/documents/MakingaComplaint.pdf>.

## **CEDR**

Centre for Effective Dispute Resolution ([http://www.cedr.com/about\\_us/](http://www.cedr.com/about_us/)). Funding comes from aid agencies and international development funding institutions.

CEDR was launched in 1990. Members include international corporations, business organizations, international law firms, professional and governmental bodies.

CEDR works with governments, public and private sector organizations to develop schemes for alternative dispute resolution. It provides training courses and consultancy services in the area of ADR. It prides itself on being material in bringing mediation into the mainstream of the English civil justice system, but its outreach is international as well. Here are some of CEDR's activities in Europe:

- “Following their Green Paper in 2002, the European Commission launched an EU Code of Conduct for Mediation and a Draft Directive developed by a drafting committee on which CEDR was represented.
- The first pan-European ADR research project, conducted by CEDR in conjunction with leading law firm CMS, culminated in the launch of a joint publication '*The EU Mediation Atlas: Practice and Regulation*'.
- “successfully introduced mediation into the [Slovak civil justice system](#).”
- “designed and established an [extra judicial system for resolving welfare disputes in Samara, Russia](#).”
- “Worked in Kazakhstan in the development of consumer-orientated mediation centres.”
- “Trained local commercial mediators in Advanced Mediation Practice in Bosnia and we regularly deliver Mediator Skills Training in Ireland.”
- “Worked with the European Patent Office to run a Study Tour for Russian and Ukrainian federal judges.”

- “Developed a mediation pilot in the [Commercial Court, Croatia](http://www.cedr.com/cjs/track_record/). (source: [http://www.cedr.com/cjs/track\\_record/](http://www.cedr.com/cjs/track_record/)).

In the UK, CEDR has the following track record:

- “In addition to the Court of Appeal Scheme and regular High Court and Commercial Court referrals, CEDR is actively involved in court-referred mediation schemes in Birmingham, Cardiff, Central London, Exeter and Guildford.”
- “A national provider to the [National Mediation Helpline](http://www.nationalmediationhelpline.org/), operated on behalf of the Ministry of Justice.”
- Building upon the success of the Judges' Forum in recent years, (...) CEDR provided mediation training to judges.
- CEDR produced an educational video on mediation and has published two editions of its '[Court referred ADR: a guide for the judiciary](http://www.cedr.com/cjs/track_record/)'.
- “Submitted a report to Mr Justice Colman's Commercial Court working group on court-ordered mediation and later a report to the Court of Appeal prior to the [Halsey judgment](http://www.cedr.com/cjs/track_record/).”

CEDR have access to over 3000 mediators, “with regular monitoring of an independent panel of over 150” ([http://www.cedr.com/CEDR\\_Solve/](http://www.cedr.com/CEDR_Solve/)).

### **The Academy of Experts**

<http://www.academy-experts.org/>

Professional body for expert witnesses in the UK and around the world.

Through the Faculty of Mediation & ADR the Academy of Experts has been providing Mediation Training since the early 90's as part of its commitment to Cost Efficient Dispute Resolution.

The Academy holds a Register of Qualified Dispute Resolvers - available on-line.

The Faculty of Mediation and ADR also produced a publication: “Resolving your dispute by mediation” (authors: P. Rowe, B. Wales-Smith (<http://www.academy-experts.org/fmadr.htm>)).

### **Maritime Solicitors Mediation Service**

A specialised service set up by a group of 19 English maritime law firms. The main objective is “to promote the use of mediation in the maritime and marine insurance sector to assist parties to expedite the cost effective resolution of disputes. The MSMS service is intended to cover the full range of "wet" and "dry" work: for example, collisions, fires, groundings, sinkings, charterparty disputes, all matters affecting the

carriage of goods by sea and marine insurance and reinsurance including hull, increased value, war, mortgagees interest, political risks, cargo, charterers' liability, energy, CAR/EAR/BAR." (source - <http://www.intervisual2.co.uk/msms/description.php>).

The following information has been posted on the website of the Service (<http://www.intervisual2.co.uk/msms/description.php>):

"The MSMS panel of Lead Mediators have carried out over 500 lead mediations between them, with a success rate (settlement rate) which is currently better than 80%. Each of the MSMS firms has an MSMS Advisor. These are people within each law firm to whom others generally turn for advice on mediation, particularly in relation to the choice of mediators. Many, but not all, of the MSMS Advisors are themselves accredited as mediators with a recognized mediation organization. The MSMS Advisors work together to promote greater use of mediation internally within their own firms and externally with clients and contacts. MSMS has a growing pool of experienced mediators with specialised maritime expertise. There are a number of experienced mediators within the MSMS Firms. With their knowledge of the maritime sector and their daily involvement in the art of negotiation, MSMS Mediators are well placed to facilitate the settlement of disputes in this specialised area. The MSMS Advisors do not restrict their recommendations to Mediators from the MSMS Firms but always recommend Mediators with the appropriate skill and expertise."

The mediators' fees are: for a one day mediation involving two parties - £2,000 per party per day. "Any additional day for any two-party mediation will be charged at £1,250 per party per day or part thereof. If the mediation involves three or more parties, the charge per party per day will be reduced to £1,500 per party per day for a one day mediation and £1,000 per party per day for any subsequent days or part thereof. These charges are based on a standard mediation day commencing at 10.00am and ending at 6.00pm. If the mediation extends beyond 6.00pm on any one day the Mediator's fee will be £300 per hour for each hour or part of an hour thereafter. The above fees are based on the assumption that the parties should restrict the papers provided to the Mediator such that they can be easily read and digested by the Mediator in one day of preparation (between 10.00am and 6.00pm). If a particular case makes it necessary for the Mediator to read more than this or to take more time, the Mediator must agree with the parties in advance of undertaking that preparation an additional charge" (source – MSMS website).

The website of the Service contains a standard form mediation agreement: <http://www.intervisual2.co.uk/msms/agreement.htm>, and a standard form mediation clause: <http://www.intervisual2.co.uk/msms/clause.htm>.

**The Ombudsman Service Ltd.**

<http://www.tosl.org.uk/>

The Ombudsman Service Ltd. is a not-for profit private company providing Ombudsman services to energy, telecoms and surveying sectors. It is funded by its members. These are: the Energy Ombudsman, Otelco, and the Surveyors Ombudsman Service. Elizabeth France - Chief Ombudsman, is the Telecommunications Ombudsman, the Energy Ombudsman and the Surveyors Ombudsman. She is supported in her work by a team of three other Ombudsmen.

### **The Leasehold Advisory Service**

<http://www.lease-advice.org/services/mediation/>

The Service provides advice concerning leasehold, or freehold property; and a mediation service to resolve disputes between the leaseholder and the landlord or manager, or between leaseholders in the same building. The mediation fee for each party is £100.

**There are many other providers of ADR services, the analysis above indicates the most prominent ones only (especially those that have other providers as their members).**

## **GOVERNMENTAL OR GOVERNMENT-FUNDED BODIES PROVIDING ADVICE, ADVOCACY, OR REDRESS MECHANISMS**

### **LEGAL ACTION GROUP**

Charity which focuses on publishing and training in order to improve quality of legal advice by lawyers and legal advisers. It is involved in policy and campaigning work, focusing on publicly funded legal services (representing the views of the end users) – source: S. Hynes “Law centres and the future of community-based legal services”, 76 *Amicus Curiae*, Winter 2008, pp. 17 – 19.

### **CITIZENS ADVICE BUREAU**

<http://www.citizensadvice.org.uk/>

The Citizens Advice 2008 – 2011 service strategy summary ([http://www.citizensadvice.org.uk/index/publications/service\\_strategy\\_2008-2011.htm](http://www.citizensadvice.org.uk/index/publications/service_strategy_2008-2011.htm)) pointed out to the wide popularity of the Bureaux – among people who sought advice, 24% used a CAB (more than any other organization) (however, the summary also mentions research which showed that 7.25 million people who “would have liked to receive advice on a problem” were not helped at all).

The structure of the Citizens Advice service is as follows: the membership organization Citizens Advice, and the Bureaux across England, Wales, and Northern Ireland. Each of these is a separate charity. In England and Wales, there are 670 main Bureaux premises, 1,800 regular outreaches and 800 one-off or irregular outreaches: a total of 3,300 locations (source – the service strategy summary). The workforce of the Bureaux consists of paid staff, volunteers and trustees.

The core funding of the Bureaux comes from local authorities (total income in 2006-7 was £140million - £65 was from local government sources). Bureaux also apply for project funding from other sources (such as the Financial Inclusion Fund).

Bureaux deliver advice, assistance and information. They also get involved in policy campaigns.

The service strategy summary provides the following information concerning the work of CAB: “In 2006/07, bureaux dealt with 2 million new clients, presenting more than 5.7 million issues. Benefits and debt problems are the main reasons people seek advice from a Citizens Advice Bureau, but hundreds of thousands of clients also present problems on a wide range of other issues including housing, employment, legal and discrimination.”

## **NATIONAL MEDIATION HELPLINE**

<https://www.nationalmediationhelpline.com/index.php>

The helpline is funded by the government. It is provided by the Ministry of Justice in conjunction with the Civil Mediation Council. The aim of the helpline is to inform about mediation and to facilitate access to mediators. There are numerous mediators accredited with the Helpline. Their list is on the website of the Helpline: <https://www.nationalmediationhelpline.com/contact-details.php>.

## **CIVIL MEDIATION COUNCIL**

The Council operates a scheme for accreditation of mediation providers. The Council operated such a pilot scheme from 2006 to 31st December. "This was a voluntary scheme although the DCA (later the MOJ) required accreditation for organizations to accept work from the National Mediation Helpline which it operated. The accreditation given during this period is still accepted by the NMH pending a replacement scheme. Accreditation related to the standards, quality, and characteristics of the provider and not to its individual mediators but set basic standards of training, CPD, and administration. The scheme is in suspension pending the proposed introduction of a registration scheme for individuals and provider organisations: this will be considered by the CMC's EGM on Monday 30th March 2009. Until then, the MOJ have indicated that they will continue to rely on the existing accredited providers." (<http://www.civilmediation.org/provider-organisations.php>).

## **PENSIONS ADVISORY SERVICE**

<http://www.pensionsadvisoryservice.org.uk/>

The network of volunteers who answer queries and try to resolve issues related to pensions, maintaining contact and referring people to the relevant schemes, the regulators, compensation funds, and the Pensions Ombudsman. The service is grant-aided by the Department for Work and Pensions. The Pensions Advisory Service can help with the dispute resolution as regards pensions (not state pensions). However, they do require the complainants to raise the issue of the Trustees of the Scheme first (although they can assist the complainants in doing this). If they recommend that a complaint should be made to the Pensions Ombudsman, they will help to make it. The services of the Pensions Advisory Service are free. They can be contacted either through a local Citizens' Advice Bureau or at their website, which contains a very comprehensive database and reference source on pensions – including occupational pensions, state pensions, and current developments.

## CONSUMER FOCUS

It is a new statutory organisation, created through the merger of three organisations – Energywatch, Postwatch and the National Consumer Council (including the Scottish and Welsh Consumer Councils) – by the Consumers, Estate Agents and Redress Act 2007. Its main tasks include:

- providing a stronger, more coherent consumer advocacy. Addressing consumer issues across different sectors, undertaking cross-sectoral research, and providing a voice for consumers in dialogue with companies, regulators, Government and Europe
- becoming the single point of contact for all consumers to obtain information and impartial advice as well as signposting consumers and providing them with help when making a complaint. Consumer Direct is a government-funded telephone and online consumer advice service offering clear, practical and impartial consumer advice.

(Source:

[http://www.consumerfocus.org.uk/en/content/cms/About\\_Us/About\\_Us.aspx](http://www.consumerfocus.org.uk/en/content/cms/About_Us/About_Us.aspx)).

Consumer Focus has strong legislative powers. “These include the right to investigate any consumer complaint if they are of wider interest, the right to open up information from providers, the power to conduct research and the ability to make an official super-complaint about failing services.” They are well-resourced to use these powers and campaign on the issues that matter most to consumers (170 staff – it is in fact “the largest and the best-resourced advocacy body in the history of the UK consumer movement”). They are not an advice agency or a statutory regulator. Other bodies such as Consumer Direct, Citizens Advice, local authority trading standards and the Office of Fair Trading play these roles. Advice for individuals on energy and post is given by Consumer Direct (08454 04 05 06).

“Consumer Focus has a duty under Section 13 of the CEAR Act 2007 to deal with cases where the consumer has been disconnected or has been threatened with disconnection, including prepayment off-supply cases. Consumer Focus also has powers under Section 12 to deal with energy or postal cases received from vulnerable consumers. The CEAR Act defines a vulnerable consumer as being someone that it is not reasonable to expect to pursue the complaint themselves.”

[http://www.consumerfocus.org.uk/en/content/cms/About\\_Us/Extra\\_Help\\_Unit/Extra\\_Help\\_Unit.aspx](http://www.consumerfocus.org.uk/en/content/cms/About_Us/Extra_Help_Unit/Extra_Help_Unit.aspx))

“In many situations Consumer Direct would be able to help potentially vulnerable consumers by: providing advice, using the empowerment arrangements to refer the consumer to an escalated team in the supplier, or by signposting the consumer to the Redress Scheme.”

“There would however be situations where these options would not be appropriate, including where the consumer was unable to understand or act on the advice given and where a previous empowerment referral to the supplier had failed to resolve the issue.

Guidelines have been developed with the industry which will allow Consumer Direct to transfer cases to the Consumer Focus’ ‘Extra Help’ unit where a consumer is not able to pursue their complaint with their supplier because of:

- The urgency of their situation e.g. debt collection action or unmanageable payment arrangement
- Their personal circumstances, whereby the consumer is unable to deal with the matter themselves
- The complexity of the problem, which makes it difficult for the consumer to deal directly with their supplier and requires expert help to resolve their problem.

Although most of Consumer Focus’ cases will be referrals from Consumer Direct, it will also be necessary to accept a small number of cases from other sources including:

- Referrals from Ofgem and Postcomm
- MP complaints
- Referrals from the Redress Schemes”  
([http://www.consumerfocus.org.uk/en/content/cms/About Us/Extra Help Unit/Extra Help Unit.aspx](http://www.consumerfocus.org.uk/en/content/cms/About_Us/Extra_Help_Unit/Extra_Help_Unit.aspx))

The Consumers, Agents and redress Act 2007 extends redress schemes to all licensed energy suppliers and postal services providers to resolve complaints where suppliers and service providers have not been able to do so, and provide compensation for consumers where it is appropriate. The full text of the legislation is available at: [http://www.opsi.gov.uk/acts/acts2007/ukpga\\_20070017\\_en\\_1](http://www.opsi.gov.uk/acts/acts2007/ukpga_20070017_en_1).

## **CONSUMER DIRECT**

<http://www.consumerdirect.gov.uk/about/>

Consumer Direct is a telephone and online consumer advice service operated by the OFT, and delivered in partnership with Local Authority Trading Standards Services. Funded by the Government. As explained on the website of Consumer Direct, their activities include: providing pre-shopping advice before consumer buys goods or services, explaining consumer rights, advising on problems or disagreements with a trader, helping consumers make a complaint about a trader (although they do not complain on the consumer’s behalf), providing general advice on how to avoid unscrupulous traders or "cowboys", explaining consumer-related issues such as warranties, buying on credit, internet shopping, refunds and replacements etc, directing the consumer to a regulator



or other organisation if it is better suited to assist him, referring the consumer's case to a local authority Trading Standards Services or similar agency if they are better suited to assist him.

“Consumer Direct will deal with each caller's problems or questions individually. We will provide an honest, impartial assessment of the situation and where possible, we will recommend a clear course of action to follow. We can only provide information and advice. **We cannot intervene directly in consumer matters, such as taking action against a trader.** If it is appropriate, we may forward the details of a complaint to an agency that is authorised to take direct action, such as Trading Standards Services.”

### INDEPENDENT COMPLAINTS ADVOCACY SERVICE

[http://www.dh.gov.uk/en/Managingyourorganisation/Legalandcontractual/Complaintspolicy/NHScomplaintsprocedure/DH\\_4087428](http://www.dh.gov.uk/en/Managingyourorganisation/Legalandcontractual/Complaintspolicy/NHScomplaintsprocedure/DH_4087428).

“The Independent Complaints Advocacy Service (ICAS) supports patients and their carers wishing to pursue a complaint about their NHS treatment or care. This statutory service was launched on 1 September 2003 and provides for the first time a national service delivered to agreed quality standards.” Section 12 of the Health and Social Care Act 2001 places a duty on the Secretary of State for Health to make arrangements to provide Independent Advocacy Services to assist individuals making complaints against the NHS. “The Independent Complaints Advocacy Service (ICAS) was established to support patients and the public wishing to make a complaint about their NHS care or treatment. It aims to ensure complainants have access to the support they need to articulate their concerns and navigate the complaints system, maximising the chances of their complaint being resolved quickly and effectively. ICAS is a patient centred service, delivering support ranging from provision of self help information, through to the assignment of a dedicated, specialist advocate able to assist individuals with more complex needs. Statistics from ICAS are shared with complaints leads, patients forum members and other stakeholders involved in improving the patient's experience. This provides an additional layer of information which can help alert the NHS to potential problem areas and ensure lessons from users' experiences of the NHS are fed back into the service to affect positive change. In addition, twice a year ICAS generates a Complaints Outcome Register for each NHS Trust showing the commitments for change, made to ICAS clients as a result of them raising their concerns using the NHS complaints procedure. This information is shared with patients' forums for them to monitor implementation.”

The Department of Health has recently awarded contracts to three organisations who will deliver a new and improved Independent Complaints Advocacy Service (ICAS) from 1st April 2006 across England.

Contracts have been awarded for each government region, as shown below:

Region: North East  
Provider: The Carers Federation

Region: North West  
Provider: The Carers Federation

Region: Yorkshire and Humberside  
Provider: The Carers Federation

Region: East Midlands  
Provider: The Carers Federation

Region: East of England  
Provider: POhWER

Region: London  
Provider: POhWER

Region: West Midlands  
Provider: POhWER

Region: South East  
Provider: SEAP

Region: South West  
Provider: SEAP

As explained on the website of ICAS, the new service has been designed using our experience of providing ICAS over the last few years, feedback from clients and stakeholders and the results of an independent evaluation conducted by MORI. "The most significant change is that the service will now have two distinct but complimentary models of service delivery, dependent on client need:

1. Self advocacy model - designed to empower those clients who want and are able to raise their own concerns

- Information and support via local rate telephone numbers, staffed by advocates, with opening times extended to include Thursday evenings
- Support via any form of written correspondence (fax, e-mail, letter)
- Support via specially designed Self Help Information which is available in hard copy, from the web and is reproduced in all of the major community languages

- 'Third party', professional support for other advocacy, support or advice workers already supporting clients with complex needs locally

2. Supported advocacy model - designed to empower and support those clients with more complex needs

- With resources directed towards the most disadvantaged and vulnerable groups in each region, this model will ensure clients with more complex needs have access to specialist advocates who can support them through the complaints process.”

“The current ICAS contracts will end on 31st March 2006.

Over the first year of ICAS delivery (1 September 2003- 31 August 2004) advocates dealt with approximately 27,000 calls on its national telephone help-lines and went on to provide full advocacy support to 10,422 complainants.

Over the second year of ICAS delivery (1 September 2004 - 31 August 2005) advocates dealt with approximately 29,000 calls and went on to provide full advocacy support to just under 13,000 complainants.”

Source of quotations:

[http://www.dh.gov.uk/en/Managingyourorganisation/Legalandcontractual/Complaintspolicy/NHScomplaintsprocedure/DH\\_4127482](http://www.dh.gov.uk/en/Managingyourorganisation/Legalandcontractual/Complaintspolicy/NHScomplaintsprocedure/DH_4127482).

## NON-GOVERNMENTAL BODIES OR ORGANISATIONS PROVIDING ADVICE, ADVOCACY, OR REDRESS MECHANISMS

### ACAS (Advisory, Conciliation and Arbitration Service)

<http://www.acas.org.uk/index.aspx?articleid=1342>

The service aims to “improve organisations and working life through better employment relations.” It supplies up-to-date information, independent advice and training, and works with employers and employees to solve problems and improve performance. Acas serves as part of the Employment Tribunals system, with increasingly important role, especially following the 2002 Employment Act and the later 2008 Employment Act (reforms of the Employment Tribunals system are analysed in the part of this Report concerning Employment Tribunals).<sup>20</sup>

Free advice is provided to employers and employees from the Acas website or by calling their telephone helpline. Employers are also offered more specialised services, including training, workplace projects, conciliation and mediation. Founded in 1975, Acas is largely funded by the BERR. However, it remains a non-departmental body, governed by an independent Council.

The Acas website explains: “Acas has a legal duty to offer free conciliation services where there is a complaint about employment rights that could be referred to an employment tribunal, even if it hasn't yet. Our role is to help find a solution that both sides find acceptable instead of going to a tribunal hearing. We don't impose solutions, but will try to help you settle your differences on your own terms. This process is known as conciliation. It's essentially the same process as mediation, but conciliation is the term that tends to be used if an employee is making a specific complaint against their employer.” <http://www.acas.org.uk/index.aspx?articleid=2010> The Acas conciliation service is:

- **“Voluntary** - you only take part if you want to and you can stop at any time.
- **Free** - there is no charge for our service.
- **Impartial** - we won't take sides or judge who is right or wrong.

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<sup>20</sup> For details see for instance the BERR dispute resolution review web page:  
[http://www.berr.gov.uk/whatwedo/employment/Resolving\\_disputes/disputes\\_after\\_6\\_april\\_2009/index.html](http://www.berr.gov.uk/whatwedo/employment/Resolving_disputes/disputes_after_6_april_2009/index.html).

- **Independent** - we are not part of the Employment Tribunal Service. Conciliation does not delay the tribunal process. What you say during conciliation can't be used as evidence against you at a tribunal hearing.
- **Confidential** - nothing you tell us will be passed on to anyone else unless you agree and nothing said in mediation can be used in any later company procedures or court action.
- **Available until the matter is resolved** - the law currently states that for certain types of complaint to an employment tribunal the help of the conciliator will only be available for a limited period. If this applies in your case, the employment tribunal will write and tell you the date that the conciliation period will end. However, as Parliament intends to abolish such fixed periods, Acas has decided that it will offer conciliation for as long as the parties wish us to do so, until either the complaint is resolved or is determined by an Employment Tribunal" (ibid . Acas website).

Agreements reached during the process are binding.

Acas also offers arbitration and mediation schemes. "The Acas Arbitration Scheme is an alternative to employment tribunal hearings. Only cases of alleged unfair dismissal or claims under flexible working legislation may be decided. Acas was given powers to draw up the Scheme in the Employment Rights (Dispute Resolution) Act 1998. The Scheme was introduced as a speedy, informal, private and generally less legalistic alternative to an employment tribunal hearing. It's designed to provide a final outcome more quickly and one which mirrors the outcomes available in an employment tribunal. There are few grounds for challenging the arbitrator's award and appeals can only be made in limited circumstances. Hearings are conducted by arbitrators from the Acas panel of independent arbitrators. They are chosen for their impartiality, knowledge, skills and employment relations experience. They are appointed on a case-by-case basis and not directly employed by Acas." "Once both parties have signed an agreement to come to arbitration under the Scheme, an employment tribunal can no longer hear the claim." An agreement can only be reached with the assistance of an Acas conciliator, or through a Compromise Agreement signed after the employee has taken advice from a relevant independent adviser. The Compromise Agreement must conform to the requirements of the Employment Rights Act 1996 (<http://www.acas.org.uk/index.aspx?articleid=2006>). Acas also offers mediation services to employees and employers (<http://www.acas.org.uk/index.aspx?articleid=2008>).

DTI: Resolving disputes in the workplace, a consultation:  
<http://www.berr.gov.uk/consultations/page38508.html>; Government Response:

<http://www.berr.gov.uk/files/file46233.pdf> (see - Employment Tribunals in this report for more details)

Advisory Conciliation and Arbitration Service (ACAS)(annual report 06/7 in file): New rules, new challenges: Acas' role in the employment tribunal system :

<http://www.acas.org.uk/CHttpHandler.ashx?id=590&p=0> ;

Making more of Alternative Dispute Resolution:

<http://www.acas.org.uk/CHttpHandler.ashx?id=177&p=0> ;

Acas' response to the Government's Review of Dispute Resolution:

<http://www.acas.org.uk/CHttpHandler.ashx?id=888&p=0>

### **Advice Services Alliance**

Many of them are members of the Advice Services Alliance (ASA) (<http://www.asauk.org.uk/go/AboutASA>) (established in 1980, the umbrella organization for independent advice services in the U.K). The members represent over 2,000 organizations that provide a range of advice, legal and other services to members of the public. Current full members are:

- Advice UK
- Age Concern England
- Citizens Advice
- DIAL UK (the disability information and advice service)
- Law Centres Federation
- Shelter
- Shelter Cymru
- Youth Access

ASA is a charity, the membership of which is open to national networks of independent, not-for-profit advice services in the UK. Associate members are:

[Child Poverty Action Group](#)

[Contracted Advice Agencies Network](#)

[Environmental Law Foundation](#)

Law for All

[Legal Action Group](#)

[Liberty](#)

[London Advice Services Alliance](#)

[London Lesbian and Gay Switchboard](#)

[National Debtline](#)

[Refugee Council](#)

[Resource Information Service](#)

[Royal National Institute for the Blind](#)

## **WHICH?**

<http://www.which.co.uk/>

The first Which? magazine was published in 1957. Today, Which? is the largest consumer body in the UK, with over 650,000 members (Subscribers to the Which? publications are known as Associate members. Any Associate member can apply to become an Ordinary member. Ordinary members are entitled to stand for election to the Council of Management, nominate other Ordinary members who wish to stand for Council, attend general meetings of the Consumers' Association and receive the Annual Report and Accounts. There are currently about 10,500 Ordinary members). It is a registered charity, and is completely independent.

Which? is well known for testing household products. They also campaign and advocate consumer issues, tackling everything from mis-selling to hospital food. Which? also offers the Best Buy Icon and organizes Which? Awards.

An important part of the activity of Which? is providing legal advice to consumers: those who are their members and those who are not. Which? Legal Service deals with tens of thousands of cases every year. There is a fee for the service (£1 per week, less for members).

They advise consumers directly on a wide range of problems involving:

- Problems with products and services you buy
- Employment law
- Speeding, clamping and parking fines

- Holiday problems
- Advice for small business on goods and services
- Civil neighbour disputes
- Tenancy advice for private residential tenants.

## **LAW CENTRES**

The first Law Centre was created by a single solicitor and a trainee in Kensington, London, in 1969. The Law Society was initially reluctant to accept the operation of the Law Centres. Finally, agreement was reached when the role of the Law Centres was grounded as specializing in areas which do not duplicate the areas covered by private practice (S. Hynes “Law centres and the future of community-based legal services”, 76 *Amicus Curiae*, Winter 2008, pp. 17 – 19). These areas are also referred to as “social welfare law” (Hynes 2008: 17), and include:

- Welfare rights
- Immigration
- Employment
- Discrimination
- Housing and
- Public law.

Law Centres provide legal advice free of charge; they are composed of solicitors and other advisers who receive a salary.

## **LAW WORKS**

Source – ‘ADRNow’: “LawWorks is the operating name of the Solicitors’ Pro Bono Group, and LawWorks Mediation is one of the projects which aims to provide legal services for free, to people who can’t afford a lawyer, but who are not eligible for legal aid. LawWorks provides legal advice, representation in court, and also mediation.

In 2002 LawWorks Mediation was launched as a joint project with the Bar Pro Bono unit and the Law Centres Federation. If you can’t get legal aid – either because your dispute is not suitable, or because your income or savings are just above the eligibility levels – then you can apply to LawWorks for free legal help and free mediation.”

The ‘ADRNow’ website provides the following information concerning LawWorks:

National Mediation Helpline can refer a person to LawWorks if they think the case is suitable. A person can also be put in touch through the Centre for Effective Dispute Resolution (CEDR) and other commercial mediation providers, or via a local CAB or Law Centre.



“LawWorks also runs mediation advice clinics at the Royal Courts of Justice CAB and at Brent CAB. Details of opening hours and phone numbers can be found on the LawWorks website.” LawWorks can also be contacted directly to discuss applying for mediation, or an application form can be downloaded from their website.

“Mediation meetings are usually planned to last three hours. However, LawWorks also deals with simpler matters and small claims cases which can often be resolved in one hour, and are sometimes handled by telephone mediation. Mediations are generally arranged within one month of sending in the completed application form.” “Around 70% of LawWorks mediations result in a settlement, either at the mediation, or shortly afterwards.”

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## OMBUDSMEN

The analysis below is conducted based on the following classification:

- ✓ **Public Ombudsmen (Public Sector Ombudsmen)**
- ✓ **Hybrid – Public/Private Ombudsmen**
- ✓ **Private Ombudsmen (Private Sector Ombudsmen)**

Public Ombudsmen perform functions in the area of administrative rather than civil justice. They deal with complaints against public bodies which normally result from maladministration<sup>21</sup> – **thus, although mentioned and briefly analysed here, they are not subject to the detailed examination following the methodology used for other mechanisms.!!! CHECK!**

Hybrid - Public/Private Ombudsmen have been referred as such by Seneviratne, as they are publicly regulated and/or funded, but they settle disputes between private parties. Purely private ombudsmen settle disputes between private parties and are not publicly regulated or funded (these are exceptional).

The institution of Ombudsman has a world-wide popularity and appeal (M. Seneviratne, *Ombudsmen. Public Services and Administrative Justice*, Butterworths, 2002, R. James, *Private Ombudsmen and Public Law*, Dartmouth, 1997, G.E. Caiden (ed.), *International Handbook of the Ombudsman: Evolution and Present Function*, Greenwood Press, 1983).<sup>22</sup> It is relatively difficult to define an Ombudsman: because of their wide presence, there is a significant variety of their roles, nature and place within the civil and administrative justice systems in general. As far as the UK is concerned, there is no specific protection provided for the term 'Ombudsman' (such protection exists for example in New Zealand): thus there is a concern that "private organizations can simply call a complaints officer and ombudsman" (UK National Report to the Leuven Study, November 2006). On the other hand, the British and Irish Ombudsman Association provides a set of criteria which the bodies who wish to be members are required to meet. These are mentioned below.

An Ombudsman was defined as: "An office provided for by the constitution or by action of the legislature or parliament and headed by an independent, high-level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials, and employees or who acts of his own motion, and who has the power to investigate, recommend corrective action, and

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<sup>21</sup> In some other countries – for instance those of Central and Eastern Europe – the emphasis is on human rights rather than maladministration (Seneviratne 2002: 8).

<sup>22</sup> A list of biographical sources is provided at the end of this part of the paper.

issue reports” (definition provided by the International Bar Association, quoted by Seneviratne (2002: 8)).

Another, more descriptive definition is provided on the website of the British and Irish Ombudsman Association: “ombudsmen exist to deal with complaints from ordinary citizens about certain public bodies or private sector services. The services provided by ombudsmen are free of charge. Each ombudsman scheme operates under slightly different rules, but in general an ombudsman does not consider a complaint unless the organization, business or professional standards body concerned has first been given a reasonable opportunity to deal with it. If the ombudsman decides to conduct a formal investigation, a written report on the investigation will be issued, and will normally set out the evidence considered by the ombudsman and proposals for resolving the dispute. If a complaint is upheld, the ombudsman will expect the organization to provide a suitable remedy.” (<http://www.bioa.org.uk/about.php>).

### History in England and Wales:

(source: British and Irish Ombudsman Association - <http://www.bioa.org.uk/about.php>).

The Parliamentary Commissioner for Administration (Parliamentary Ombudsman) was established in 1967. By the end of the 1970s there were parliamentary, health and local government ombudsmen services in each country of the British Isles.

“In 1981 the Insurance Ombudsman Bureau, the first private sector ombudsman scheme, was established and over the next few years further private sector schemes were set up. In 2001 a number of voluntary schemes (banking, building societies, insurance and investment) were brought together to form a statutory Financial Ombudsman Service.” (Source - <http://www.bioa.org.uk/about.php>). The private sector Ombudsmen established during 1980s and 1990s were often voluntary, although they resulted from the intention of the industry to avoid statutory intervention. This was for instance the Banking Ombudsman (1986).<sup>23</sup> Building societies did not establish a voluntary Ombudsman service, and a statutory scheme was imposed on them in 1987 (Seneviratne 2002: 5). In 1990, an Ombudsman scheme was estate agents was established, again on a voluntary basis. In 1998 its membership was opened to all estate agents who wished to join (ibid.). In 1994, the Funeral Ombudsman Scheme was set up. In the same year, a Personal Investment

In 1991 a conference of ombudsmen from both the public and private sectors was held, at which it was agreed to set up an association for ombudsmen, their staff, and other organizations and individuals, such as voluntary bodies and academics interested in the work of ombudsmen.” **The British and Irish Ombudsman Association (BIOA)** “came into being in 1993 as the United Kingdom Ombudsman Association and became the British and

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<sup>23</sup> Seneviratne 2002: 5; P. Morris, *The Banking Ombudsman*, (1987) *Journal of Banking Law* 133; P. Morris, *The Banking Ombudsman – five years on*, (1992) *Lloyd’s MCLQ* 227.

Irish Ombudsman Association when membership was extended to include ombudsmen from the Republic of Ireland in 1994.”

**The British and Irish Ombudsman Association performs the following activities:**

- “Providing information for the public about ombudsman and complaint handling schemes on the internet.
- Response by the Secretary of the Association to written, telephone and e-mail enquiries about ombudsman services.
- Acting as a focal point for ombudsman schemes, complaint handling bodies and other members of the Association to seek and exchange information.
- Providing advice to organisations considering the establishment of ombudsman services.
- Publishing a newsletter three times each year, containing news about ombudsmen and complaint handling services in the UK, Ireland and overseas, together with topical articles of interest to members of the Association.
- Publishing guidance notes for ombudsmen on relevant topics.
- Convening working groups to consider issues of concern to members of the Association
- Holding a two-day residential conference every two years for members of the Association and others, with plenary sessions and workshops on topical issues relevant to the work of ombudsmen, complaint handling bodies, and others with an interest in complaint handling.
- Holding regular meetings of those concerned with the general management of ombudsman and complaint-handling schemes to exchange views and experiences. Once a year a training seminar is held on current issues.
- Liaising with central government through the Cabinet Office and Ministry of Justice (MoJ), and with other bodies such as the Department for Business, Enterprise & Regulatory Reform (BERR) and the Office of Fair Trading (OFT).”

(Source - <http://www.bioa.org.uk/about.php>).

The Association created a set of rules and requirements for members. The following is an excerpt from the Association’s website:

“The term ‘Ombudsman’ should only be used if four key criteria are met. Those criteria are independence of the Ombudsman from those whom the Ombudsman has the power to investigate; effectiveness; fairness and public accountability.

Detailed criteria which should in the longer term be achieved by all recognised ombudsman schemes are set out in part B.

Given the considerable range of ombudsmen schemes in the public and private sectors and the variations in their constitution, jurisdiction, powers and accountability, the detailed criteria need to be interpreted with sufficient flexibility to encompass those variations.

Independence, for example, may be achieved in several ways. Hence, in the private sector the body which appoints the Ombudsman and to whom the Ombudsman reports, can be regarded as independent, provided that those of its members who are representatives of organisations subject to the Ombudsman's jurisdiction, constitute a minority of the membership.

Initially, recognition of existing schemes will be dependent on whether, broadly speaking, they meet the key criteria; it will not be withheld if, in some respects, the detailed criteria are not met. However, over time it is expected that the constitution of all schemes would be developed to the extent necessary to meet the detailed criteria. For example, in the longer term the power by those subject to investigation to veto the proposed appointment or reappointment of an Ombudsman should, where it exists, be removed.

In due course, it is expected that in the private sector all, or virtually all, firms in an industry with an ombudsman scheme or schemes should participate in the scheme or schemes, even though in the short term, especially when a scheme is first established, a lesser number of firms may participate.

The decision on which schemes are recognised as meeting the key criteria will be made by the Executive Committee or a General Meeting on the recommendation of the Validation Committee. The Validation Committee will also consider according to the rules which schemes meet the detailed criteria in full and which do not. In respect of the latter, the Validation Committee will in due course review its initial recognition, when requested to do so, having regard to the extent to which progress has been achieved towards meeting the detailed criteria in full.

## **B. Detailed Criteria**

- **Definition of Core Role of an Ombudsman**

The core role of an Ombudsman is to investigate and resolve, determine or make recommendations with regard to complaints against those whom the Ombudsman is empowered to investigate by the exercise of powers and in accordance with procedures described in these criteria.

- **Independence**

(a) The jurisdiction, the powers and the method of appointment of the Ombudsman should be matters of public knowledge.

(b) The persons who appoint the Ombudsman should be independent of those subject to investigation by the Ombudsman. This does not exclude minority representation of those subject to investigation on the appointing body, provided that the body is entitled to appoint by majority decision.

(c) The appointment should be either for a minimum of three years or until a specified retirement age. If the former, it may be renewable. The initial term of office and any renewal should normally commence before the age of 65 years and be of sufficient duration not to undermine independence.

(d) The appointment must not be subject to premature termination other than for incapacity or misconduct or other good cause. The grounds on which dismissal can be made should always be stated, although the nature of the grounds may vary from scheme to scheme. Those subject to investigation by the Ombudsman should not be entitled to exercise the power to terminate the Ombudsman's appointment, but this does not exclude their minority representation on the body which is authorised to terminate.

(e) The remuneration of the Ombudsman should not be subject to suspension or reduction by those subject to investigation, but this does not exclude their minority representation on the body authorised to determine it.

(f) The Ombudsman alone (or an appointed deputy) must have the power to decide whether or not a complaint is within the Ombudsman's jurisdiction. If it is, the Ombudsman (or an appointed deputy) must have the power to determine it.

(g) Unless otherwise determined by statute the Ombudsman should be required to report to a body independent of those subject to investigation, but this does not exclude their minority representation on that body. That body should also be responsible for safeguarding the independence of the Ombudsman.

(h) The office of the Ombudsman must be adequately staffed and funded, either by those subject to investigation or from public funds, so that complaints can be effectively and expeditiously investigated and resolved.

- **Accessibility**

(a) The right to complain to the Ombudsman should be adequately publicised by those subject to complaint.

(b) Those subject to complaint should be required to have proper internal complaints procedures.

(c) The office of the Ombudsman should be directly accessible to complainants unless otherwise specified by or under statute.

(d) The Ombudsman's procedures should be straightforward for complainants to understand and use.

(e) Those complaining to the Ombudsman should be entitled to do so free of charge.

- **Powers and Procedures**

The Ombudsman should:

(a) Be entitled to investigate any complaint made to the Ombudsman which is within the Ombudsman's jurisdiction without the need for any prior consent of the person or body against whom the complaint is made. This does not preclude a requirement that before the Ombudsman commences an investigation, the complainant should first have exhausted the internal complaints procedures of the person or body being investigated.

(b) Save as otherwise provided by law, have the right to require all relevant information, documents and other materials from those subject to investigation.

(c) Be entitled but not obliged, to disclose to the complainant or to the person being investigated such information, documents and other materials as shall have been obtained by the Ombudsman from the other of them unless there shall be some special reason for not making such disclosure, for example, where sensitive information is involved or disclosure would be a breach of the law.

(d) Proceed fairly and in accordance with the principles of natural justice.

(e) Be required to make reasoned decisions in accordance with what is fair in all the circumstances, having regard to principles of law, to good practice and to any inequitable conduct or maladministration.

(f) In all cases which it is decided not to accept for investigation, notify that decision to the complainant and the reasons for it.

(g) In all cases investigated, notify in writing the decision and the reasons for it to the parties concerned.

- **Implementation of Decisions**

Either

(a) Those investigated should be legally bound by the decisions or recommendations of the Ombudsman;

or

(b) There should be a reasonable expectation that the Ombudsman's decisions or recommendations will be complied with. In all those cases where they are not complied with, the Ombudsman should have the power to publicise, or require the publication of such non-compliance at the expense of those investigated.

- **Annual Report**

The Ombudsman should publish an Annual Report. The Ombudsman should be entitled in that report, or elsewhere, to publish anonymised reports of investigations.”

The Association has a large number of members – some of them are ‘Voting Members’, others are ‘Associate Members’.

### **Reforms of the Public Sector Ombudsmen system:**

The Public Sector Ombudsmen have undergone a significant reform recently. The process commenced with the Cabinet Office Review of Public Sector Ombudsmen (1999), which was initiated by the Government in response to proposals put forward by the Commission for Local Administration (CLA) (which comprises the three local government ombudsmen) and the Parliamentary and Health Service Ombudsman. “The purpose of the review was to consider the arrangements for the ombudsmen against the background of more integrated public services. Value for money and the best interests of complainants were key factors to be taken into account” ([http://www.ombudsman.org.uk/about\\_us/our\\_history/collcut.html](http://www.ombudsman.org.uk/about_us/our_history/collcut.html)). The review was carried out by Philip Collcutt and Mary Hourihan of the Cabinet Office and published on 13 April 2000. In June 2000 the Cabinet Office issued a consultation on the review. In 2003 Ann Abraham, the Parliamentary and Health Service Ombudsman and Tony Redmond, the Chairman of the Commission for Local Administration in England (the Local Government Ombudsmen), made proposals to the Cabinet Office and the Department for Communities and Local Government for legislative changes to facilitate closer working between them. In August 2005 the Cabinet Office published a “Consultation Document on the Reform of Public Sector Ombudsmen Services in England”. The Regulatory Reform (Collaboration etc between Ombudsmen) Order 2007 and the Local Government and Public Involvement in Health Act 2007 were enacted following the review and the consultation.



The Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007 no.1889 ([http://www.opsi.gov.uk/si/si2007/uksi\\_20071889\\_en\\_1](http://www.opsi.gov.uk/si/si2007/uksi_20071889_en_1) ) enables the Local Government Ombudsmen for England, the Parliamentary Ombudsman and the Health Service Ombudsman for England to work together collaboratively on cases and issues that are relevant to more than one of their individual jurisdictions. “Examples of complaints that may fall within this category include the provision of health and social care; complaints about the administration of housing and welfare benefits; and complaints about some planning and environmental issues.”

“The Local Government and Public Involvement in Health Act 2007, which came into effect on 1 April 2008, introduced more changes to the Ombudsmen’s jurisdiction and operation. The main changes are:

- the Ombudsmen may look at service failure in addition to maladministration
- the Ombudsmen will have a limited power to investigate where an apparent case of maladministration comes to light even though they have received no complaint about the matter
- complaints about the procurement of goods and services are now within jurisdiction
- the Ombudsmen may issue a ‘statement of reasons’ instead of a report if they are satisfied with the council’s proposals to remedy its failures
- there are new powers to publish Ombudsmen’s decisions other than reports
- complaints no longer need to be in writing.” (source: <http://lgodev.web-labs.co.uk/about-us/background/>).

### **Jurisdiction of Ombudsmen:**

As explained by ‘ADRNow’ :

“Ombudsmen who look at complaints about public services were set up to investigate ‘maladministration causing injustice’. Some public services ombudsmen can also look at ‘service failure’, or ‘failure to provide a service’.” According to the Local Government Ombudsman’s current leaflet: *We can consider complaints about things that have gone wrong in the way a service has been given or the way a decision has been made, if this has caused problems for you. We cannot usually question what a council has done simply because you do not agree with it. There must be some fault by the council.*

### **Maladministration**

“ The Cambridge online dictionary defines maladministration as ‘lack of care, judgment or honesty in the management of something’. But the law does not define maladministration. When the public service ombudsmen were set up, parliament left it for the ombudsmen to decide the meaning of the word. When parliament was debating the Bill to set up the Parliamentary Ombudsman in 1967,

Richard Crossman said that maladministration included "bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude and so on". In a court case in 1979 Lord Denning particularly liked the 'and so on' at the end. He said: "It would be a long and interesting list, clearly open-ended, covering the manner in which a decision is reached or discretion is exercised..." Here are the explanations of what maladministration means given by the main public services ombudsmen. The Local Government Ombudsman (LGO) investigates complaints about local authority services in England. Its 2008 leaflet suggests that you may want to complain about:

- administrative fault, such as the council making a mistake or not following its own rules
- poor service or no service
- delay
- bad advice

The LGO also has a section for advisors on its website which offers a longer list of things which could be maladministration:

- delay
- incorrect action or failure to take any action
- failure to follow procedures or the law
- failure to provide information
- inadequate record-keeping
- failure to investigate
- failure to reply
- misleading or inaccurate statements
- inadequate liaison
- inadequate consultation
- broken promises

The Housing Ombudsman Service investigates complaints about all registered social landlords and housing associations, and some private landlords as well. He explains maladministration like this: you can complain if you think your landlord has done something wrong which affects you in your home. This includes:

- failing to do repairs
- making it difficult to use services or facilities to which you are entitled
- making administrative errors, and so on

The Parliamentary Ombudsman investigates complaints about government departments. This is her list of things which indicate maladministration:

- failure to provide a service
- delay that could have been avoided

- faulty procedures, or failing to follow correct procedures
- not telling you about any rights of appeal open to you
- unfairness, bias or prejudice
- giving advice which is misleading or inadequate
- refusing to answer reasonable questions
- rudeness and not apologising for mistakes
- mistakes in handling your claims
- not putting things right when something has gone wrong

Don't forget that none of the ombudsmen can question what a council, landlord or government department has done simply because you do not agree with it. There must be some fault by the body concerned.

Also, the ombudsmen cannot look at things like:

- staff matters
- commercial decisions and contracts
- teaching, curriculum, conduct, discipline and management in schools and colleges
- rent and service charges set by a council or social landlord
- government policy
- legislation.

According to "Examples of maladministration by Sir William Reid" as quoted by the Parliamentary and Health Service Ombudsman and by the Annual Report for 2006-07 of the Judicial Appointments and Conduct Ombudsman: in the 1993 Annual Report of the Parliamentary Commissioner for Administration, under the heading "What is maladministration?", Sir William Reid, the then Ombudsman, wrote:

"To define maladministration is to limit it. Such a limitation could work to the disadvantage of individual complainants with justified grievances which did not fit within a given definition. However I suggest an expanded list of examples going beyond those recounted in what has become known as the Crossman catalogue.

When the Parliamentary Commissioner Bill was being taken through Parliament, the examples with Mr Crossman as Leader of the House of Commons then gave were bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness and so on. In the language of the 1990s I would add:

- rudeness (though that is a matter of degree);
- unwillingness to treat the complainant as a person with rights;
- refusal to answer reasonable questions;
- neglecting to inform a complainant on request of his or her rights or entitlement;
- knowingly giving advice which is misleading or inadequate;
- ignoring valid advice or overruling considerations which would produce an uncomfortable result for the overruler;
- offering no redress or manifestly disproportionate redress;

- showing bias whether because of colour, sex , or any other grounds;
- omission to notify those who thereby lose a right of appeal;
- refusal to inform adequately of the right of appeal;
- faulty procedures;
- failure by management to monitor compliance with adequate procedures;
- cavalier disregard of guidance which is intended to be followed in the interest of equitable treatment of those who use a service;
- partiality; and
- failure to mitigate the effects of rigid adherence to the letter of the law where that produces manifestly inequitable treatment.”

### Injustice

There is no fixed ombudsman definition of injustice, but it basically means that the maladministration must have caused problems for you. The Local Government Ombudsman suggests that this could include:

- hurt feelings, distress, worry, or inconvenience
- loss of right or amenity
- not receiving a service
- financial loss or unnecessary expense
- time and trouble in pursuing a justified complaint

The hardship or injustice you have suffered must have been caused by a fault by the organisation you are complaining about. The other thing to bear in mind is that the problems must be quite serious. The ombudsman can decide not to investigate a complaint if you are only slightly affected.

### Service failure

Service failure is not very different from maladministration, but it can have a slightly wider meaning.

In 2002, the [Scottish Public Services Ombud](#) was set up to provide a one stop shop for complaints about all public services in Scotland. The [Public Services Ombud for Wales](#) was set up in 2006 in the same way. Both the Welsh and the Scottish public services ombudsmen can look at service failure as well as maladministration. From April 2008, the [Local Government Ombudsman](#) for England (LGO) can look at ‘service failure’ and ‘failure to provide a service’ as well as maladministration.

Here are some examples of what ‘service failure’ might mean, taken from public services ombudsmen websites.

The Scottish Public Services Ombudsman will investigate complaints that any public body in Scotland has:

- provided a poor service
- delivered a service badly
- failed to provide a service

The LGO can make a finding of 'service failure' even if there is no maladministration. This could involve failure in a service which it was the council's function to provide, or failure to provide such a service. For example, if the council has arranged for contractors to make repairs in a council property, and the contractors just never turn up, the tenants will not get the service they are due. This would be a failure in a service which it was the council's function to provide, and a complaint could be made to the ombudsman if the council do not deal with the problem appropriately.

The [Health Service Ombudsman](#) has always had a wider brief than just maladministration in the health service. Her website states: 'If you have suffered because you received poor service or treatment or were not treated properly or fairly - and the organisation hasn't put things right where it could have - we may be able to help you.' Examples of the sorts of complaints she can look into include:

- receiving the wrong or poor treatment
- errors in diagnosis or treatment
- communication problems within or between services
- significant mistakes over appointments to see a doctor or go to hospital
- failure by an organisation to provide or pay for a service such as continuing care
- delay that could have been avoided
- faulty procedures, or failing to follow correct procedures
- unfairness, bias or prejudice
- giving advice which is misleading or inadequate
- rudeness and not apologising for mistakes
- not putting things right when something has gone wrong".

## Public Ombudsmen

### Parliamentary and Health Services Ombudsman

[www.ombudsman.org.uk](http://www.ombudsman.org.uk)

#### **Statutory basis (legal basis):**

The Parliamentary Ombudsman (initially the Parliamentary Commissioner for Administration) was established by the Parliamentary Commissioner Act 1967. See [http://www.ombudsman.org.uk/about us/our history/pca act 1967.html](http://www.ombudsman.org.uk/about_us/our_history/pca_act_1967.html) for changes to the 1967 Act.

The Health Service Commissioner (Ombudsman) for England has been given powers to consider complaints by the Health Service Commissioners Act 1993: [http://www.opsi.gov.uk/acts/acts1993/Ukpga\\_19930046\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1993/Ukpga_19930046_en_1.htm) (see [http://www.ombudsman.org.uk/about us/our history/hsc act 1993.html](http://www.ombudsman.org.uk/about_us/our_history/hsc_act_1993.html) for changes to the 1993 Act).

From April 2009 the new two-stage complaints system to deal with complaints about the NHS and social care in an integrated manner will be in operation. Thus, if a claim has not been resolved locally, it can be referred directly to the Health Service Ombudsman (and/or the Local Government Ombudsman in the case of integrated health and social care complaints), omitting the previously existing intermediate stage of complaining to the Healthcare Commission.

#### **Links with government and finance:**

Ombudsmen are appointed by the queen and report directly to Parliament. Funding is also provided by Parliament.

#### **Governance and structure:**

See [http://www.ombudsman.org.uk/documents/phso structure chart.doc](http://www.ombudsman.org.uk/documents/phso_structure_chart.doc) for the organisational structure.

#### **Budget and expenditure:**

**Aims:** to investigate complaints into the work of government departments, their agencies, and the NHS in England, and as a result to improve public service.

#### **Procedure:**

- **who can apply for compensation/refer claims:**

Anyone who has a complaint about a government department,

- **formal requirements and time limits:**

Complaints must be sent through a Member of Parliament. They must follow an attempt to resolve the complaint internally with the organisation complained about. They will normally not be followed if they were made 12 months from the time when the complainant became aware of the cause for complaint.

According to the Health Service Commissioners Act, the general remit of Health Commissioners includes:

“(1) On a complaint duly made to a Commissioner by or on behalf of a person that he has sustained injustice or hardship in consequence of:

(a) a failure in a service provided by a health service body,

(b) a failure of such a body to provide a service which it was a function of the body to provide, or

(c) maladministration connected with any other action taken by or on behalf of such a body,

the Commissioner may, subject to the provisions of this Act, investigate the alleged failure or other action.

(2) In determining whether to initiate, continue or discontinue an investigation under this Act, a Commissioner shall act in accordance with his own discretion.

(3) Any question whether a complaint is duly made to a Commissioner shall be determined by him.

(4) Nothing in this Act authorises or requires a Commissioner to question the merits of a decision taken without maladministration by a health service body in the exercise of a discretion vested in that body.” (Section 3)

- **proceedings:**

Section 7 of the Parliamentary Commissioner Act 1967:

“(1) Where the Commissioner proposes to conduct an investigation pursuant to a complaint under this Act, he shall afford to the principal officer of the department or authority concerned, and to any other person who is alleged in the complaint to have taken or authorised the action complained of, an opportunity to comment on any allegations contained in the complaint.

(2) Every such investigation shall be conducted in private, but except as aforesaid the procedure for conducting an investigation shall be such as the Commissioner considers appropriate in the circumstances of the case; and without prejudice to the generality of the foregoing provision the Commissioner may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit, and may determine whether any person may be represented, by counsel or solicitor or otherwise, in the investigation.”

The Ombudsman's decision is final, no appeal possible. However, decisions can be challenged in the High Court.

- **results – compensation, other:**

If the Commissioner/Ombudsman finds that the organisation under complaint has committed maladministration or other undesirable action, he/she can request the organisation to: provide an explanation on what went wrong, and to put things right including offering an apology. If serious faults are found, the Commissioner can also recommend that the organisation changes the manner in which it handles certain matters so that similar problems can be avoided, and make payment to the complainant for financial loss suffered, as well as for the inconvenience caused. No formal power to enforce the recommendations rests with the Commissioner, but the recommendations are "almost always followed" (website: [http://www.ombudsman.org.uk/can\\_the\\_ombudsman\\_help\\_you/parliamentary/what\\_can\\_we\\_do\\_to\\_put\\_things\\_right.html](http://www.ombudsman.org.uk/can_the_ombudsman_help_you/parliamentary/what_can_we_do_to_put_things_right.html)).

Section 7 of the Parliamentary Commissioner Act 1967:

"(3) The Commissioner may, if he thinks fit, pay to the person by whom the complaint was made and to any other person who attends or furnishes information for the purposes of an investigation under this Act— (a) sums in respect of expenses properly incurred by them; (b) allowances by way of compensation for the loss of their time, in accordance with such scales and subject to such conditions as may be determined by the Treasury."

**Costs:**

The service is free of charge.

**History, including reforms:**

See legal basis.

**Statistics:**

In the 2006-2007 Annual Report [http://www.ombudsman.org.uk/pdfs/ar\\_07.pdf](http://www.ombudsman.org.uk/pdfs/ar_07.pdf) the Ombudsman reported on 1363 investigations concerning government departments, agencies and public bodies.

**Reported cases, problems, issues identified in academic writings:**

Report 'Equitable Life. A decade of Regulatory Failure' presented to the Parliament during Session 2007 – 2008. See [http://www.ombudsman.org.uk/improving\\_services/special\\_reports/pca/equitable\\_life/index.html](http://www.ombudsman.org.uk/improving_services/special_reports/pca/equitable_life/index.html)



In the 2007/2008 Annual Report  
([http://www.ombudsman.org.uk/improving\\_services/annual\\_reports/ar08/index.html](http://www.ombudsman.org.uk/improving_services/annual_reports/ar08/index.html))

the following summary information was provided: the Ombudsman dealt with over 11,500 enquiries during the year, reported on 926 investigations. 290 of those reports related to government departments and a range of other public bodies in the UK: of those two thirds (68%) were either fully or partly upheld. 636 reports related to the NHS in England and of those around half (49%) were fully or partly upheld.

The Report also highlights the forthcoming changes to NHS complaints handling which will see a new, simpler system in place from 1 April 2009. It provides typical case studies as well.

The Ombudsman, the Citizen and Parliament by Roy Gregory and Philip Giddings - a history of the Office. - Politico's, 2002 (ISBN 1842750542).

See also Seneviratne (2002: 101 – 196) for an analysis of Parliamentary Ombudsman and Health Service Ombudsman.

### **Local Government Ombudsman**

[www.lgo.org.uk](http://www.lgo.org.uk)

The Local Government Ombudsman looks at complaints about local councils and some other authorities (including education admissions appeal panels). It is a cost-free service for the users. It requires that the complainant first attempts to resolve the complaint with the authority internally.

There are three Ombudsmen in England. They have the same powers as the High Court to obtain information and documents. Their decisions are final, cannot be appealed. They can, however, be challenged in the High Court (if reasoning has legal flaw). It is discretionary whether an Ombudsman takes a case on (depending on the effect of the complainant).

The Ombudsman's website points out: "when we find that a council has done something wrong, we will recommend how it should put it right. Although we cannot make councils do what we recommend, they are almost always willing to act on what we say."

### **Statutory basis (legal basis)**

The Ombudsman was established by the 1974 Local Government Act (initially it was for England and Wales. Now Wales has its own Public Services Ombudsman – see below). Changes to the operation and functions of the Ombudsmen were introduced in 2007 and 2008 by the

### **Links with government and funding**

The Ombudsmen are independent of all government departments and local councils. The Ombudsmen are appointed by the Queen. They are funded by the Government.

### **Governance and structure**

Detailed information concerning governance can be found on the Ombudsmen's website: <http://lgodev.web-labs.co.uk/about-us/governance/>. The website specifies that the Commission for Local Administration runs the Local Government Ombudsman service. It is an independent body funded by a government grant. The members of the Commission are the three Ombudsmen together with the Parliamentary Commissioner for Administration (the Parliamentary Ombudsman). The functions of the Commission include defining the areas of Ombudsmen's responsibilities, providing them with accommodation, IT services, producing annual accounts and annual business plans, or giving advice on good administrative practice.

### **Budget and expenditure**

Detailed information concerning financial reports can be found on the website: <http://lgodev.web-labs.co.uk/about-us/governance/>.

### **Aims**

The Local Government Act 1974 defines two main statutory functions for the Ombudsmen:

- to investigate complaints against councils and some other authorities
- to provide advice and guidance on good administrative practice.

The website of the Ombudsmen specifies further: "the main activity is the investigation of complaints, which the Act states is limited to complaints from members of the public alleging they have suffered injustice as a result of maladministration. Since 1988, members of the public have been able to complain on their own behalf. There is no need for them to be referred by a councillor (when that restriction was removed, the number of complaints received by the Ombudsmen went up by over 44% in the first year)" (<http://lgodev.web-labs.co.uk/about-us/background/>).

The Ombudsmen's jurisdiction covers all local authorities (excluding town and parish councils); police authorities; school admission appeal panels; and a range of other bodies providing local services. The vast majority of the complaints the Ombudsmen receive concern the actions of local authorities. Despite of some restrictions which the Act established, most of the administrative actions of local authorities are within the Local Government Ombudsmen's jurisdiction. As far as the conduct of councillors (council members) is concerned, the Ombudsmen share their powers to some extent with the **Standards Board for England**. Until the Local Government Act 2000 was passed, the

conduct of council members and staff was subject to the National Code of Local Government Conduct. The Ombudsman could investigate complaints about breaches of this code.

The Local Government Act 2000 introduced a new system, where each council adopts its own code (using the model code approved by Parliament in 2001), and the Standard Board for England considers complaints about breaches of codes. The Local Government Ombudsman can still investigate complaints about misconduct. The Ombudsmen's website suggests: "some people may, and perhaps in some cases should, make a complaint both to the Standards Board and to the Ombudsman. Much depends on what the aggrieved person wants. If the desired outcome is a sanction against the offending member, the complaint must go to the Standards Board. If there is a claim of personal injustice and a remedy is sought, the complaint must go to the Ombudsman (because the Board cannot give a remedy to the individual)" (<http://lgodev.web-labs.co.uk/about-us/links-with-other-bodies/>).

"All the powers of investigation are vested in each of the Ombudsmen personally. The Ombudsmen are equal in status and none has power to review the decisions of another" (<http://lgodev.web-labs.co.uk/about-us/background/>).

**Procedure:**

- **who can apply for compensation/refer claims**

Any member of the public can apply for compensation.

- **formal requirements and time limits**

Claims need to concern one of the following issues:

- Housing (only housing provided by the councils. Housing associations and other social landlords are covered by the jurisdiction of the Housing Ombudsman Service (see below);
- Planning;
- Education;
- Social care;
- Housing benefit;
- Council tax;
- Transport and highways;
- Environment and waste;
- Neighbour nuisance and antisocial behaviour.

The Ombudsmen's website stresses that the aim is to investigate cases where a wrong decision was made, service was provided poorly or not at all. A necessary requirement is

that the customer has suffered financial loss or an inconvenience. It is not the responsibility of the Ombudsman to be an appeal service from decisions of local councils (there must be a “fault” in the conduct of the council). Any member of the public (even including the local councillors, if they are in receipt of a service by a local council) can complain to the Ombudsman. If a friend, family member or a voluntary body or advice agency wishes to complain on behalf of someone else, the latter’s consent must be obtained. Parish councils cannot make complaints.

The following are the situations where the Ombudsmen will not intervene:

- Something the complainant knew about more than 12 months before he wrote to the Ombudsman or to a councillor, unless there is good reason for the delay.
- Something the complainant could appeal about to a tribunal (such as the Housing Benefit Appeals Service) or a government minister (such as a planning appeal) or go to court about, unless the Ombudsman thinks there are good reasons why this should not be done.
- Something about which the complainant already appealed to a tribunal or a government minister or have taken court action against the council.
- Something affecting all or most of the people living in a council’s area, such as a complaint that the council has wasted public money.
- Court proceedings, including:
  - evidence given to the court, or
  - actions and decisions by the council and court staff in those proceedings.
- Personnel matters (about your employment, including pay, pensions or dismissal).
- The internal management of schools and colleges (including conduct, discipline and teaching – but we can look at some aspects of the provision required by a child’s statement of special educational needs).
- Some commercial or contractual matters with the council.

The following are the local bodies subject to the Ombudsman’s authority:

- Councils (district, borough, city or county, but not town or parish)
- Education appeal panels
- School governing bodies (admission matters only)
- Joint boards of local authorities
- National park authorities
- Fire authorities
- Police authorities (but not about the investigation or prevention of crime)
- Internal drainage boards
- The Greater London Authority
- London TravelWatch
- Transport for London
- The London Development Agency

- London Thames Gateway Development Corporation
  - Commission for New Towns (housing matters only, occurring before 1 December 2008)
  - The Homes and Communities Agency (planning matters only)
  - English Partnerships (some housing and planning matters only)
  - The Norfolk and Suffolk Broads Authority
  - The Environment Agency (flood defence and land drainage matters only).
- (source: <http://lgodev.web-labs.co.uk/making-a-complaint/who-you-can-complain-about/>).

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

Complaints must be made within 12 months from when the complainant learnt about the problem. Also, the complainant must have first attempted to resolve the problem directly with the authority (usually this should be resolved within 3 months, unless the matter is urgent in which case the complaint can be made earlier). If this was not done, the Ombudsman will send the complaint to the council. Complaints can be made using an online form or by phone. When the Ombudsman receives the complaint and the decision is made that the case will be taken on (that is: if the law permits it and the complainant suffered only a slight injustice) and an investigator is appointed. While the investigation takes place, the council's actions cannot be stopped. The council is informed of the complaint even if the Ombudsman decides not to investigate. The investigator has the power to obtain documents and information from the councils and other bodies. Before the decision is made, the complainant is informed of the proposed decision and given the chance to comment. In around half of the proceedings it takes around 3 months for the Ombudsman to reach a decision, but in complex cases they can take up to one year (<http://lgodev.web-labs.co.uk/making-a-complaint/how-we-will-deal-with-your-complaint/>). At any stage of the investigation, a 'local settlement' can be reached, where the council rectifies the problem and the Ombudsman considers the result fair (having heard the views of the complainant).

- **results – compensation, other**

The outcome of the investigation may be a decision that no fault was found in the council's conduct, or that insufficient injustice was suffered by the complainant (the Ombudsmen's website gives an example where a person was overcharged for photocopying (£5 for one photocopy) (<http://lgodev.web-labs.co.uk/making-a-complaint/possible-outcomes/>). 'Local settlements' (mentioned above) are quite common. Ombudsmen's decisions are not legally binding on the councils, but in most

cases they are followed. These decisions may involve the requirements to: apologize, pay compensation, conduct the required repairs to a council house, take action or make a decision that should have been done before, reconsider a decision that the council did not take properly in the first place, improve its procedures so that similar problems do not happen again, consider taking enforcement action against an unauthorized building, or against the unauthorized use of a building, or hold another school admission appeal hearing for the complainant's child.

The decisions take a form of a letter, but in particularly important cases a report may be written and made public (the complainant's identity is not revealed). The decisions are final (no appeal).

- **costs**

The service is free to the users.

### **History (including any reforms, also ongoing reforms)**

See legal basis and the Introduction to the Ombudsmen section.

### **Statistics**

Detailed complaint statistics: <http://www.lgo.org.uk/pdf/detailed-complaints-statistics-2007-08.pdf>

### **Reported cases, problems, issues identified in academic writings**

Annual Report 07-07: <http://www.lgo.org.uk/letters/2007-08/pdfs/Annual-Report-2007-08.pdf>

See also Seneviratne (2002: 197 – 237).

### **Judicial Appointments and Conduct Ombudsman**

<http://www.judicialombudsman.gov.uk/index.htm>

Member of the British and Irish Ombudsman Association. "The Judicial Appointments and Conduct Ombudsman investigates complaints about the judicial appointments process and the handling of matters involving judicial discipline or conduct. He has been appointed by the Queen on the recommendation of the Lord Chancellor, but is completely independent of the government and the judiciary. There are two distinct aspects to his work:

- To seek redress in the event of maladministration. 'Maladministration' includes (among other things) delay, rudeness, bias, faulty procedures, offering misleading advice, refusal to answer questions and unfair treatment; and
- Through recommendations and constructive feedback, to improve standards and practices in the authorities or departments concerned.”  
(<http://www.judicialombudsman.gov.uk/index.htm>)

### **Statutory basis (legal basis)**

Constitutional Reform Act 2005 (S. 62).

### **Links with government and funding**

Independent of the Government, although the DCA, now the Ministry of Justice, is the sponsoring department.

### **Governance and structure**

The Ombudsman is appointed on the recommendation of the Lord Chancellor. He is assisted by the Head of the Office and other members of staff (they are Ministry of Justice employees). As explained in the Ombudsman’s Annual Report for 2006-07, the Lord Chancellor is responsible for making or approving arrangements to support the Ombudsman and for meeting expenditure incurred in the discharge of the Ombudsman’s statutory functions. “This responsibility is exercised on behalf of the Lord Chancellor by the Director General of Legal and Judicial Services who, inter alia, is responsible for:

- the provision of an effective support office; and
- the delegation of a budget to the Head of Office.”

The Ombudsman’s office is an Associated Office of the DCA, and is therefore subject to its budgetary, risk and security controls.

The structure of the Ombudsman’s office can be found at p. 27 of the 2006-07 Annual Report.

### **Budget and expenditure**

The total expenditure for 2006-07 was £475,392.42 (which was less than the predicted £606,562.96) Most of the expenditure went on staff salaries and costs) (Annual Report, p. 28).

### **Aims**

Regarding judicial appointments, the Ombudsman considers:

- complaints from candidates for judicial office about the way in which their applications were handled;

- matters referred to him by the Lord Chancellor relating to the procedures of the Judicial Appointments Commission (JAC);

Regarding judicial conduct and discipline:

- concerns raised by a complainant, or a judge who is the subject of a complaint, about how a complaint was handled by the **Office for Judicial Complaints (OJC)**, a Tribunal President or a Magistrates' Advisory Committee; (Office for Judicial Complaints is analysed elsewhere in this Report) and
- matters referred to him by the Lord Chancellor or the Lord Chief Justice relating to the handling of judicial conduct issues. (source: Annual Report for 2006-07, p. 8).

The Annual Report mentions the need for fairness, proportionality, effective and responsive service.

**Procedure:**

- **who can apply for compensation/refer claims**

As far as judicial appointments are concerned, the Ombudsman considers individual complaints from candidates for judicial office who are unhappy with the Judicial Appointments Commission's handling of their application. Regarding judicial conduct, the Ombudsman considers individual complaints from a member of the public – or a judge who is unhappy with some aspect of the handling of their case by the Office for Judicial Complaints, the Lord Chancellor, the Lord Chief Justice, a Magistrates' Advisory Committee or a Tribunal President, High Court Judges, Lord Justices of Appeal, and Heads of Division, and since April 2006: Coroners, lay members of Employment Tribunals for England & Wales and Scotland, members of the Special Educational Needs & Disability Tribunal for England and members of the Criminal Injuries Compensation Appeals Panel (an alphabetical list of all the constituents is available at the following address: [http://www.judicialombudsman.gov.uk/docs/constitutional\\_reform\\_act\\_2005.pdf](http://www.judicialombudsman.gov.uk/docs/constitutional_reform_act_2005.pdf)).

- **formal requirements and time limits**

Appointment complains need to be made on the official appointment permission form and a monitoring form must be attached (available on the Ombudsman's website). They must be made as soon as possible after the notification of the final decision, and not later than 28 days after the notification (See 'Appointments Leaflet' - <http://www.judicialombudsman.gov.uk/docs/appointmentsbooklet08.01.09.pdf>). The complainant must have first complained to the Judicial Appointments Commission or the Ministry of Justice (the latter for magistrates' appointments).

Conduct complaints must be made on the official conduct complaint form, with the monitoring form attached (see 'Conduct Leaflet' - <http://www.judicialombudsman.gov.uk/docs/Conductbookletforwebsite.pdf>). The complainant must have first complained to the Office of Judicial Complaints, a Tribunal President, or a Magistrates' Advisory Committee. The complaint must be made within 28 days from receipt of the final decision of these bodies (except if they are taking too long



in considering the complaint). The complaint cannot concern a judge's conduct (these go to the above bodies), or the bodies decisions (their substance – the Ombudsman is not an appeal body).

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

Appointment complaints: the Ombudsman does not act in an appeal capacity (so it is not his role to determine whether a particular person should indeed have been appointed) – he investigates whether the complainant was treated fairly during the appointment process. The Investigating Officer conducts the necessary investigation – asking for further documents or explanation if necessary. He then sends the results and his recommendations to the Ombudsman who decides on the outcome – the draft decision is first notified to the Lord Chancellor. The complainant is informed of the final decision.

Conduct complaints: similar procedure to the above.

- **results – compensation, other**

Appointment complaints:

If the Ombudsman finds that the complaint was well founded (something has gone wrong in the way that the Judicial Appointments Commission or the DCA handled the complaint about an application for judicial office), he can:

- “uphold or dismiss a complaint (in whole or in part)
- make recommendations to the Lord Chancellor and the Judicial Appointments Commission about what steps should be taken in relation to a complaint which has been upheld
- recommend changes to procedures to avoid future complaints on similar grounds
- recommend compensation be paid to successful complainants for loss which appears to the Ombudsman to have been suffered as a direct result of the poor handling of their complaint (but not in respect of any earnings that the complainant would have received had his/her application for appointment been successful).” (source – ‘Appointments Leaflet’).

Conduct complaints:

“The Ombudsman can:

- set aside a decision made by the Office for Judicial Complaints, Tribunal President or Magistrates’ Advisory Committee and direct that they look at a complaint again;
- recommend that an investigation or determination should be reviewed by a Review Body;

- ask the Office for Judicial Complaints, Tribunal President or Magistrates' Advisory Committee to write to you and apologise for what went wrong;
- recommend that changes are made in the way the Office for Judicial Complaints, Tribunal Presidents or Advisory Committees work in future to prevent the same things happening again; and/or
- suggest payment of compensation for loss which appears to the Ombudsman to have been suffered as a direct result of the poor handling of your complaint.

The Ombudsman cannot:

- reprimand a judge;
- re-open a case;
- remove a judge from office; or
- enforce payment of compensation." (source – 'Conduct Leaflet')

- **costs**

Cost-free to complainants.

### **History (including any reforms, also ongoing reforms)**

In operation since 3 April 2006.

### **Statistics**

In Annual Report 2006-07 (p. 26):

Total number of cases received 304, of which conduct-related cases: 222, and appointments-related cases: 82.

### **Reported cases, problems, issues identified in academic writings**

The Annual Report gives examples of cases resolved by the Ombudsman. It also highlights the need to popularize the existence of the Ombudsman and to make clear what his powers are (some complaints received were not within the scope of the Ombudsman's powers) (p. 15).

## **Public Services Ombudsman for Wales**

[www.ombudsman-wales.org.uk](http://www.ombudsman-wales.org.uk)

The Ombudsman can look into complaints about local government, National Health Service organizations - including GPs - housing associations, the Welsh Assembly Government, the Environmental Agency, social landlords in Wales, education authorities, and many other bodies. The full list of bodies and institutions which can be subject to a

complaint to the Ombudsman is available online: <http://www.ombudsman-wales.org.uk/en/bodies-in-the-ombudsmans-jurisdiction/>. Under Part III of the Local Government Act 2000, the Ombudsman can also consider complaints that local authority members have broken their authority's code of conduct.

### **Statutory basis (legal basis)**

Public Services Ombudsman (Wales) Act 2005 –  
[http://www.opsi.gov.uk/acts/acts2005/ukpga\\_20050010\\_en\\_1](http://www.opsi.gov.uk/acts/acts2005/ukpga_20050010_en_1).  
Local Government Act 2000.

### **Links with government and funding**

Appointed by the Queen, publicly funded.

### **Governance and structure**

Independent of the government.

### **Budget and expenditure**

See the Annual Reports on the website: <http://www.ombudsman-wales.org.uk/en/publications/>.

### **Aims**

The website of the Ombudsman explains that the “primary role of the Public Services Ombudsman for Wales is to investigate complaints made to him by members of the public about the way they have been treated by a public body. Complaints will be investigated independently and impartially, and when upheld, the Ombudsman will say what the public body should do to make amends to the complainant and impress the need for improvement in its standard of service in the future. Lessons learned from investigations will be publicized. He will also promote good administration and high standards of conduct by investigating allegations that local authority members have breached their own authority’s code of conduct.”

### **Procedure:**

- **who can apply for compensation/refer claims**

See the leaflet produced by the Ombudsman “How to complain about a public body” - <http://www.ombudsman-wales.org.uk/uploads/publications/143.pdf>. The issues which the Ombudsman can deal with include:

- social services;

- planning;
- education;
- council housing;
- social housing (provided by housing associations);
- hospital services; and
- GP services.

The Ombudsman cannot investigate the following matters:

- properly made decisions that a public body or a provider of public services has a right to make, (again, not an appeal service from these decisions);
- most staff matters such as pay or discipline (however, he can consider complaints about recruitment or appointment procedures);
- teaching, curriculum, conduct, discipline and management in schools and colleges; and
- the rent and service charges set by a social landlord.

The Ombudsman also cannot investigate a complaint where the complainant has, or had, a legal right of appeal or the right to take the matter to court, **unless** he is satisfied that in the particular circumstances it was not appropriate to do so (“How to complain about a public body”).

Any member of the public can make a complaint.

- **formal requirements and time limits**

Similarly with other public service ombudsmen, there is 12 months for the complainant to inform the body complained about of the issue. There is also the requirement that the complainant must have attempted to resolve the problem internally with the body first. Complaint forms are available online.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

The procedure is similar to those for other public service ombudsmen: <http://www.ombudsman-wales.org.uk/en/what-will-the-ombudsman-do/>.

- **results – compensation, other**

The Ombudsman’s decision is not binding, but it is normally followed. Under the Public Services Ombudsman (Wales) Act 2005, the Ombudsman can issue one of two types of reports following an investigation into a complaint by a member of the public that they have suffered hardship or injustice through maladministration or service failure on the part of a public body. The first type of report (known as a Section 16 report) is issued when the Ombudsman believes that the investigation report contains matters of public

interest. The body concerned is obliged to give publicity to such a report at its own expense. The second type of report that the Ombudsman can issue is known as a Section 21 report. He can do so if the public body concerned has agreed to implement any recommendations he has made and if he is satisfied that there is no public interest involved. The lists of these Reports are available on the website of the Ombudsman: <http://www.ombudsman-wales.org.uk/en/investigation-reports/>.

- **costs**

Cost-free to the users.

### **History (including any reforms, also ongoing reforms)**

See legal basis (above).

### **Statistics**

See the Reports (above).

### **Reported cases, problems, issues identified in academic writings**

The leaflet produced by the Ombudsman “How to complain about a public body” - <http://www.ombudsman-wales.org.uk/uploads/publications/143.pdf> contains some examples of typical cases.

Annual Report 07-08: <http://www.ombudsman-wales.org.uk/content.php?nID=12;lang=1;pID=166>

See the Strategic Plan 2008/09 – 2010/11: <http://www.ombudsman-wales.org.uk/uploads/publications/276.pdf> for future plan of work of the Ombudsman.

## **HYBRID: PUBLIC/PRIVATE OMBUDSMEN**

### **FINANCIAL SERVICES OMBUDSMAN**

With the assistance of Chris Warner (Which)

#### **Legal (statutory) basis**

Statutory dispute resolution scheme set up by the Parliament, based on Part XVI ([http://www.opsi.gov.uk/acts/acts2000/ukpga\\_20000008\\_en\\_19#pt16](http://www.opsi.gov.uk/acts/acts2000/ukpga_20000008_en_19#pt16)), Schedule 17 ([http://www.opsi.gov.uk/acts/acts2000/ukpga\\_20000008\\_en\\_48#sch17](http://www.opsi.gov.uk/acts/acts2000/ukpga_20000008_en_48#sch17)) of the Financial Services and Markets Act 2000, and Section 59 of the Consumer Credit Act 2006 ([http://www.opsi.gov.uk/acts/acts2006/ukpga\\_20060014\\_en\\_6#pb12-l1g59](http://www.opsi.gov.uk/acts/acts2006/ukpga_20060014_en_6#pb12-l1g59)).

Following the Thornton Review of Pensions Institutions (June 2007), FOS is to be merged with the Pensions Ombudsman.<sup>24</sup>

#### **Links with government and finance**

Close links with the FSA and the OFT. FOS was established on a non-commercial, no-for-profit basis. Although its board is appointed by the Financial Services Authority (FSA), the directors cannot be removed for reasons connected to individual complaints.

FOS is independent and impartial. Nevertheless, in order to carry out all its functions effectively, it needs to co-operate and communicate regularly and constructively with a number of other government bodies. As a result, FOS has entered into a number of Memoranda of Understanding (MOUs) with relevant bodies that sets out the operational framework for the relationship between them. In particular, the MOUs establish when and how information is to be shared between FOS and the relevant bodies, and where the boundaries for each body's responsibilities lay.

There are also special procedures in place to ensure FOS, the FSA and the OFT co-operate effectively where cases having wider implications arise. Cases are likely to have wider implications where they either (i) affect a large number of consumers or businesses; (ii) affect the financial integrity of a large business; (iii) concern a common or industry business practice; and/or (iv) involve the interpretation of the FSA Practice Rules or guidance from either the FSA or OFT.

#### **Governance and structure**

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<sup>24</sup> The Report is available on the website:  
<http://www.dwp.gov.uk/pensionsreform/pdfs/InstitutionalReviewFinalReport180507.pdf>.

Non-commercial, not-for-profit service. The legal entity underpinning FOS is Financial Ombudsman Service Limited. It is known as the "scheme operator" and it is a company "limited by guarantee and not having a share capital". The scheme operator has a board consisting of nine directors – including the chairman. They are appointed by the Financial Services Authority (FSA) under the Financial Services and Markets Act 2000. The chairman of the board is appointed by the FSA with the approval of the HM Treasury. These directors (or board members) are "non-executive" – they are not involved in considering individual complaints. Their job as "public interest" directors is to take a strategic overview and ensure that FOS is properly resourced and able to carry out its work effectively and independently.

The board of directors appoint the ombudsmen who are responsible for making the final decisions in the cases that our adjudicators have not been able to resolve more informally, earlier in our dispute-resolution process. The panel of ombudsmen is comprised as follows:

- chief ombudsman
- 2 principal ombudsmen
- 4 lead ombudsmen – each dealing with one of general insurance, banking and credit, general investment or mortgage endowments
- 30 ombudsmen.

The panel of ombudsmen is supported by a body of adjudicators who try to resolve the dispute informally between the consumer and business. In the financial year ended 31 March 08, FOS averaged a total of 825 staff.

### **Budget and expenditure**

Not funded by the Government, funded by levies and case fees paid by businesses, consumers do not pay to bring complaints. See [http://www.financial-ombudsman.org.uk/publications/technical\\_notes/QG1.pdf](http://www.financial-ombudsman.org.uk/publications/technical_notes/QG1.pdf) for funding and case fees. FOS is a not-for-profit organisation and is entirely funded through a combination of annual levies and individual case fees.

All businesses covered by the ombudsman service are required to pay an annual levy that varies depending upon the size of the business. At the time of writing, such levies range from between £100 for a small firm of financial advisers to over £300,000 for a high street bank or a major insurance company. Businesses regulated by the OFT under the Consumer Credit Act 1974 pay a reduced fee of £150 every 5 years.

Regulated businesses are also required to pay an individual case fee – £450 at the time of writing - each time FOS handles a complaint about them. However, all businesses are currently entitled to three "free" cases in any one financial year – individual case fees are

only payable for the fourth and any subsequent complaints. Case fees are payable whether or not the complaint is upheld. Complainants are not charged for having a complaint dealt with by FOS, irrespective of whether the complaint is upheld. [see section below for details of how this fee structure has been recently challenged].

As mentioned in the Hunt Review, the number of businesses covered is far higher than is the case for any other scheme. “There were 22,823 businesses covered at 31 March 2007. This figure increased dramatically in autumn 2007 with the addition of some 80,000 consumer credit licensees not previously covered. This will rise further over coming years with the broadening of the consumer credit jurisdiction in October 2008 to cover debt administration and credit information firms; implementation of the Payment Services Directive in 2009; the Government's plans in response to the Thornton Review, to merge the FOS and the Pensions Ombudsman” (Hunt Report, p. 19).

For the year ending 31 March 2008, FOS operated with an income of £55.5m, and an average cost per complaint resolved of £529.

## **Aims**

Independent public body aiming to settle individual disputes between consumers and businesses providing financial services: FAIRLY (not representing consumer or business interests, impartially considering cases, accessible for all), REASONABLY (giving clear reasons for the decisions, actively sharing knowledge and experience with the outside world – so that consumers and businesses are able to settle their disputes without the involvement of the Ombudsman), QUICKLY (aiming to achieve a fair result in a short period of time), and INFORMALLY (not holding hearings or face-to-face interrogations, informal proceedings) (source: the Ombudsman website - <http://www.financial-ombudsman.org.uk/about/aims.htm>).

The Financial Services and Markets Act 2000 (FSMA) sets out the intended role of the FOS: to establish “*a scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person*” (see the Hunt Review – reference below).

## **Procedure**

The rules setting out in more detail how the Financial Ombudsman Service (and businesses) should handle complaints are published as part of the FSA's Handbook – in the section called Dispute resolution: complaints. Chapter 2 concerns the Jurisdiction of the Financial Ombudsman Service. Complaints must first be referred to the respondent – the business with whom the complainant has the relationship which gave rise to the complaint. The respondent has 8 weeks to reply.



- **who can apply for compensation/refer claims:**

Eligible complainants are: Private individuals, Businesses with a group annual turnover of less than £1 million at the time of the complaint referred to the respondent, Charities with an annual income of less than £1 million (time – ditto), Trustees of a trust which has a net asset value of less than £1 million (time – ditto). Another set of requirements is related to the relationship with the respondent (2.7.6 of the FSA Handbook). Complaints may only be brought by (or on behalf of) “eligible complainants”.

It is usually not necessary to seek professional assistance before making a complaint – FOS will look at the merits of the case, not at how well it is presented.

- **formal requirements and time limits:**

Complaints may be brought against

- any retail financial businesses that are regulated by the FSA;
- any business having a standard consumer credit licence from the OFT;
- any other business that has agreed voluntarily to be covered by FOS.

To be eligible for consideration by FOS, the complaint must relate to one of the specified “regulated activities”. In practice, these cover most financial matters, including: banking; insurance; mortgages; pensions; savings and investments; credit cards and store cards; loans and credit; hire purchase; pawnbroking; financial advice; stocks, shares, unit trusts and bonds.

The complaint must relate to financial products or services provided in (or from) the United Kingdom.

**Additional requirements for bringing a complaint:**

- **Business failed to resolve the dispute:**

FOS will not consider a complaint until the business in question has had the chance to resolve the issue. The business must comply with complaints handling rules laid down by the FSA. This includes that the business must provide the consumer with a “final response” (or a explanation of why the business is unable to do this) within 8 weeks of the complaint being made.

- **Complaint brought within time:**

FOS will not normally deal with complaints where:

- More than 6 months have passed since the complainant received the final response;
- More than 6 years have passed since the event to which the complaint relates; or
- If more than 6 years have passed, it is more than 3 years since the complainant first became aware of the problem.

FOS has the discretion to waive these time limits in exceptional circumstances, or where the business does not object.

Special time limits apply to complaints relating to mortgage endowment products.

- **No court action:**

FOS will not normally handle a complaint that has already been considered by a court or where court action is due to take place.

- **Business not insolvent:**

In the event a business has become bankrupt either before or during the FOS investigation of the complaint, then the complaint should be referred to the Financial Services Compensation Scheme (FSCS).

The formal requirements for complaints are related to: the type of activity to which the complaint relates, the place where this activity was carried on, whether the complainant was eligible (above), and whether the complaint was referred to the Financial Ombudsman Service within the time limit (2.2.1 of the Handbook).

Type of activities (and any ancillary activities, including advice, in connection with the following):

- regulated activities;
- consumer credit activities;
- lending money secured by a charge on land;
- lending money (other than restricted credit, which is not a consumer credit activity);
- paying money by a plastic card (excluding a store card);
- providing ancillary banking services.

Time limits for claims: six months from the date on which the respondent sent the complainant the final response (the complaint can only be made if the final response from the respondent was received, although this is not necessary if eight weeks have passed since the respondent received the complaint); or six years from the event complained of, or (if later) three years from the date on which the complainant became aware (or ought reasonably become aware) that he had cause for complaint.

Time limits can be disregarded if the Ombudsman considers that the failure to comply with the time limits was a result of exceptional circumstances, or if the respondent has not objected to the Ombudsman considering the complaint.

- **proceedings:**

1. Complainant completes the standard complaint form.
2. The complaint form is assessed to ensure the complaint is eligible.

3. The complaint is passed to an adjudicator who will then try and resolve the dispute informally by weighing up the facts as provided in writing by both parties, and providing recommendations to both parties.
4. Complaints are usually dealt with by the adjudicators in the order in which they are received. However, it may be necessary to deal with complaints in a different order, for example, a complaint is particularly urgent (e.g. where the complainant is in financial hardship or delay would add significantly to the complainant's distress and inconvenience); or where complaints relate to issues that are subject to regulatory action or that may have wider implications.
5. The recommendations shall be based on what appears to be fair and reasonable in the circumstances of each particular case, taking into account relevant law, codes of practice, regulatory rules and guidance. While it aims to be consistent, FOS is not bound by legal precedent.
6. If the dispute cannot be resolved informally, the adjudicator will adopt a more formal approach, which may involve written requests for further information and/or documents and telephone interviews with those involved.
7. The adjudicator will then try and settle the dispute over the phone.
8. Where this is not possible, or the nature of the complaint means a written explanation is more appropriate, the adjudicator will set out its recommendations in writing.
9. In more complex cases, the adjudicator may issue an adjudication report. This is a formal document setting out the details of the dispute, the adjudicator's findings and any redress that the adjudicator considers appropriate.
10. If either party disagrees with the adjudicator's recommendations, they may request a review and final decision by an ombudsman.
11. The ombudsman will then become directly involved in the case, and will carry out an independent review of the complaint before issuing a final decision.
12. It is unlikely that the ombudsman will consider a face-to-face meeting is necessary. Although complainants may request such a meeting, the ombudsman will only agree to such a request if he thinks the case cannot be decided fairly without one.
13. If the complainant accepts the ombudsman's decision within the time limits given by the ombudsman, then both the complainant and the business are then bound by that decision.
14. If the complainant rejects the ombudsman's decision, or misses the time limits for accepting the decision, then he is free to take the complaint to a court instead.
15. FOS aims to settle most disputes within 6 to 9 months, although more complex cases can take longer.
16. About 50% of complaints are resolved informally at the earliest stage. 40% of complaints require a more formal investigation and a more formal report. Only about 10% of complaints need an individual final decision by an ombudsman.

- **results: compensation, other:**

The complaint will be resolved in one of three ways:

- informal resolution by the adjudicator (either in writing or over the phone);
- formal resolution by the adjudicator by way of a written adjudication;
- a final decision by an ombudsman.

Where FOS finds in favour of the complainant – either wholly or in part – there are several potential outcomes:

- Financial redress (money award) – in order to put the complainant in the position they would have been in had the business not got it wrong in the first place;
- Compensation for distress and inconvenience – generally an amount between £150 and £500 where justified by the individual circumstances;
- Directions award – FOS tells the business what actions it needs to take in order to put things right for the complainant e.g. paying a previously rejected insurance claim. Such directions shall be what FOS believes to be just an appropriate, whether or not a court could order those steps to be taken.
- An apology from the business.

The maximum amount of compensation that can be awarded in relation to any single complaint is £100,000. FOS is unable to make a business apply a decision on an individual case to all other complainants in the same position, although where there are a large number of similar cases, it may well be that the case has wider implications. In such a situation, there are special procedures through which wider regulatory action can be taken (usually by the FSA).

If the complainant accepts the ombudsman's decision, then the FSA regulatory rules require that the business complies promptly with any money award or other direction the ombudsman makes. Failure to do so would entitle the complainant to go to court to enforce the ombudsman decision.

FOS does not fine or otherwise punish a business against whom a complaint has been upheld.

On average, about a third of complaints are resolved in favour of the complainant, while a third are resolved in favour of the business. About a third of complaints have a mixed outcome.

**Costs:**

No costs for consumers. All businesses pay a levy to finance the Ombudsman. Businesses regulated by the FSA pay it together with the FSA regulatory fee and the levy for the Financial Services Compensation Scheme. The levy varies from £100 for a small business to £300,000 for a large company.

FOS is free for complainants to use. Businesses are required to pay an individual case fee – £450 at the time of writing - each time FOS handles a complaint about them. However, all businesses are currently entitled to three “free” cases in any one financial year – individual case fees are only payable for the fourth and any subsequent complaints. Case fees are payable whether or not the complaint is upheld.

## History

“The government first announced its intention to set up a single statutory financial services ombudsman scheme in 1997. Anticipating the legislation, in April 2000, a number of former ombudsman and complaint-handling schemes were merged and operated voluntarily by the Financial Ombudsman Service until the new body attained its powers under the Financial Services and Markets Act 2000 on 1 December 2001”.<sup>25</sup>

The Financial Ombudsman Service has been the subject to two independent reviews since its inception. In 2004, *Fair and reasonable – An assessment of the Financial Ombudsman Service*, was published in 2004 by Professor Elaine Kempson and a team of researchers from the Personal Finance Research Centre at Bristol University (Kempson Review).<sup>26</sup> This independent review of the FOS focused on internal processes and operation of the FOS. The second review was conducted by Rt Hon Lord Hunt of Wirral – *Opening Up, Reaching Out and Aiming High. An Agenda for Accessibility and Excellence in the Financial Ombudsman Service*.<sup>27</sup> It was published in 2008 and made 73 recommendations concerning accessibility and openness of the FOS. Both reviews were conducted at the initiative of the FOS.

## Statistics

As mentioned in the Kempson Report, “since its inception in April 2000, the workload of the Service has grown at a phenomenal rate. In 2000-01 it dealt with 28,400 complaints and employed 340 staff on a budget of £21 million. Three years later, in 2003-04, it received 97,900 complaints, (resolving 76,700 of them), with a staff of 725, at the end of the year and at a total cost of £36.5 million.” (p.5)

Number of complaints resolved, year ending 31 March:

2002	2003	2004	2005	2006	2007	2008
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<sup>25</sup> Kempson Report 2004 (see below for a reference), p. 4.

<sup>26</sup> Report is accessible on the FOS website: <http://www.financial-ombudsman.org.uk/publications/pdf/kempson-report-04.pdf>.

<sup>27</sup>

39,194	56,459	76,704	90,908	119,432	111,673	99,699
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Time taken to resolve cases, year ending 31 March 2008:

Within 3 months	Within 6 months	Within 9 months	Within 12 months
42%	70%	81%	86%

For the year ending 31 March 2008:

Number of initial enquiries and complaints	794,648
Number of new cases	123,089
Number of cases resolved:	
Total	99,699
Informally	91,739
Formally	7960
Number of regulated businesses involved in disputes	<5%

### **Reported cases, problems, issues identified with FOS**

The two independent reviews mentioned above (the Kempson review and the Hunt Review) detected a number of problems and made recommendations concerning operation, governance and the external accessibility and openness of the FOS scheme. The Kempson Report made recommendations with regard to quality, timeliness, and training and support for staff, although the overall feedback was very positive. The Hunt Report was more comprehensive, and it made 73 recommendations concerning the accessibility, transparency, and openness of the FOS. It is clear that the FOS faces some significant challenges in this regard.

FOS does not publish the decisions of the ombudsman or the outcome of the resolved complaints. Similarly, FOS does not publish the names of the businesses or complainants with whom it has dealt.

However, FOS does publish details of the types of new complaints received, as well as the outcomes for the different types of complaints it resolves (these are analysed each year in the FOS Annual Review). Explanations of FOS' general approach to some particular types of complaint and summarised in technical notes published by FOS on its websites, while a number of case study examples are provided in its monthly newsletter "Ombudsman News".

### Case fees

In June 2008 the Court of Appeal upheld the fee structure employed by FOS, following a claim by a regulated business that the imposition of a case fee on business even though the complaint against them was dismissed was unreasonable and unlawful.

[*Financial Ombudsman Service v Heatehr Moor & Edgecomb Ltd*, [2008] EWCA Civ 643]

## **Pensions Ombudsman**

<http://www.pensions-ombudsman.org.uk/>

The Pensions Ombudsman can investigate and decide complaints and disputes about the way that occupational and personal pension schemes are run; on the other hand, marketing and sales of pension schemes are dealt with by the Financial Ombudsman Service.

As the Ombudsman for the Board of the Pension Protection Fund, the Pensions Ombudsman can deal with disputes about decisions made by the Board or the actions of their staff. He also deals with appeals against decisions made by the Scheme Manager under the Financial Assistance Scheme. It is to be merged with the FOS following the Thornton Review of the Pensions Institutions of 2007.<sup>28</sup>

### **Statutory basis (legal basis)**

Established by Part X of the Pension Schemes Act 1993 ([http://www.opsi.gov.uk/acts/acts1993/ukpga\\_19930048\\_en\\_14#pt10](http://www.opsi.gov.uk/acts/acts1993/ukpga_19930048_en_14#pt10)).

Pensions Act 2004, s. 274 – amends some provisions of the Pension Schemes Act. ([http://www.opsi.gov.uk/Acts/acts2004/ukpga\\_20040035\\_en\\_24#pt5-pb19](http://www.opsi.gov.uk/Acts/acts2004/ukpga_20040035_en_24#pt5-pb19)).

### **Links with government and funding**

The Pensions Ombudsman's role and powers have been decided by Parliament, and he is appointed by the Secretary of State for Work and Pensions. He is completely independent and acts as an impartial adjudicator.

### **Governance and structure**

At present, the Pensions Ombudsman is Tony King. There is also a Deputy Pensions Ombudsman, Charlie Gordon. The Pensions Ombudsman and the Deputy Pensions Ombudsman have the same powers to investigate and determine complaints.

### **Budget and expenditure**

See the Annual Reports: <http://www.pensions-ombudsman.org.uk/publications/>.

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<sup>28</sup> <http://www.dwp.gov.uk/pensionsreform/pdfs/InstitutionalReviewFinalreport180507.pdf>.

The 2007/08 Report (joined Report of Pensions Ombudsman and the Pension Protection Fund Ombudsman) indicates the following: “The joint office is funded by grant-in-aid paid by DWP. The grant-in-aid is substantially recovered from the general levy on pension schemes that is invoiced and collected by the Pensions Regulator. The levy is set by and owed to the Secretary of State for Work and Pensions. In 2007/08 the office received £2,823,000 grant-in-aid, incurred net expenditure of £2,666,269 and had net assets at 31 March 2008 of £351,225.” (p. 2, <http://www.pensions-ombudsman.org.uk/publications/docs/PO-AnnualReport-2007-08.pdf>).

## **Aims**

The Ombudsman’s Charter declares: “Our role is to provide an impartial, efficient and effective method of resolving complaints and disputes concerning pension arrangements referred to our office under our governing legislation” (<http://www.pensions-ombudsman.org.uk/ourcharter/>). Section 146.1 of the Pensions Schemes Act 1993 specifies: “he Pensions Ombudsman may investigate and determine any complaint made to him in writing by or on behalf of an authorised complainant who alleges that he has sustained injustice in consequence of maladministration in connection with any act or omission of the trustees or managers of an occupational pension scheme or personal pension scheme.”

## **Procedure:**

- **who can apply for compensation/refer claims**

The Ombudsman can investigate complaints brought by:

- “members or ex-members of occupational pension schemes or personal pension schemes, including stakeholder schemes
- spouses or dependants of members or ex-members who have died
- anyone claiming to be a member or ex-member, or the spouse or dependant of one, as long as their complaint is about that claim
- people entitled to pension credits following the divorce of a scheme member
- personal representatives appointed on the death of people in categories 1 to 4
- a suitable person representing the interests of a minor or person unable to act for themselves in one of categories 1 to 4
- trustees or managers of occupational pension schemes
- employers in relation to an occupational pension scheme” (<http://www.pensions-ombudsman.org.uk/powers/>).

“Members and ex-members, or anyone in categories 1 to 6 of the people who can complain, can bring their complaints against trustees of the scheme, including past trustees, managers of the scheme: “for example, in public sector schemes the body that runs the scheme, or for insured schemes, the insurance company”, an employer “(but



only about the employer's role in relation to the scheme, not general employment matters), and an administrator of an occupational pension scheme, which means any person or body concerned with the scheme's administration (disputes with administrators are excluded)."

"Trustees or managers can complain against:

- the trustees or managers of another scheme
- an employer in relation to the scheme.

In addition:

- If at least half of them agree, trustees can bring a dispute with other trustees of the same scheme.
- A statutory independent trustee can bring a complaint against or a dispute with other trustees of the same scheme.
- If the trustee is a sole trustee it can refer a question to the Ombudsman concerning its functions.
- Employers in relation to a scheme can complain against the trustees or managers of the scheme" (<http://www.pensions-ombudsman.org.uk/powers/>).

"Complaints may concern most kinds of pension scheme other than the State scheme. For the purposes of the Ombudsman's legislation they are divided into two kinds:

- *occupational pension schemes* which means schemes established by an employer, whether in the public or private sector, and tied to employment with the employer or a connected group of employers
- *personal pension schemes* being schemes not tied to employment with any particular employer

Scheme members and ex-members (and their spouses and dependants) can complain in relation to either kind of scheme. This includes Stakeholder pension schemes. Trustees and employers can only complain in relation to occupational pension schemes (<http://www.pensions-ombudsman.org.uk/powers/>).

- **formal requirements and time limits**

Complaints and disputes should usually be made in writing to the Pensions Ombudsman within 3 years of the act or omission complained about or disputed. If the complainant did not know about the matter at the time, the 3 years run from the time that he knew or ought to have known. The Pensions Ombudsman may extend the time limit, but only as long as he thinks that any further delay beyond 3 years is reasonable. In particular he will usually treat time spent using an internal dispute resolution procedure and / or being

assisted by the Pensions Advisory Service as a good reason for delaying complaining to him. However, the website of the Ombudsman urges complainants to bring complaints as soon as possible, even without assembling the evidence first – the Ombudsman is to conduct his own investigation (<http://www.pensions-ombudsman.org.uk/powers/>).

The Ombudsman will not:

- “deal with complaints about the way that financial services business is carried out by organisations and people regulated by the Financial Services Authority or bodies approved by it. Generally this means that he will not deal with the way that a pension scheme is sold or marketed.
- deal with complaints about State pensions or other State benefits. Problems with State benefits should be taken up with the Department for Work and Pensions- details are under [Helpful bodies](#) (...).
- investigate a complaint or dispute already subject to court proceedings (an employment tribunal counts as a court) unless the proceedings began after 30 November 2000 and they have been discontinued without a settlement binding on the person referring the matter to the Ombudsman.

Additionally the Ombudsman usually will not investigate matters which are subject to regulation by [the Pensions Regulator](#) unless they have completed an investigation or decided not to investigate. There are certain matters regulated by [the Pensions Regulator](#) cannot make findings about. Also the Pensions Ombudsman usually will not investigate any complaint that has been, or is being, investigated by any other ombudsman” (<http://www.pensions-ombudsman.org.uk/powers/>).

The complainants are first required to use an internal complaints procedure of the pension scheme. In fact, all schemes are required to have such internal complaints procedures.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

The Pensions Ombudsman's decision is final and binding on all the parties to the complaint or dispute. It can be enforced in court. His decision can only be changed by appealing to the appropriate court on a point of law.

When the Ombudsman receives a complaint, he acknowledges the receipt. If the Ombudsman considers that the case should be dealt with by another body – he will send the complaint to this body or return it to the complainant indicating possible further steps. The Ombudsman’s target is for application processing time to average 12 months (<http://www.pensions-ombudsman.org.uk/ourcharter/>). A third of cases takes up to 6

months, a third – up to 12 months, the rest may take longer (<http://www.pensions-ombudsman.org.uk/procedures/>). A complaint is to be made in writing (not over the phone), on the form available online.

The complaint is passed on to an investigator who will determine whether an investigation is necessary (if he considers that there is no chance of success – he will recommend to the Ombudsman that the complaint be returned, although the complainant will get a chance to express his views about this). It is always the Ombudsman who makes the final decision, however. Normally, however, full investigation is undertaken. The complaint form and all the papers that the complainant and the Pensions Advisory Service have provided is sent to the people and bodies that were named as respondents (they should respond in writing). “The Ombudsman's staff may ask for documents, such as the scheme rules, or trustees' records. Details of the complaint may also be sent to anyone else who has an interest in its outcome. Any responses will be sent to the complainant for comments. The respondents also have an opportunity to comment on each other's responses. Afterwards the Ombudsman's staff may ask further questions and obtain further documents. When there is sufficient information for him to do so, the Ombudsman will arrange for issue of his preliminary conclusions concerning the complaint to the parties, including any directions that he thinks necessary to put the matter right if his preliminary conclusions are unchanged. Directions can, but do not always, include payment of money. All of the parties have the opportunity to comment on the preliminary conclusions, and the Ombudsman will take into account any comments made before issuing the final Determination and Directions, either of which may be different. The Determinations and Directions are final and binding on all of the parties, (...) subject only to an appeal on a point of law to, in England and Wales, the High Court, in Scotland, the Court of Session, in Northern Ireland, the Court of Appeal.”

“Any party to the Determination (including a complainant) may appeal. The other parties to the Determination may also be parties to the appeal, as may the Ombudsman. Those wishing to appeal should consider taking legal advice. The Pensions Ombudsman's office cannot usually help. If there is no appeal, the Pensions Ombudsman's decision can be enforced in the courts” (<http://www.pensions-ombudsman.org.uk/procedures/>).

The Pensions Ombudsman sometimes calls all sides to a hearing to help decide a particular issue or issues. The complainant may request the hearing, although the Ombudsman may or may not agree to your request. As specified by the procedural rules on the Ombudsman's website, the Ombudsman would usually only hold an oral hearing in the following circumstances:

1. “where there are differing accounts of a particular material event and the credibility of the witnesses needs to be tested; or
2. where the honesty or integrity of a party has been questioned and the party concerned has requested a hearing; or

3. where there are disputed material and primary facts which cannot properly be determined from the papers alone.

The Ombudsman may, however, decide that it is appropriate to hold a hearing in a case which does not fall into any of these categories and may do so even if one has not been requested by you or any other party to an investigation. If an oral hearing is held then it will be in public (unless there are good reasons why it should not be). The respondents [and the complainant] will be entitled to be present and to call and cross-examine witnesses. Also the respondents [and the complainant] will be allowed to be represented by a lawyer or other appropriate person” (<http://www.pensions-ombudsman.org.uk/procedures/>).

- **results – compensation, other**

The Ombudsman may determine that scheme should pay compensation to the complainant. Other outcomes may include: apologies, rectifying the problems within the organization, ... Determinations issued after 1 April 2000 are published online on the Ombudsman’s website (<http://www.pensions-ombudsman.org.uk/determinations/>).

- **costs**

Cost-free to the users.

### **History (including any reforms, also ongoing reforms)**

See legal basis above.

### **Statistics**

See Annual Report on the website: <http://www.pensions-ombudsman.org.uk/publications/index.html>.

### **Reported cases, problems, issues identified in academic writings**

The Annual Report for 2007-08 indicates backlog of cases with which the new Ombudsman (Tony King) had to deal with. He noted some progress in this area.

Annual report 2007-08: <http://www.pensions-ombudsman.org.uk/publications/docs/PO-AnnualReport-2007-08.pdf>.

The Report indicates that “the number of initial enquiries fell in 2007/08 to 2,462 (3,023 in 2006/07). In fact, with anomalies removed, the underlying trend has been downward for the past three years from a peak in 2004/05. There is not any obvious reason – and indeed there may not be any great statistical significance. There are probably at least 30

million people with pension rights about which a complaint would be within the Pensions Ombudsman's jurisdiction. A shift of a few hundred here or there in the number out of that 30 million who metaphorically knock on our door may not mean much."

"But if forced to guess at a reason for the reduction, then among possible influences might be that many of the smaller defined benefit schemes that were being wound up (with attaching delays and disputes) now have been. Also, the Pension Protection Fund and the Financial Assistance Scheme are now able to deal with those people whose pension rights have been dramatically affected by funding deficits and insolvent employers. Formerly they might have come to the Pensions Ombudsman. Finally, the membership of defined benefit schemes is decreasing. Whatever the arguments about the relative merits of defined benefit versus defined contribution in relation to risk, income replacement and so on, defined contribution schemes are simpler and there is just less, administratively speaking, that can go wrong. There may be more mundane reasons too. The average number over the last ten years is 3,173. In many years that figure has included one or more groups of related enquiries – complaints about treatment of part timers for example, or issues in single schemes affecting several hundred members. In 2007/08 there were no such groups; next year there may be." (p. 10).

Other publications and annual reports: <http://www.pensions-ombudsman.org.uk/publications/index.html>.

See also Pensions Protection Fund: <http://www.ppfo.org.uk/ppfohome.asp> and Financial Assistance Scheme: <http://www.faso.org.uk/fashome.asp>

### **Pension Protection Fund Ombudsman**

The Pensions Ombudsman and the Deputy Ombudsman are also the Pension Protection Fund Ombudsman and Deputy Ombudsman.

They consider decisions made by the Board under the Pension Protection Fund's internal procedures. See leaflet: "Pension Protection Fund. How the Pension Protection Fund Ombudsman can help you", [http://www.ppfo.org.uk/documents/ppf\\_booklet.pdf](http://www.ppfo.org.uk/documents/ppf_booklet.pdf).

They also consider decisions made by fund managers on completion of a review under the Financial Assistance Scheme's internal review procedure (different procedure, analysed separately below). See leaflet: "Financial Assistance Scheme. What the Pension Protection Fund Ombudsman can do for you", [http://www.faso.org.uk/docs/fas\\_booklet.pdf](http://www.faso.org.uk/docs/fas_booklet.pdf).

#### **Statutory basis (legal basis)**

Based on the Pensions Act 2004.

#### **Links with government and funding**

Appointed by the Queen, funded by the Department for Work and Pensions.

## **Governance and structure**

See governance and structure of Pensions Ombudsman.

## **Budget and expenditure**

Annual report 2007-08: <http://www.pensions-ombudsman.org.uk/publications/docs/PO-AnnualReport-2007-08.pdf>.

## **Aims**

To review decisions of the Board of the Pension Protection Fund.

## **Procedure:**

- **who can apply for compensation/refer claims**

Applicants may include: members of the pension scheme, trustees or managers of the pension scheme, the employer in relation to the pension scheme, the employer's insolvency practitioner, the actuary in relation to the pension scheme, someone who thinks that they may have suffered an injustice because of maladministration (applications may be made personally or by a representative) (source: "Pension Protection Fund. How the Pension Protection Fund Ombudsman can help you", [http://www.ppfo.org.uk/documents/ppf\\_booklet.pdf](http://www.ppfo.org.uk/documents/ppf_booklet.pdf)).

- **formal requirements and time limits**

There are two types of matters the Ombudsman may consider: either a decision concerning a reviewable matter (Schedule 9 to the Pensions Act 2004 contains a list of reviewable matters) (referral), or/and a decision about a complaint of maladministration causing injustice (complaint) (these are defined in the leaflet "Pension Protection Fund. How the Pension Protection Fund Ombudsman can help you"). Examples of maladministration include: the Board taking too long making a decision, or not making the decision properly.

The internal procedure of the Pension Protection Fund must have been exhausted before the application is made – the first stage is consideration by the Board, the second stage is a decision by the Reconsideration Committee (although in some cases the Ombudsman does consider cases which did not reach the second stage).

A general time limit for referrals and complaints is 28 days from the day on which the notice of the decision of the Reconsideration Committee was sent (with some exceptions

when the period can be longer). In some cases the Ombudsman will accept a complaint which was not considered by the Reconsideration Committee.

There are two separate forms to be filled in: for referrals and for complaints. These must be accompanied by all the required information, and can be submitted online.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

Receipt of the complaint or referral is acknowledged, and the Board or any significantly adversely affected person are informed. All persons concerned (parties and the significantly adversely affected persons) will be given a chance to submit observations. All documents must be made available to all the interested parties (otherwise the Ombudsman will not use them). If a number of similar complaints or referrals were made, the Ombudsman may decide to deal with them together (subject to the parties' approval). Before the final determination, a preliminary opinion is sent to the parties, and the applicant can submit observations.

The Ombudsman may decide to hold an oral hearing (especially when there is a conflict of evidence, or when the parties requested this, or if the adversely affected person requested a hearing).

The Ombudsman's decision is final for the parties and the adversely affected persons, and can only be appealed on a point of law to court.

- **results – compensation, other**

If the Ombudsman decides that the referral or complaint is well founded, he may order the Board to change or replace its decision, or to pay compensation. The Ombudsman's decision may be posted on his website.

- **costs**

The proceedings are free to the users, although if a hearing is held and a person has behaved vexatiously or unreasonably the Ombudsman may make an adverse costs order after having given the person the opportunity to explain.

### **History (including any reforms, also ongoing reforms)**

No reforms so far – see legal basis.

### **Statistics**

See the Annual Report referred to in the Pensions Ombudsman section.

### **Reported cases, problems, issues identified in academic writings**

Ibid.

## **Office of Legal Complaints Ombudsman**

(CHRIS WARNER - WHICH)

Source: OLSO annual report 2007-08

### **Statutory basis (legal basis)**

OLSO is established under the Courts and Legal Services Act 1990 (section 21).

### **Links with government and funding**

OLSO is a statutory body paid for by grant in aid from Ministry of Justice.

In 2007-08, its financing from MoJ was £1.6 million plus £272,000 MoJ overhead charge. Its total expenditure was £1.9 million.

It is totally independent of the legal profession.

### **Governance and structure**

OLSO is headed by the current Legal Services Ombudsman, Zahida Manzoor CBE. The total number of staff is around 25. The Ombudsman is appointed by the Secretary of State for Justice following Nolan principles and the appointee can not be a qualified lawyer.

### **Budget and expenditure**

See b)

### **Aims**

OLSO deals with complaints from consumers where the consumer is not satisfied with the response from the relevant legal professional body.

These bodies are:

Law Society (Legal Complaints Service and Solicitors Regulation Authority)  
Bar Council (Bar Standards Board)



Council for Licensed Conveyancers  
Institute of Legal Executives  
Chartered Institute of Patent Attorneys  
Institute of Trade Mark Attorneys

The vast majority of the complaints relate to the Law Society's Legal Complaints Service.

**Procedure:**

- **who can apply for compensation/refer claims**

Any consumer unhappy with the way the relevant legal professional body has handled a complaint. Consumers can not complain directly to OLSO without first taking up their complaint with the legal professional concerned and then their relevant professional body.

- **formal requirements and time limits**

The complaint must be referred to OLSO within 3 months of the consumer receiving the decision of the relevant legal professional body.

- **proceedings** (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)

OLSO reviews the way that the professional body investigated the complaint about the lawyer and reaches a conclusion. OLSO's decision can only be challenged in the courts though complainants can complain about OLSO's quality of service.

- **results – compensation, other**

If OLSO is not satisfied with the way that the professional body dealt with the complaint, she can recommend that they re-investigate, or she can formally criticise them.

If OLSO considers that the consumer has been distressed or inconvenienced by the professional body's handling of the complaint, she can recommend that they pay compensation.

- **costs**

Free of charge to the consumer.

**History (including any reforms, also ongoing reforms)**

As a result of the Legal Services Act 2007, OLSO will cease to exist once the new legal complaints environment is established – specifically the new statutory Office of Legal Complaints (OLC). This is expected to be no earlier than December 2010.

As a result of the establishment of both the OLC and the Legal Services Board (the new overarching regulator), the Office of the Legal Services Complaints Commissioner (OLSCC) will also be abolished (in March 2010). This body reviews the way in which the Law Society handles complaints under powers given by the Access to Justice Act 1999. The OLSCC is not a consumer facing body.

### **Statistics**

In 2007-08, OLSO investigated 1,864 complaints (2006-07: 1,884 complaints). This represents 1,803 new cases.

1,708 complaints related to solicitors (1,293 from Legal Complaints Service and 415 from Solicitors Regulation Authority).

138 cases related to the Bar Standards Board (the complaints handling body of the Bar Council).

10 cases related to the Council for Licensed Conveyancers.

In addition, 461 complaints were rejected for investigation; 210 because enquiry was premature, 154 because the enquiry was for another organisation, 61 because the enquiry was outside of the 3 month time limit, 32 because the enquiry was duplicate and 4 others.

100% of complaints are dealt with within 6 months (ahead of the Government's target of 90%).

In 2007-08, 8 applications were lodged in court to challenge an OLSO decision. 5 were unsuccessful and 3 are pending.

In 2007-08, 23 complaints were received about OLSO's quality of service. 2 were upheld, 11 rejected and 10 related to the OLSO decision and could not be considered.

### **Reported cases, problems, issues identified in academic writings**

No data.

### **Energy Ombudsman**

<http://www.energy-ombudsman.org.uk/>

The Energy Ombudsman has been approved by the Industry Regulator – Ofgem (the Office of Gas and Electricity Markets, working under the direction and governance of the Gas and Electricity Markets Authority) – as a statutory redress scheme in the energy sector (see the Memorandum of Understanding between the Gas and Electricity Markets

Authority and the Ombudsman Service Ltd., which administers the Energy Ombudsman Service:

[www.ofgem.gov.uk/Consumers/Complain/Documents/MOU%20Between%20Ofgem%20and%20Ombudsman%20Service.pdf](http://www.ofgem.gov.uk/Consumers/Complain/Documents/MOU%20Between%20Ofgem%20and%20Ombudsman%20Service.pdf).

The aim is to settle disputes between gas and electricity companies (energy companies) and their domestic and small business customers. The provisions of the Consumers, Estate Agents and Redress Act, 2007, which require all energy companies which have domestic or small business customers to join an approved dispute resolution scheme, came into force on 1 October 2008. Ofgem published its approval criteria in March 2008 (<http://www.ofgem.gov.uk/Markets/RetMkts/Compl/ConsRep/Documents1/Redress%20Schemes%20Decision.pdf>).

The list of members of the Energy Ombudsman can be found at the following website: <http://www.energy-ombudsman.org.uk/links/2-0-members.php>.

### **Statutory basis (legal basis)**

In operation since 1 July 2006 (initially established on a voluntary basis), see also the Consumers, Estate Agents and Redress Act 2007, which gives Secretary of State the power to require regulated providers in the energy sector to become members of an approved redress scheme.

### **Links with government and funding**

The Ombudsman is independent, funded by its industry members. The Ombudsman services are provided by a private company – Ombudsman Service Ltd.

### **Governance and structure**

There is a chief Ombudsman (Elizabeth France CBE) and a number of Ombudsmen. The Ombudsman Service Ltd. has a Council which ensures its independence (the Ombudsman Service Ltd. administers the Energy Ombudsman and is a private limited company which operates on a not-for-profit basis). “Its governance structure has been carefully designed to protect the independence of the Ombudsman and the company has been admitted to membership of the British and Irish Ombudsman's Association (BIOA).” (<http://www.energy-ombudsman.org.uk/links/3-1-background.php>). The key role of the Energy Member Board is to ensure that the Energy Ombudsman is appropriately funded,

### **Budget and expenditure**

See the Energy Ombudsman Annual Report for 2008: [http://www.energy-ombudsman.org.uk/downloads/34841\\_Energy\\_Annual.pdf](http://www.energy-ombudsman.org.uk/downloads/34841_Energy_Annual.pdf).

## **Aims**

Assisting domestic consumers and small businesses in settling complaints about energy suppliers, for example they can seek help with billing and transfer related disputes. The Energy Ombudsman can deal with complaints against any of the supply companies or network operators.

## **Procedure:**

- **who can apply for compensation/refer claims**

Any domestic customer or a small business customer (defined as one who: employs fewer than ten people, or uses less than 200,000 kWh gas per year or 55,000 kWh electricity per year, or where the annual turnover for the business is less than €2 Million) can complain if they are:

- complaining about a company which provides energy to your home and which is a member of our service (a 'member company'); or
- having problems resulting from an energy supplier's sales activity; or
- having problems resulting from changing your gas or electricity supply to or from a member company; or
- representing a customer who meets one of the conditions (must have the customer's permission in writing).

Problems can concern:

- energy bills;
- problems resulting from changing energy suppliers;
- complaints about an energy supplier's sales activity;
- physical problems to do with the supply of energy to a home or small business (e.g. power cuts). (source – Ombudsman's website: [http://www.energy-ombudsman.org.uk/links/3-0-what\\_we\\_do.php](http://www.energy-ombudsman.org.uk/links/3-0-what_we_do.php)).

These are the areas where the Ombudsman cannot intervene:

- complaints about an energy company which is not a member of the service;
- complaints about an energy company's sales activity, where the problem happened before 1 September 2007;
- complaints about physical problems to do with the gas or electricity supply to a home, where the problem happened before 1 April 2008;
- complaints about an energy company which joined the service on or after 1 October 2008, where the problem happened before this date

- problems that the Ombudsman thinks would be better dealt with by the courts, arbitration services or other complaints procedures;
- problems that are already being dealt with by courts or other complaints procedures;
- employment and staff issues in member companies;
- cases that the Ombudsman considers to be malicious or unjustified;
- commercial decisions made by member companies about whether to provide a product or service, and the terms under which they may be provided. For example, we cannot make an energy company reduce the tariff charges for the energy it provides; and
- disagreements between gas or electricity companies about providing those services. (source: Ombudsman's website: [http://www.energy-ombudsman.org.uk/links/3-11-we\\_cannot\\_deal\\_with.php](http://www.energy-ombudsman.org.uk/links/3-11-we_cannot_deal_with.php)).

- **formal requirements and time limits**

The energy company complained against must be a member of the Ombudsman, and the complainant is required to first of all attempt to resolve the problem internally with the company. Complaints to the Ombudsman can only be made if a 'deadlock letter' was received by the complainant, or if 8 weeks (or 12 weeks if the company became a member after 1 October 2008) passed from the day when the complaint was first made to the company. The complaint must be brought within 9 months from the date when the complainant first told the company about the problem (although this period may be extended if a 'deadlock letter' was recently received).

There are also time limits related to the fact that the Ombudsman is a new institution: for example a company's sales activity must have occurred after 1 September 2007, and if the complaint is about a physical problem with the gas or electricity supply to a home (power cut for example), the problem must have occurred after 1 April 2008.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

Complainants phone the Ombudsman and explain the problem to an Enquiry Officer, who decides whether the Ombudsman can take the case on and fills in a claim form and sends it to the complainant for approval. The signed form is then returned to the Ombudsman, who will make initial enquiries concerning the case and decide whether to commence an investigation. If the Ombudsman accepts the complaint and the complainant agrees, the company will be asked for information about what's happened so far. How long it takes

the Ombudsman to come up with a solution depends on how complicated the complaint is, and how quickly the facts can be ascertained (further information may be requested). The Ombudsman will also attempt to encourage the parties to settle. When a decision was reached, a Provisional Conclusion is sent to the complainant and the company. If you the energy company accept this as a settlement of the dispute, it will become the final decision and the energy company must put in place any remedy that is called for. Decisions are binding.

- **results – compensation, other**

The Ombudsman can ask a supplier or network operator to apologise and take practical action to resolve a dispute and in some cases make a financial award (up to £5000 <http://www.ofgem.gov.uk/Media/FactSheets/Documents1/changestoconsumer.pdf>).

They may be able to deal with the complaint if the complainant has exhausted the supplier's complaints process or if the complaint is more than 8 weeks old (source – Ofgem's website: <http://www.ofgem.gov.uk/Consumers/Complain/Pages/Complain.aspx>).

- **costs**

Cost-free to complainants. Funded by members. Members pay a £300 case handling fee for a complaint which is investigated, and also pay an annual subscription fee.

### **History (including any reforms, also ongoing reforms)**

“In 2005, Ofgem determined (following the energywatch billing supercomplaint) that energy suppliers should establish a scheme to resolve outstanding billing disputes in a fair and independent way. The energy suppliers who were members of the Energy Retail Association committed to establishing an Alternative Dispute Resolution (ADR) scheme within 12 months as part of their ongoing drive towards improved customer service and the ongoing trend towards reduced complaints within the industry. They felt that such a scheme would further strengthen existing arrangements for complaint resolution within the domestic energy sector. The Energy Ombudsman is that scheme.” (source – Ombudsman's website: <http://www.energy-ombudsman.org.uk/links/3-1-background.php>).

### **Statistics**

The Annual Report 2008 and the Ofgem's review of 2007 (see below for references), indicate increased usage and popularity of the scheme.

### **Reported cases, problems, issues identified in academic writings**

See the Annual Report 2008: [http://www.energy-ombudsman.org.uk/downloads/34841\\_Energy\\_Annual.pdf](http://www.energy-ombudsman.org.uk/downloads/34841_Energy_Annual.pdf)

See also information booklet: [http://www.energy-ombudsman.org.uk/downloads/08\\_-\\_007\\_Energy\\_28pp\\_Booklet\\_V4d.pdf](http://www.energy-ombudsman.org.uk/downloads/08_-_007_Energy_28pp_Booklet_V4d.pdf)

See also The Energy Retail Association: <http://www.energy-retail.org.uk/energysupply.html>; code of practice: <http://www.energy-retail.org.uk/salespractice/thecode/eracode161105.pdf> ; and related code of practice report: <http://www.energy-retail.org.uk/documents/AESAnnualReportFINAL.pdf>

For an assessment of the work of the Ombudsman so far – see Ofgem’s review: “Review of the Energy Supply Ombudsman” of 27 November 2007: <http://www.ofgem.gov.uk/Markets/RetMkts/Compl/ConsRep/Documents1/Review%20of%20the%20Energy%20Supply%20Ombudsman.pdf>. This review is positive about the success of the scheme so far (based on performance targets and customer satisfaction surveys). There were some concerns regarding the circumstances where the customers are being referred back to the companies because the Ombudsman considers that the latter had not been given sufficient opportunity to resolve the complaint. It is to be expected that complaints handling standards were improved following the Ofgem’s criteria and the need to follow these in order to be an approved redress scheme. The review also highlighted the need for the companies to improve signposting the existence of the scheme to their customers.

The review indicates that the scheme is becoming more popular and indeed more capable of affecting the supplier’s conduct: as the scope and range of issues involved is growing, and as the companies realize the negative consequences of complaints – risk of adverse decision is significant, and the suppliers face a charge of around £300 per complaint.

### **The Housing Ombudsman Service**

(Prepared with the assistance of Ms Nadia Khoury of CMS Cameron McKenna, London).

<http://www.ihos.org.uk/>

The Ombudsman deals with complaints about landlords and agents in England and other housing disputes. In Wales, complaints about social landlords are dealt with by the Public Services Ombudsman for Wales. The Housing Act 1996 requires all social landlords to belong to the Service. But it does not include local councils: council tenants must complain to the Local Government Ombudsman. The Service also has some voluntary members – landlords and management agents.

#### **Statutory basis (legal basis)**

Housing Act 1996, which, as specified above, requires all social landlords to belong to the Service (Schedule 2: Social Rented Sector: Housing Complaints -

[http://www.opsi.gov.uk/ACTS/acts1996/ukpga\\_19960052\\_en\\_19](http://www.opsi.gov.uk/ACTS/acts1996/ukpga_19960052_en_19)). The service was established under the Housing Act 1996 (paragraphs 7 to 10, Schedule 2) with jurisdiction over more than 2,000 landlords. Under the Housing Act 1996, all housing associations must belong to the service by law (section 51; paragraph 6, Schedule 2).

**N.B. Many provisions of the Housing Act 1996, including section 51, are currently subject to a pending amendment.**

### **Links with government and funding**

Statutory body. The Ombudsman is appointed by the company formed to administer the scheme (Independent Housing Ombudsman Limited) and this appointment is subject to the approval of the Secretary of State for Housing. However, this still endeavours to be an independent service.

The scheme is funded by subscription fees paid by member landlords to Independent Housing Ombudsman Limited.

### **Governance and structure**

The Service consists of an Ombudsman, a Deputy Ombudsman, a Director of casework, and a company secretary. Please see <http://www.ihos.org.uk/about/who.asp> for more details.

### **Budget and expenditure**

Variable; see p72 of Annual Report 2008; budget for 2008 was just under £ 3 million.

### **Aims**

The Ombudsman will consider complaints about the actions or omissions of a member landlord. The person complaining or on whose behalf a complaint is made must have been adversely affected by those actions or omissions, in respect of their occupation of property, or the delivery of services to them, or in the course of any transaction with the member landlord.

When investigating a complaint, the Ombudsman is concerned to establish whether the member landlord has been guilty of maladministration.

### **Procedure:**

- **who can apply for compensation/refer claims**

The following people can make complaints on and after 1st April 1997 against member landlords for investigation by the Ombudsman:



- (a) A person who has (or had at the time of the matter complained of) a lease, tenancy, licence to occupy, service agreement or other arrangement to occupy premises owned by or managed by a member landlord.
- (b) A person who is or was liable to pay (or who at the time of the matter complained of paid) a service charge to a member landlord.
- (c) An applicant for a property owned or managed by a member landlord.
- (d) A representative of any of the people above who is authorised by them to make and pursue the complaint on their behalf.
- (e) A representative of a person otherwise entitled to complain where the Ombudsman is satisfied in the circumstances that that person cannot pursue the complaint on their own behalf.

- **formal requirements and time limits**

The Ombudsman will not consider complaints about:

- disagreeing with the landlord's decision when it is properly made
- disputes between neighbours (although it can look at how the landlord handled the dispute)
- complaints that rent or service charge levels are too high
- complaints from someone other than the tenant involved, unless it is an authorised representative (ADRNow: [http://www.adrnow.org.uk/go/SubPage\\_34.html](http://www.adrnow.org.uk/go/SubPage_34.html)).

The complainant must have first attempted to resolve the problem internally with the landlord or agent. The complaint to the landlord must be made within 12 months of becoming aware of the problem. The Ombudsman must be approached within 12 months of reaching the final stage of the landlord's complaints procedure.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

All complaints receive some preliminary investigation, and the Ombudsman decides whether to take the case on. The case will not be taken if the Ombudsman considers that it would have been better dealt with by a court or tribunal (or if the case is also about to be taken to court or tribunal). As specified on the Ombudsman's website, conciliatory approach to resolving housing disputes is encouraged. Complaints will only be investigated when there is early evidence of serious maladministration. Otherwise, the use of mediation or other alternative forms of dispute-resolution may be advised, which the Ombudsman makes available at no extra cost" (<http://www.ihos.org.uk/complainants/default.asp>).

Complaints can be submitted on the official complaint form, by email, through the Ombudsman's website or by letter. "In special circumstances, they can be made on the phone, and HOS staff will complete the complaint form with the complainant over the phone. If the complainant has difficulty completing the complaint form, they can ask an adviser or family member to make the complaint. There is a place on the form to indicate that that person has been given authority to act on the complainant's behalf.

In addition to investigations, the service uses a number of ADR methods to resolve complaints and disputes, including local settlement (a kind of conciliation), mediation, arbitration and adjudication.

*Local settlement:*

Once a complaint has been accepted by HOS, a copy of the complaint is sent to the landlord for comment. The first stage is an attempt at local settlement: HOS tries to negotiate a settlement between the complainant and the landlord.

*Adjudication:*

HOS can offer the parties Adjudication without a face-to-face hearing. This is a quick method to handle disputes that are not technically complex and for which there is no need to carry out extensive enquiries or gather substantial information.

*Mediation:*

HOS can recommend Mediation, which needs to be agreed by both parties. The mediation is provided by an independent, impartial mediator who will help the parties reach their own, non-binding agreement that resolves the dispute. HOS mediators are provided by the CEDR. There is no extra cost for mediations under HOS.

*Arbitration:*

Where HOS recommends Arbitration, both parties will need to agree to it. In arbitration, an impartial, independent arbitrator hears both sides of the case and makes a decision that is binding on both parties. The arbitrator will be selected from HOS's panel of trained arbitrators, who are members of IDRS. HOS covers the fees for the arbitrator and related expenses such as expert opinions" ('ADRNow': [http://www.adrnow.org.uk/go/SubPage\\_34.html](http://www.adrnow.org.uk/go/SubPage_34.html)).

"Member organisations are expected to comply with the ombudsman's orders and follow his recommendations, and nearly all do. If they refuse, the ombudsman has the power to force landlords to publish their refusal.

There is no appeal against the ombudsman's decisions, though it is possible to apply for a judicial review of the HOS procedure. Complainants who are unhappy with the outcome can still go to court." (ibid. ADRNow).

Section 7 of Schedule 2 of the Housing Act 1996 provides:

“A housing ombudsman under an approved scheme shall investigate any complaint duly made to him and not withdrawn, and may investigate any complaint duly made but withdrawn, and where he investigates a complaint he shall determine it by reference to what is, in his opinion, fair in all the circumstances of the case.

(2) He may in his determination—

(a) order the member of a scheme against whom the complaint was made to pay compensation to the complainant, and

(b) order that the member or the complainant shall not exercise or require the performance of any of the contractual or other obligations or rights existing between them.

(3) If the member against whom the complaint was made fails to comply with the determination within a reasonable time, the housing ombudsman may order him to publish in such manner as the ombudsman sees fit that he has failed to comply with the determination.

(4) Where the member is not a social landlord, the housing ombudsman may also order that the member—

(a) be expelled from the scheme, and

(b) publish in such manner as the housing ombudsman sees fit that he has been expelled and the reasons for his expulsion.

(5) If a person fails to comply with an order under sub-paragraph (3) or (4)(b), the housing ombudsman may take such steps as he thinks appropriate to publish what the member ought to have published and recover from the member the costs of doing so.

(6) A member who is ordered by the housing ombudsman to pay compensation or take any other steps has power to do so, except that a member which is also a charity shall not do anything contrary to its trusts.”

- **results – compensation, other**

The HOS can order compensation, or changes in policy and procedure – for example, training for staff – that can help to prevent the problem recurring. The HOS publishes summaries of cases in its annual report and on its website; they do not name the complainant but may name the landlord involved.

Giving his reasons in writing, the Ombudsman may:

(a) reject the complaint;

(b) recommend that the member landlord apologise to the complainant;

(c) order the member landlord to pay compensation to the complainant;

(d) order the member landlord or the complainant not to exercise or require the performance of any of the contractual or other obligations existing between them;

- (e) recommend that the landlord undertakes or refrains from undertaking works or takes or does not take such other reasonable steps to secure redress for the complainant within the legal powers of the member landlord;
- (f) expel from the scheme a member landlord which is not a social landlord as defined in the Housing Act 1996;
- (g) order the expelled member landlord to publish that it has been expelled and the reasons for it in a way that the Ombudsman thinks fit.

Whether or not the Ombudsman decides to reject a complaint, in addition to his determination, he may also recommend:

- (a) changes of procedure by the member landlord arising from the facts disclosed by the complaint;
- (b) other ways of resolving the complaint that he considers appropriate including mediation or arbitration.

Member landlords are expected to comply with the determination of the Ombudsman following his investigation of a complaint.

- **costs**

Free to tenants, who can also obtain legal aid for legal advice in preparing the complaint.

### **History (including any reforms, also ongoing reforms)**

Effective from 1 April 1997. Reforms of the system of complaints handling in the area of housing may be forthcoming – see the Housing Ombudsman Service response to the Law Commission’s report on Proportionate Dispute Resolution in Housing ([http://www.ihos.org.uk/downloads/common/HOS\\_Law\\_Comm\\_Response\\_PDR.pdf](http://www.ihos.org.uk/downloads/common/HOS_Law_Comm_Response_PDR.pdf)).

### **Statistics**

See the following website for documents and annual reports:

<http://www.ihos.org.uk/complainants/downloads.asp>.

‘ADRNow’ reports that “it can take time to get a decision – the average time taken to get a final determination in 2007 was 26 weeks, though mediation and adjudication can be arranged more promptly, and at no extra cost” ([http://www.adrnow.org.uk/go/SubPage\\_34.html](http://www.adrnow.org.uk/go/SubPage_34.html)).

“For mediations and “paper-only” adjudications, about 80% are resolved within two months, for arbitrations, most are resolved within four months, on average, cases that are investigated get a final determination within 26 weeks, 98% of cases are closed within one year.”

“In 2007 the majority of complaints were about:

- repairs – 32%
- the way landlords deal with concerns about anti-social behaviour – 18%
- allocations and transfers – 12%
- charges – 10%.”

“Only 15% of the complaints investigated by HOS resulted in a finding of maladministration in 2007. The ombudsman can order a wide range of remedies such as an apology, compensation, or a change in policy or procedure. In a further 18% of cases in 2007, although no maladministration was found, the HOS recommended some form of remedy or compensation for the complainant. Generally, compensation levels are lower than in the county court. The principal role of the ombudsman is, whenever possible, to put the individual back in the position he or she was in before things went wrong. This means that high levels of compensation to punish the landlord are not awarded. The most common factors taken into account when setting compensation levels are:

- time taken to resolve the problem
- difficulties faced by the complainant
- undue delay
- disruption to household, particularly in relation to disrepair
- landlord mishandling of complaints

The range of awards across all the above factors is between £25 and £3,000, although higher awards have been made.”

The Ombudsman investigated 3,206 cases in the year 1 April 2007 to 31 March 2008.

### **Reported cases, problems, issues identified in academic writings**

See the history part for the reference to Law Commission’s report.

See article by M. Biles (Housing Ombudsman) in Landlord and Tenant Review [2003] 7 L & T Rev Issue 2, pp. 25 – 28.

<http://www.ihos.org.uk/>

Annual Report 2007:

[http://www.ihos.org.uk/downloads/common/HOS\\_Annual\\_Report\\_2007.pdf](http://www.ihos.org.uk/downloads/common/HOS_Annual_Report_2007.pdf)

Consumer information: [http://www.ihos.org.uk/downloads/common/HOS\\_Leaflet.pdf](http://www.ihos.org.uk/downloads/common/HOS_Leaflet.pdf)

Response to the Law Commission’s report on Proportionate Dispute Resolution in Housing:

[http://www.ihos.org.uk/downloads/common/HOS\\_Law\\_Comm\\_Response\\_PDR.pdf](http://www.ihos.org.uk/downloads/common/HOS_Law_Comm_Response_PDR.pdf) ;

Law Commission Report 13.5.2008: <http://www.lawcom.gov.uk/docs/lc309.pdf>

Useful summary document:

[http://www.ihos.org.uk/downloads/common/HOS\\_Scheme.pdf](http://www.ihos.org.uk/downloads/common/HOS_Scheme.pdf)

## **Prisons and Probation Ombudsman**

<http://www.ppo.gov.uk/>

*Prepared with the assistance of Ms Nadia Khoury of CMS.*

The Prisons and Probation Ombudsman investigates:

- complaints from prisoners, people on probation and immigration detainees held at immigration removal centres
- deaths of prisoners, residents of probation service Approved Premises, and those held in immigration removal centres.

Annual Report 07-08: <http://www.ppo.gov.uk/download/annualreps/annual-report-0708.pdf>

### **Statutory basis (legal basis)**

Non-statutory establishment but there are ongoing attempts to place the position on a statutory basis.

### **Links with government and funding**

The Ombudsman is appointed by the Secretary of State for Justice and is completely independent of the Prison Service, the National Probation Service (NPS) and the Border and Immigration Agency. Funding is received from the Home Office.

### **Governance and structure**

The current Ombudsman is Stephen Shaw. A team of Deputy Ombudsmen, Assistant Ombudsmen, investigators and administration staff supports him.

### **Budget and expenditure**

Expenditure: £7.3 million.

Budget for 2007-2008: £5.2 million.

### **Aims**

The Prisons and Probation Ombudsman investigates complaints from prisoners, those on probation and those held in immigration removal centres. He also investigates all deaths that occur among prisoners, immigration detainees and the residents of probation hostels (Approved Premises).

**Procedure:**

- **who can apply for compensation/refer claims**

The Ombudsman investigates complaints submitted by the following categories of persons:

- (i) Individual prisoners who have failed to obtain satisfaction from the Prison Service complaints system and who are eligible in other respects, and
- (ii) Individuals who are, or have been, under the supervision of the NPS or housed in NPS accommodation or who have had pre-sentence reports prepared on them by the NPS and who have failed to obtain satisfaction from the NPS complaint system and who are eligible in other respects.

The Ombudsman will normally act on the basis only of eligible complaints from those individuals described in paragraphs 2 and not on those from other individuals or organisations.

The Ombudsman will investigate the circumstances of the deaths of the following categories of person:

- (i) Prisoners (including persons held in young offender institutions). This includes persons temporarily absent from the establishment but still in custody (for example, under escort, at court or in hospital). It excludes persons released from custody, whether temporarily or permanently. However, the Ombudsman will have discretion to investigate, to the extent appropriate, cases that raise issues about the care provided by the prison.
- (ii) Residents of NPS Approved Premises (including voluntary residents).
- (iii) Residents of immigration detention accommodation and persons under Immigration Service managed escort.

- **formal requirements and time limits**

Before putting a grievance to the Ombudsman, a complainant must first seek redress through appropriate use of the Prison Service and NPS complaints procedures.

Complainants will have confidential access to the Ombudsman and no attempt should be made to prevent a complainant from referring a complaint to the Ombudsman.

The Ombudsman will consider complaints for possible investigation if the complainant is dissatisfied with the reply from the Prison Service or the NPS area board or receives no final reply within six weeks (in the case of the Prison Service) or 45 working days (in the case of the NPS).

Complainants submitting their case to the Ombudsman must do so within one calendar month of receiving a substantive reply from the Prison Service or, in the case of the NPS, the area board.

However, the Ombudsman will not normally accept complaints where there has been a delay of more than 12 months between the complainant becoming aware of the relevant facts and submitting their case to the Ombudsman, unless the delay has been the fault of either of the Services.

Complaints submitted after these deadlines will not normally be eligible. However, the Ombudsman has discretion to consider those where there is good reason for the delay, or where the issues raised are so serious as to override the time factor.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

### **Examination of complaints**

The Ombudsman will examine complaints to consider whether they are eligible. To assist in this process, where there is some doubt or dispute as to the eligibility of a complaint, the Ombudsman will inform the Prison Service or the NPS area board of the nature of the complaint and, where necessary, the Prison Service or area board will then provide the Ombudsman with such documents or other information as the Ombudsman considers are relevant to considering eligibility.

The Ombudsman may decide not to accept a complaint or to continue any investigation where it is considered that no worthwhile outcome can be achieved or the complaint raises no substantial issue. The Ombudsman is also free not to accept for investigation more than one complaint from a complainant at any one time unless the matters raised are serious or urgent.

### **Access to information for complaints**

The Director General of the Prison Service and the National Director of the NPS will ensure that the Ombudsman has unfettered access to the relevant service's documents. This will



include classified material and information entrusted to that service by other organisations, provided this is solely for the purpose of investigations within the Ombudsman's terms of reference and subject to certain safeguards.

In conducting an investigation the Ombudsman and staff will be entitled to visit Prison Service or NPS establishments, after making arrangements in advance for the purpose of interviewing the complainant, employees and other individuals, and for pursuing other relevant inquiries in connection with investigations within the Ombudsman's Terms of Reference and subject to certain safeguards.

### **Resolution and reporting for complaints**

It will be open to the Ombudsman in the course of investigation of a complaint to seek to resolve the matter by local settlement.

Before issuing a final report on an investigation, the Ombudsman will send a draft to the Director General of the Prison Service or to the National Director of the NPS depending on which service the complaint has been made against, to allow that service to draw attention to points of factual inaccuracy, to confidential or sensitive material which it considers ought not to be disclosed, and to allow any identifiable staff subject to criticism an opportunity to make representations.

### **Timing for complaints**

The Ombudsman has a target date to give a substantive reply to the complainant within 12 weeks from accepting the complaint as eligible. Progress reports will be given if this is not possible.

The Prison Service and NPS have a target of four weeks to reply to recommendations from the Ombudsman. The Ombudsman should be informed of the reasons for delay when it occurs.

### **Reports on fatal incidents**

The Ombudsman will produce a written report of each investigation which, following consultation with the Coroner where appropriate, the Ombudsman will send to the relevant service, the Coroner, the family of the deceased and any other persons identified by the Coroner as properly interested persons. The report may include recommendations to the relevant Service and the responses to those recommendations.

The Ombudsman will send a draft of the report in advance to the relevant service, to allow the service to respond to recommendations and draw attention to any factual inaccuracies or omissions or material that they consider should not be disclosed, and to allow any identifiable staff subject to criticism an opportunity to make representations.

The Ombudsman will be able to review the report of an investigation, make further enquiries, and issue a further report and recommendations if the Ombudsman considers it necessary to do so in the light of subsequent information or representations, in particular following the inquest. The Ombudsman will send a proposed published report to the relevant service, the relevant Inspectorate and the Secretary of State for Justice (or appropriate representative). If the proposed published report is to be issued before the inquest, the Ombudsman will seek the consent of the Coroner to do so. The Ombudsman will liaise with the police regarding any ongoing criminal investigation.

Taking into account any views of the recipients of the proposed published report regarding publication, and the legal position on data protection and privacy laws, the Ombudsman will publish the report on the Ombudsman's website.

The relevant service will provide the Ombudsman with a response indicating the steps to be taken by the service within set timeframes to deal with the Ombudsman's recommendations. Where that response has not been included in the Ombudsman's report, the Ombudsman may, after consulting the service as to its suitability, append it to the report at any stage.

- **results – compensation, other**

Following an investigation all recommendations will be made either to the Secretary of State for Justice, the Director General of the Prison Service or to the National Director of the NPS or to the chair of the area board as appropriate to their roles, duties and powers.

Among the remedies that he can recommend are:

- reconsideration of a decision (for example a transfer request);
- an apology;
- quashing a disciplinary punishment or finding of guilt;
- compensation for loss or damage;
- changes in policy or procedure.

The Ombudsman will reply to all those whose complaints have been investigated, sending copies to the relevant service, and making any recommendations at the same time. The Ombudsman will also inform complainants of the response to any recommendations made.

- **costs**

Cost-free to complainants.

### **History (including any reforms, also ongoing reforms)**

The office of prisons ombudsman for England and Wales was established in 1994 following the report by Lord Woolf and Sir Stephen Tumim on Prison Disturbances and the White Paper "Custody, Care and Justice". The position was later re-titled Prisons and Probation Ombudsman.

## **Statistics**

### **Complaints**

During 2007-08, the Ombudsman received 4,750 complaints:

- 4,231 were about the Prison Service;
- 426 were about the National Probation Service;
- 93 were from detainees in immigration removal centres.

The Ombudsman completed 1,673 investigations in all.

### **Fatal Incidents**

During 2007-08, the Ombudsman investigated 204 deaths:

- 183 were prisoners;
- 2 had been recently released from prison;
- 17 were resident in Probation Service Approved Premises.

Of those, 95 were from natural causes, 2 were as a result of substance misuse, 1 was homicide, 92 were apparently self-inflicted and 4 were unclassified.

### **Reported cases, problems, issues identified in academic writings**

Cases are identified in the 2007-2008 Annual Report:

<http://www.ppo.gov.uk/download/annualreps/annual-report-0708.pdf>

## **PRIVATE OMBUDSMEN**

### **Surveyors Ombudsman Service**

Prepared with the assistance of Ms Nadia Khoury, CMS.

<http://www.surveyors-ombudsman.org.uk/>

#### **Statutory basis (legal basis)**

The Surveyors Ombudsman Service (SOS) was established by the Royal Institution of Chartered Surveyors (RICS) under its regulatory regime. The estate agents redress scheme was approved under the Consumer Estate Agents and Redress Act 2007.

#### **Links with government and funding**

The SOS is independent from government and funded by industry members of The Ombudsman Service Limited (TOSL), a private limited company (<http://www.tosl.org.uk/>).

#### **Governance and structure**

The SOS is under the responsibility of TOSL, and ultimately run by the Chief Executive of TOSL, who is also Chief Ombudsman. A Surveyor Member Board aims to ensure that the SOS is appropriately funded, to approve each Annual Budget and Annual Business Plan, to determine the scale of case fees and subscriptions to be applied against Members of the SOS and to ensure that the Service adheres to the purpose and scope of the Surveyor Ombudsman as described in the terms of reference.

#### **Budget and expenditure**

The SOS' turnover for 2007/2008 was just under £ 3.7 million and expenditure was £ 3.4 million.

#### **Aims**

The SOS looks to investigate complaints fairly between a complainant and a surveyors firm. It has been approved by the Office of Fair Trading (OFT) to run an estate agent redress scheme and can handle complaints about Chartered Surveyors, Surveyors and Estate agents which have chosen to become a member of the service.

## Procedure:

- **who can apply for compensation/refer claims**

The services will consider complaints made by actual or potential buyers and sellers of residential property. Complaints might include an apparent breach of legal obligations, unfair treatment, avoidable delays, failure to follow proper procedures, rudeness or discourtesy, not explaining matters, poor service or incompetence.

The service will only consider complaints made against Chartered Surveying Firms that have joined the RICS and have become member firms of the (SOS), and complaints made against Surveyors or Estate Agents which have not joined RICS but have chosen to become a member of the SOS.

- **formal requirements and time limits**

The complainant must first complain to the Chartered Surveying Firm, Surveyor or Estate Agent, and follow their complaints procedure. The complainant must have also contacted the Firm or Agent within 12 months of finding out about the cause for complaint. There are then three situations in which the complainant may resort to the SOS, each with corresponding time limits:

(i) If the complainant feels there is no satisfactory progress within eight weeks of submitting his/her complaint, he/she may then resort to SOS within nine months from the date the Firm or Agent was first informed of the cause for complaint.

(ii) If the complainant receives a final letter which states that their complaint will no longer be considered, he/she may then resort to SOS within six months from the date of the letter.

(iii) If the complainant has been unable to register or progress a complaint, he/she may refer to the SOS at any time.

A complaint form can then be completed by an Enquiry Officer and signed by the complainant.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

The Ombudsman will consider whether the Chartered Surveying Firm, Surveyor or Estate Agent must take any action with regard to the complaint. If the Ombudsman decides to

make an award, and the complainant accepts it, then the member firm must keep to the decision.

- **results – compensation, other**

The Ombudsman may ask the member firm to provide any, or all of the following:

- A service or some practical action that will benefit the complainant;
- An apology or explanation; or
- A financial award.

When deciding upon an award it is not the Ombudsman's role to punish a Chartered Surveying Firm. If a financial award is required, this will be the amount that the Ombudsman considers to be the right amount to settle a particular dispute. The Ombudsman can award as much as £25,000 (including VAT) for loss and expenses and for stress and inconvenience. The Ombudsman may also recommend that the Chartered Surveying Firm make changes to its policies or procedures.

- **costs**

Cost-free to complainants.

### **History (including any reforms, also ongoing reforms)**

Established on 1 June 2007. Since August 2008 all Estate Agents must be members of the scheme (See elsewhere in the report: Estate Agents).

### **Statistics**

60% of all final decisions in 2007/2008 included a financial reward.

20 provisional conclusions were issued in 2007/2008.

Approximately 3,000 firms have joined the SOS.

Further statistics can be found in the Annual Report for 2007/2008:  
[http://www.surveyors-ombudsman.org.uk/downloads/34841\\_SOS\\_Annual.pdf](http://www.surveyors-ombudsman.org.uk/downloads/34841_SOS_Annual.pdf)

### **Reported cases, problems, issues identified in academic writings**

The SOS website provides a list of closed cases for each month: <http://www.surveyors-ombudsman.org.uk/pages/44closedcases.php>.

Annual Report 2008: <http://www.surveyors-ombudsman.org.uk/>

Service Booklet: [http://www.surveyors-ombudsman.org.uk/downloads/07 - 058 SOS Booklet 28pp AW.pdf](http://www.surveyors-ombudsman.org.uk/downloads/07_-_058_SOS_Booklet_28pp_AW.pdf) ; changes to p.13: <http://www.surveyors-ombudsman.org.uk/downloads/07-094SOSpage13.pdf>

## **Double Glazing and Conservatory Ombudsman**

<http://dgcoss.org.uk/>

*Prepared with the assistance of Ms Nadia Khoury, CMS.*

### **Statutory basis (legal basis)**

Not a statutory body.

### **Links with government and funding**

The Double Glazing and Conservatory Ombudsman Scheme (DGCOS) is independent from government. There is no concrete information on funding, but this is presumably obtained from members' accreditation fees.

### **Governance and structure**

The Ombudsman is totally independent of the member organisations within the scheme. He has full autonomy and authority to provide a complaints and dispute resolution service between members of the scheme and its customers.

### **Budget and expenditure**

No data.

### **Aims**

The DGCOS helps ensure professional standards by vetting its members thoroughly prior to awarding accreditation. It also ensures fairness through its legally binding complaints and dispute handling service. This is through a process of conciliation, mediation, independent inspections and ultimately arbitration by the Ombudsman.

### **Procedure:**

- **who can apply for compensation/refer claims**

Complaints can be made by any member of the public, but only against a firm that is a member of the DGCOS.

- **formal requirements and time limits**

Complaints must first be addressed to the member firm; if dissatisfied with the outcome of the complaint, the complainant may refer the problem to the Ombudsman within three months from a reply from the member firm, or four months from the date of the complainant's original letter if there is no reply from the member firm. A complaint can be made to the Ombudsman by filling out a complaint form available on the DGCOS website.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

The average complaint may take six months to be resolved.

Every member of DGCOS has signed a legally binding agreement allowing the DGCOS and the Ombudsman to investigate any complaints involving its professional conduct. The Ombudsman's decisions are final, legally binding and enforceable under the terms of the Arbitration Act 1996. However, his decisions are subject to judicial review in certain cases.

- **results – compensation, other**

Following an investigation, the Ombudsman can:

- (i) Recommend that the member or the member's trade association/ professional body reconsider any complaint;
- (ii) Formally criticize or reprimand or instruct that the member's trade association/professional body remove the member from its list of members;
- (iii) Recommend that the member rectify the problem and/or pay compensation for loss, distress or inconvenience; or
- (iv) Decide that the circumstances of the case do not justify any further action on his part and dismiss the claim.

There is no limit to compensation; the highest amount awarded in previous years was £ 14,800.

- **costs**

Cost-free to complainants.

**History (including any reforms, also ongoing reforms)**



The DGCOS was initially set up locally in Lancashire, Manchester and Cumbria, and then expanded nationally in Autumn 2008.

### **Statistics**

No data.

### **Reported cases, problems, issues identified in academic writings**

No data.

How to complain: [http://dgc.org.uk/about\\_complain.html](http://dgc.org.uk/about_complain.html)

Ombudsman for Estate Agents

(WHICH, CHRIS WARNER)

(info based on 2007 Annual Report published March 2008 and other information known to Which? as at November 2008)

<http://www.oea.co.uk/index.htm>

#### **a. Statutory basis (legal basis)**

The OEA is not a statutory redress mechanism but since 2004 has operated within a statutory framework.

The relevant Acts are:

The Housing Act 2004 under which it secured approval from Dept for Communities and Local Government (CLG) to act as a redress mechanism for complaints about Home Information Packs (HIPs).

This has now in effect been superseded, with effect from 1 October 2008, by the Consumers, Estate Agents and Redress Act 2007 under which the OEA has secured OFT approval as a redress mechanism for general complaints about estate agents, including HIPs provided by estate agents. This Act requires all estate agents to join an approved complaints scheme by amending the Estate Agent Act 1979.

The Office of Fair Trading (OFT) has the power to approve more than one estate agent redress scheme and, as at November 2008, has approved one other scheme – the Surveyors Ombudsman Scheme – to deal with complaints about estate agents. Consumer

redress for HIPs depends on who provided the HIP; for example this means that the redress mechanism may be the Law Society or Society of Licensed Conveyancers for HIPs provided by conveyancers, or that no redress is available if the HIP provider is not a member of any scheme at all.

The Property Misdescriptions Act 1991 is also relevant to the OEA's area of work but not its governance.

In addition, the OEA has secured OFT approval for its code of practice for residential sales under the Consumer Codes Approval Scheme

[http://www.offt.gov.uk/oft\\_at\\_work/consumer\\_initiatives/codes](http://www.offt.gov.uk/oft_at_work/consumer_initiatives/codes)

The OEA also has a role dealing with consumer disputes with lettings agents. However this area of its work is not currently subject to a statutory framework. It is however seeking OFT CCAS approval for its code of practice for letting agents.

#### **b. Links with government and funding**

The OEA is not Government funded at all. Its income is drawn from its estate agent membership (at 30 June 2008: 5,812 members operating out of 12,593 offices).

The OEA's links to Government are primarily with the Office of Fair Trading (OFT). Under the terms of its code of practice approval it must inform the OFT of instances where an estate agent may have broken the Estate Agent Act 1979.

Other relevant Government departments to the OEA are: Communities and Local Government (CLG), responsible for housing and HIPs, and Business, Enterprise and Regulatory Reform (BERR), responsible for estate agency. Ministry of Justice, responsible for the legal profession including conveyancing, and the Land Registry, may have more indirect links with OEA.

#### **c. Governance and structure**

The OEA has 5,812 members (at 30 June 2008) operating out of 12,593 offices). This number grew hugely in 2007 as a result of the implementation of HIPs from August 2007 and the decision of NAEA to require its members to join the OEA.

In 2008, it not yet clear whether membership has increased further due to the CEAR Act 2007 requirement that all estate agents must join an OFT approved redress mechanism from 1/10/08 or fallen as a consequence of the state of the property market causing closures of estate agency offices.

The OEA is governed by the OEA Council of 7 people. It is chaired by Lord Borrie QC and has a lay majority (5/7 members are non-industry). Its main roles are to ensure the Ombudsman's independence and resourcing; to act as an advisory body to the Ombudsman and to refer matters of consideration to the OEA Board.

The day-to-day management of the OEA is run by the OEA Board of 12 people, none of whom are lay members. Chaired by the OEA chief operating officer, its other members are 9 elected representatives of the OEA's estate agency members, 1 person to represent RICS and 1 person to represent the National Association of Estate Agents (which required its members to join the OEA prior to the implementation of the CEAR Act 2007). The Board's main roles are to manage the business of the Company; to raise sufficient funds from Members to administer the Scheme; and to represent the Member Agencies.

The role of the OEA Ombudsman (currently Christopher Hamer) and his staff of 32 people is to consider and resolve complaints against Member Agents, to report to the OEA Council and to administer Membership of the OEA Scheme (on behalf of the OEA Board).

#### **d. Budget and expenditure**

The OEA's income in 2007 was £1,438,509. This represents the fees paid by the estate agents who have joined the OEA.

The OEA's expenditure in 2007 was £1,102,808 plus £12,374 distribution costs.

This means its operating surplus before taxation and interest receivables was £323,327.

#### **e. Aims**

(extracts from OEA website)

The Ombudsman for Estate Agents provides a free, fair and independent service for dealing with unresolved disputes between OEA registered agents and those who are buying or selling or potentially buying or selling residential property in the UK. The Ombudsman is a member of the British and Irish Ombudsman Association and follows the standards and rules of the Association. The Ombudsman is totally independent of estate agents and reports directly to the OEA Council, which has a majority of non-industry members.

This is how the OEA describes its role regarding estate agents

The OEA's role is to provide fair and reasonable resolutions to disputes between members of the public and estate agents who are members of the OEA or who have registered with the OEA under the Office of Fair Trading (OFT) Approved Estate Agents Redress Scheme.

Firms who are members follow the OEA Code of Practice for Residential Sales, which has been approved by the OFT under the Consumer Codes Approval Scheme.

This is how the OEA describes its role regarding letting agents

The OEA can also resolve disputes referred by landlords or tenants and relating to lettings and management agents that are members of the scheme. These agents follow the Code of Practice for Letting Agents, for which we are seeking OFT approval, in common with the Code of Practice for Residential Sales.

Note that disputes relating to repayment of deposits paid by tenants and which are protected by an approved Tenancy Deposit Scheme should be referred to the relevant deposit protection scheme.

**f. Procedure:**

○ **who can apply for compensation/refer claims**

Any consumer with a complaint against an OEA member. This can be any actual or prospective buyer or seller; it is not limited to the actual client of the estate agent (usually the seller) or to cases where the property transaction was completed.

○ **formal requirements and time limits**

The complaint must first have been considered by the member firm's own internal complaints handling process. If the consumer is dissatisfied by the outcome, they may then refer it to the OEA.

○ **proceedings** (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)

(this section is drawn from the OEA's website)

Having got the relevant paperwork from the estate agent, an OEA case officer will then undertake a formal review of your complaint, largely based on the documents from both sides, but he may also make other enquiries. The case officer will then present his recommendations in a written case review to the Ombudsman for his proposed decision. That proposed decision may be: to support your complaint; not to support your complaint; or to propose a settlement.

The Ombudsman will need to be convinced that there is some reasonable substance behind any allegation. Any proof that you can provide will substantially help your case.

If the evidence provided by the agent, disproves your allegation, the Ombudsman is unlikely to support your version of events. However, if the agent is unable to provide documentary evidence and the Ombudsman believes that he should be able to, he is likely to support your version of events.

In carrying out his review of your complaint against an agent who has voluntarily subscribed to the OEA Code of Practice, the Ombudsman will be guided specifically by that Code in judging the complaint. For those agents who do not subscribe to the OEA Code of Practice, the Ombudsman will be guided by his best practice guidance issued to agents.

At the same time, the Ombudsman will be influenced by the evidence that he sees and will be guided by best practice. He will always try to use common sense and arrive at a decision based on what seems to him to be fair and reasonable in all the circumstances.

If the proposed decision supports all or part of your complaint and an award of compensation is made in your favour, the case review with that decision is first sent to the agent. The agent has 14 days to accept the decision or make a representation. If the agent submits a representation, this is considered and the case review may be amended as necessary.

The case review is then sent to you with the Ombudsman's proposed decision, together with a copy of the agent's submission and any relevant documents which you may not have previously seen. You will have 28 days in which to accept the decision, or make your own representation.

If the Ombudsman does not support the complaint, the Ombudsman's case review containing his proposed decision together with a copy of the agent's submission and any relevant documents, which you may not have previously seen, will be sent to you first. You will have 28 days in which to accept the decision, or make your own representation.

If you do not agree with the decision, you can submit a representation within 28 days. However, the Ombudsman will only re-consider his proposed decision if:

- You can show that there was a significant error in fact that would have had a material effect on the decision
- Or where you can produce significant new evidence that will have a material effect on the decision

If you are unable to produce either of these, we will not be able to help you further.

Having considered any representations, the Ombudsman will make a Final Decision.

Please note that the OEA Scheme complaints process is designed so that complaints received about an agent, start and finish with the Ombudsman. Having made a Final Decision, there is no avenue for appeal or further review of your complaint for either party within the Scheme.

Any request for an oral hearing will be considered by the Ombudsman (or his deputy), by reference to the nature of the issues to be determined and in particular to the extent to which the complaint raises issues of credibility or contested facts that cannot be fairly determined by reference to documentary evidence and written submissions. In deciding whether there should be a hearing and, if so, whether it should be in public or private, the Ombudsman will have regard to the provisions of the European Convention on Human Rights. The Ombudsman will give reasons in writing, if he declines to grant a hearing.

○ **results – compensation, other**

The OEA's redress limit is £25,000 so the Ombudsman can make awards up to £25,000. Even though it will be paid by the agent you are complaining about, the award is not made to punish the agent, that is not the Ombudsman's role. An award will be made if the Ombudsman is convinced that you have suffered:

- Actual, proven financial loss as a direct result of the actions or inactions of the agent
- And/or any avoidable aggravation, distress and inconvenience, over and above what is a stressful and inconvenient process at the best of times

The Ombudsman can criticise the agent for any failings or breaches of the Code of Practice if it applies to the agent. This is normally confined to ensuring that he examines his procedures and supervision, so that such failings are reduced or eliminated. More rarely, such criticism can result in the Ombudsman reporting a serious breach of the Code of Practice to the OEA Council for consideration of their further action against the agent (which could lead to dismissal from the OEA Scheme). This can also apply to those agents who do not subscribe to the Code of Practice.

Alternatively, the Ombudsman may direct that the agent apologises to you.

If you accept the award, you do so in full and final settlement of all the complaints against the agent upon which the Ombudsman has made a formal judgement. By acceptance of the award, you agree to the full and final settlement of your dispute with the agent and you will be asked to sign your agreement to that effect. The OEA Scheme (recognised by the courts as an Alternative Dispute Resolution mechanism) is designed to settle disputes. That is why (to the best of our knowledge), the courts rarely accept, and have never upheld, the case of a complainant who has previously accepted an award under the OEA Scheme. Therefore, if you wish to pursue your case through the courts, you must reject the Ombudsman's findings in their entirety.

## Other issues

The Ombudsman will always consider and actively promote and support any opportunities to settle the dispute quickly and this will involve both parties. This is normally done by a member of the office staff. However, you can be assured that any complaint reaching this office will be examined thoroughly and fairly and the decision is based entirely on the merits of the case.

### ○ **Costs**

The consumer does not pay anything to submit a complaint to the OEA. Costs are borne by the member firms.

### **g. History (including any reforms, also ongoing reforms)**

The OEA was established in 1998 as a voluntary complaints handler for estate agents. When the NAEA required its members to join the OEA (in 2006?), the number and percentage of estate agents who joined the OEA increased substantially and the OEA now estimates it covers 85% of estate agents.

The changes brought by recent legislation are noted above under a) and b).

In 2004, the OFT conducted a market study of estate agency which did not recommend a positive licensing scheme (though it did recommend that all estate agents should join an approved complaints handler, as now implemented by the CEAR Act 2007, from 1 October 2008). Debate is ongoing about whether the Government should intervene further in the estate agency market to set standards, establish a statutory regulatory structure.

In 2007-08, following implementation of HIPs, industry bodies such as RICS, NFOPP (the combination of NAEA & ARLA) and Law Society have sought further changes to the regulatory environment of the property market – both sales and lettings. In Autumn 2007, RICS and NFOPP commissioned Sir Bryan Carsberg to review the main issues and this led to the establishment of a new Property Standards Board in summer 2008 under the chairmanship of Dianne Hayter. It is not yet clear what impact this may have on the OEA.

In October 2008, the Rugg Report, commissioned by the Dept for Communities and Local Government, made various recommendations about improving standards in the private rented sector and this may lead to legislative change in future which may impact on the sector, including OEA.

### **h. Statistics**

Extract from 2007 Annual Report  
(2008 Annual Report will be published Spring 2009)  
figures in (brackets) are for 2006  
2006 2007 % Difference  
1st January - December 31<sup>st</sup>

#### 1 GENERAL ENQUIRIES

From Estate Agents (does not include membership) (256) 429  
From the Media (68) 45  
From the Public (381) 465  
From the Letting Agents (0) 6  
Total (705) 945 - 34% difference

#### 2 COMPLAINT ENQUIRIES AGAINST ESTATE AGENTS

a. Complaints against non Member Agents/Lettings Agents (3696) 3211  
Sub Total 1 - (3696) 3211 -13%  
b. Complaints against Member Agents outside Terms of Reference  
(eg time, mortgage, lettings, survey) Sub Total (596) 691 16%  
c. Complaints against Member Agents within Terms of Reference  
From Complainant who is a seller (1997) 2985  
From Complainant who is a buyer (1219) 1761  
From Complainant who is a seller and buyer (92) 147  
Complainant unwilling to state whether buyer or seller (113) 185  
Letting complaints (as from 1 June 2006) (175) 969  
Sub Total 3 - (3596) 6047 68%  
d. Insufficient info given as to whether Member/Non-Member (A) Sub Total 4 - (0) 574  
e. Complaints against all Agents (A) Sub Totals 5 (582) 584  
f. Complaints against all Agents Total / Sub Totals 1-4 – (8470) 11107 31%

#### 3 COMPLAINTS REVIEWED - CASES DEALT WITH IN YEAR

a. Workload (ie New cases received in year) (1) Total (586) 870 48%  
b. Productivity:  
Cases reviewed in year (2) (485) 847 75%  
Representations conducted in year (3) (99) 143 44%  
Total (584) 990 70%

#### 4 CASES CLOSED IN YEAR = OUTCOME (2) (489) 795 63%

a. Description of Complainant  
Seller (373) 522  
Buyer (94) 193  
Seller & Buyer (20) 39  
Other (Tenant/Landlord) (2) 41  
Total (489) 795 63%



b. Findings:

Outside Terms of Reference/Not Pursuing (9) 13

Complainant Withdrawal/Complainant & MA resolution (1) 4

Against Complainants (no Award made) (182) 286

Sub Total 5 - (192) 303

For Complainants (Award made - Member Agent made No Offer) (223) 377

For Complainants (Award made - Member Agent made Offer) (4) (74) 115

Sub Total 6 - (297) 492

Total/Sub Total 5-6 – (489) 795 63%

c. Size of Awards

£1 - 99 (36) 84

£100 - 499 (181) 272

£500 - 999 (42) 74

£1,000 - 2999 (33) 42

Over £3,000 (5) 20

Total (297) 492

d. Total value of Awards made - Total (£150,601.26) £268,880.53

1 This represents the Workload for the year - started by the receipt of the Complaints/Waiver Form from the Complainant.

2 The number of Cases Closed will always differ slightly from the number of Cases Reviewed.

3 Those Cases where either the Complainant or the Member Agent has commented on the Decision.

4 Cases where the Ombudsman endorsed, increased or lowered offers already made by MAs. Also includes “early redress” cases.

Web Site Hits: For 2006 -179,068. For Jan - Dec 2007 741,290. Highest Award: - £17,948.

**i. Reported cases, problems, issues identified in academic writings**

Not known

### **The Furniture Ombudsman**

(Formerly known as Qualitas – until 2006) – <http://www.fira.co.uk/services/furnitureOmbudsman.html>; operated by FIRA (the Furniture Industry Research Association). It is an independent conciliation and adjudication scheme for disputes concerning new furniture, floor coverings, kitchen, bedroom or bathroom installations. Around 250 retailers are registered with the

Furniture Ombudsman. The Ombudsman's website explains: "Buying from a member of The Furniture Ombudsman means the reassurance that the retailer is following The Furniture Ombudsman Code of Practice. Furthermore, in the unlikely event of an unresolved problem, the retailer agrees to accept the decision of the The Furniture Ombudsman conciliation service.

Under The Furniture Ombudsman Code of Practice, member retailers will:

- Provide well-made and dependable products.
- Provide clear and accurate information about the product and its price.
- Provide clear and accurate information on suitability for use and product care.
- Provide accurate delivery information and give prompt advice to the consumer if there is any delay to a quoted delivery date.
- Give clear and easily understood guarantees, which comply with all current consumer legislation.
- Ensure that all service requests are handled with courtesy, efficiency and speed.
- In the event of an unresolved dispute, accept the ruling of The Furniture Ombudsman conciliation service."

### **Statutory basis (legal basis)**

This is not a service based on statute.

### **Links with government and funding**

It is not funded by government. It is supported by members representing many areas of furniture industry.

### **Governance and structure**

The Ombudsman is a sister company of FIRA (<http://www.fira.co.uk/index.html>).

The scheme has an independent advisory panel which includes representatives from Trading Standards, Citizens Advice and Which? Legal Services. The panel reviews adjudications, and offers an appeal process where consumers are not content with the adjudicator's decision. The scheme is an associate member of the British and Irish Ombudsman Association, but not a full voting member, as it does not meet all of their membership criteria (Source: ADR now [http://www.adrnow.org.uk/go/SubPage\\_43.html](http://www.adrnow.org.uk/go/SubPage_43.html)).

### **Budget and expenditure**

Lack of data.

## Aims

The aim of the Furniture Ombudsman is “fast resolution of customer complaints and disputes on behalf of retailers and manufacturers” (Ombudsman website). The service offers information and advice as well as a dispute resolution (conciliation and adjudication) mechanism. “Dispute resolution is achieved through the adjudication service that is exclusive to The Furniture Ombudsman. The organisation is backed by a range of information and support services, all aimed at reducing the level of complaints and improving supporters’ reputation with customers” (<http://www.fira.co.uk/services/furnitureOmbudsman.html>).

## Procedure:

- **who can apply for compensation/refer claims**

Any customer of a furniture company which is a member of the Ombudsman scheme can use the service, provided that the dispute was first of all referred to the company itself (no personal injury claims are considered). Where the complaint is about a purchase made from a retailer who is not a member of The Furniture Ombudsman, the latter are still able to arrange an independent inspection. “The product will be examined by a competent, independent, and experienced consultant, and a report provided which will detail whether or not the complaint is valid.” Where appropriate the customer will be able to use this report in support of the claim. The Furniture Ombudsman is not able to intervene further into a dispute where the retailer is not a member. You can seek further advice from a solicitor or your local Citizens Advice Bureau or Trading Standards department. (Source – Ombudsman website: <http://www.fira.co.uk/techinfo/view/52/Consumer+advice+-+what+should+I+do+when+things+go+wrong%3F/00001.html>).

- **formal requirements and time limits**

As mentioned above, anyone can refer the dispute to the Ombudsman, provided that an attempt was made to resolve it with the company first. No particular time limit has been set out.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

The Ombudsman will first of all try to assist the customer by giving advice over the phone. The next stage in the proceedings is conciliation: here investigation is undertaken, and, if

necessary, samples are examined. Advice is offered to the consumer or the retailer (or to both) to enable the complaint to be resolved, or further steps to obtain the information needed to resolve the matter are suggested. Conciliation essentially means reaching a conclusion that is acceptable to both parties. The Ombudsman's website concludes: "We are able to resolve 80% of cases referred to us at this stage, which is at no cost to the consumer."

"At this stage our advice and help is always free where the retailer is a The Furniture Ombudsman member. However some problems cannot be resolved simply by conciliation and in this event the consumer is offered the opportunity to have the case adjudicated."

The next stage in the proceedings is adjudication. "Furniture Ombudsman arranges for the necessary evidence to be obtained to determine whether the consumer has a valid complaint or not. This can involve an on-site inspection by an independent consultant and/or physical testing. The retailer and consumer are given the opportunity to comment on any report before the case proceeds further." There is a £50 fee for inspection at the adjudication stage. This fee is refundable if the case is successful.

The case is then examined in detail and a final adjudication report is prepared. This includes our decision about the validity of the complaint and any action that should be taken to resolve it."

- **results – compensation, other**

Depend on the substance of the complaint/dispute. This decision is binding on The Furniture Ombudsman members. "The consumer has the right to pursue the matter further through legal channels if the outcome is considered unacceptable" (Ombudsman website). Repairs, replacements, refunds, compensation – these are the typical outcomes.

"Suppliers who are registered with the scheme are required to comply with an adjudicator's decision as a condition of membership. It is unusual for traders to fail to comply, but if they do FIRA cannot enforce their decision. Their only recourse is to expel the trader from membership" (ADRNow: [http://www.adrnow.org.uk/go/SubPage\\_43.html](http://www.adrnow.org.uk/go/SubPage_43.html)).

- **costs**

Before the commencement of adjudication, "the consumer then pays a fee of £50.00, which is deposited in a holding account. This fee is refundable if the consumer's complaint is upheld." An inspection of a sample of fabric sent to FIRA costs from £125. An on-site inspection costs from £295, depending on the distance the inspector has to travel (source – 'ADRNow': [http://www.adrnow.org.uk/go/SubPage\\_43.html](http://www.adrnow.org.uk/go/SubPage_43.html)).

### **History (including any reforms, also ongoing reforms)**

No data.

### **Statistics**

During 2007, the Furniture Ombudsman resolved 1642 complaints through conciliation, and 307 through arbitration (Source: ADRNow: [http://www.adrnow.org.uk/go/SubPage\\_43.html](http://www.adrnow.org.uk/go/SubPage_43.html)).

### **Reported cases, problems, issues identified in academic writings**

No data.

## **The Removals Ombudsman**

<http://www.removalsombudsman.org.uk/>

The Removals Industry Ombudsman Scheme: an independent service for resolving disputes between removal companies and their clients. It covers all members of the National Guild of Removers and Storers. This trade association covers around 25% of removals firms in the UK, mostly small firms.

Full member of the British and Irish Ombudsman Association.

### **Statutory basis (legal basis)**

This is not a statutory scheme.

### **Links with government and funding**

Independent of the Government, funded by members (annual fees and case handling fees).

### **Governance and structure**

The Scheme is managed by an independent Committee, and it has appointed an Ombudsman, Shelley Radice, who has no connection with any removal business.

### **Budget and expenditure**

See Annual Report 2006: <http://www.removalsombudsman.org.uk/report.pdf>.

### **Aims**

To resolve disputes between customers and member removal companies.

## Procedure:

- **who can apply for compensation/refer claims**

Any customer of a member company, see below for conditions.

- **formal requirements and time limits**

As specified on the website of the Ombudsman: the first step is to complain directly to the company, preferably setting out the complaint in writing. The removal company will deal with it according to their normal complaints procedures. If this is unsatisfactory, the complaint can be brought to the trade association to which the removal company belongs, with a request for the association to forward the complaint to their conciliation service. At the present time, only The National Guild of Removers and Storers is able to refer the matter to the Removals Industry Ombudsman (<http://www.removalsombudsman.org.uk/yourgas.htm>). If this is unsatisfactory, and the 'deadlock letter' is received, a complaint can be made.

"The Ombudsman can consider complaints such as:

- Breaches of contract. E.g. a failure to provide a service to the standard contracted or excessive charges over and above what was agreed.
- Allegations of unprofessional, inefficient or unfitting conduct
- Breaches of the Code of Practice
- Substantial delays in dealing with your complaint

The Ombudsman cannot deal with:

- Any complaint against a non-member of the Scheme
  - Insurance matters
  - Complaints which are, or have been, dealt with by the Court or another body
  - A complaint sent to the Ombudsman more than three months after it was last considered by the trade association
  - Frivolous or vexatious complaints, without substance." (Ibid. Ombudsman's website)
- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

The complaint form is available online: <http://www.removalsombudsman.org.uk/complaint.htm>. The ombudsman acknowledges receipt of the complaint, and requests information from the removal firm.

The firm has 28 days to reply. "If it is possible to resolve the dispute by agreement at this stage, she will attempt to do so. If not, then she will investigate further. The process is by written documents only: there is no hearing. A determination will then be made, and if the complaint is upheld, an award of compensation will be recommended. If the complainant accepts this as a full and final settlement, it is binding on the company. If the complainant is not satisfied, then you retain the right to take further legal action" (ADRNow - [http://www.adrnow.org.uk/go/SubPage\\_112.html](http://www.adrnow.org.uk/go/SubPage_112.html)).

"The removal company has agreed to be bound by the Ombudsman's decision. The complainant may accept it, in full and final settlement of the dispute, or reject it. The right to take legal action will not have been affected" (Ombudsman's website).

- **results – compensation, other**

Compensation may be awarded, or a company may be required to apologise or perform some other activity.

- **costs**

Free to the complainants.

### **History (including any reforms, also ongoing reforms)**

According to the Annual Report 2006: "proposals are in hand to adopt a new sanction in instances where the removal company declines to abide by the Ombudsman's award. This sanction takes the form of an option to publicise the default in the local media. The second proposal is adapted from a successful trial by the Scottish Public Services Ombudsman service, and would only be used by our Scheme very rarely. This is the Policy on Unacceptable Actions by Complainants."

### **Statistics**

The Annual Report 2006 indicates:

"Since the last Report, 73 written complaints have been received, about the same number as last year. These include complaints outside our jurisdiction, about non-member companies. Some of the worst problems involved overseas removals.

Of the written complaints, 13 escalated into cases for the Ombudsman, compared to 17 cases in 2005. In addition, six are currently awaiting determination.

Slightly more complaints are coming through e-mail, but most still begin with a telephone call or a letter.

Analysis has shown that about a third of cases are resolved within one month, and the rest seldom taking more than two months.

The value of the awards was between £40 and £600. This year the statistics are not significantly different from previous years."

## **Reported cases, problems, issues identified in academic writings**

The 2006 Annual Report indicates problems within the industry – fraud and incompetence. However, they are not able to help customers of firms that are not members (<http://www.removalsombudsman.org.uk/report.pdf>, at p. 5).

See the Annual Report for case studies and typical problems.

## **The Waterways Ombudsman**

<http://www.waterways-ombudsman.org/>

The Waterways Ombudsman deals with complaints and disputes involving British Waterways, its customers and visitors, neighbours of British Waterways land, and waterway businesses. It also deals with complaints about BWML, which runs marinas for British Waterways. British Waterways manages around 3,500 km of rivers and canals in England, Scotland and Wales (source: ‘ADRNow’ - [http://www.adrnow.org.uk/go/SubPage\\_128.html](http://www.adrnow.org.uk/go/SubPage_128.html)).

See: <http://www.waterways-ombudsman.org/docs/UpdatedWOSchemeRulesAdoptedNov05updated06.pdf> for the Rules of the Ombudsman.

### **Statutory basis (legal basis)**

This is not a statutory scheme.

### **Links with government and funding**

The scheme is independent of the government. Although it is funded by British Waterways, it meets the BIOA standards for independence (full member). British Waterways pay all the costs of the scheme, including the fees and expenses of the Ombudsman and the expenses and costs of the Committee.

### **Governance and structure**

As specified on the Ombudsman’s website (<http://www.waterways-ombudsman.org/docs/UpdatedWOSchemeRulesAdoptedNov05updated06.pdf>): the Ombudsman is supported by the Committee, “established in early 2005 to oversee the operation of the Waterways Ombudsman scheme and the independence and accessibility of the Ombudsman. The Committee has eight members. Of those, three (including the current chairman - Professor Jeffrey Jowell QC) are independent and three are appointed by the British Waterways Advisory Forum (ie from groups, such as users and businesses, with interests in waterways). The remaining two members are appointed by British



Waterways. Full details of the membership of the Committee are given in the 2005-06 Annual Report and full details of their role in the terms of reference.

The main roles of the Committee are:

- the appointment (or removal from office) of the Ombudsman;
- keeping the operation of the scheme under review, both to ensure that it meets its purposes and that it is adequately funded;
- to receive reports on the method and adequacy of publicising the scheme;
- to publish an annual report. Issues relating to the investigation or determination of complaints, both by British Waterways under its internal complaints procedure, and by the Ombudsman if subsequently referred to her, are matters for the Ombudsman alone, and the Committee has no part to play in those.”

### **Budget and expenditure**

No data.

### **Aims**

The Waterways Ombudsman will investigate complaints of injustice caused by unfair treatment or maladministration by British Waterways or its subsidiaries. According to ‘ADRNow’ website: [http://www.adrnow.org.uk/go/SubPage\\_128.html](http://www.adrnow.org.uk/go/SubPage_128.html)), this includes “unreasonable delays, doing something the wrong way, doing things which should not have been done, failing to do something which should have been done.” Of course, maladministration and injustice are matters which are within the normal scope of Ombudsmen’s powers (see the introductory part).

### **Procedure:**

- **who can apply for compensation/refer claims**

These are the eligible complainants according to the Ombudsman’s rules:

- a private individual not acting in the course of a business;
- any natural or legal person acting in the course of a business provided that business (or the group of which it is part) has an annual turnover of less than £1m at the time the cause of the complaint was first brought to the attention of the body subject to the complaint;
- any registered charity or any trust or unincorporated body whose annual income (or the annual income of any group of which it is part) is less than £1m at the time the cause of the complaint was first brought to the attention of the body subject to the complaint; or

- any body or organisation that is a member of the British Waterways Advisory Forum, without any limitation by reference to its financial resources, but provided the subject matter of the complaint concerns injustice suffered by the body or organisation itself, or by a significant part of the membership of that body or organisation.
- **formal requirements and time limits**

The following excerpt from the Ombudsman’s rules is relevant here:

“25. The Ombudsman may only consider a complaint where:

- a) the complaint has been referred to and has completed the final level of the internal complaints procedure of the body that is subject to the complaint (or has been deemed to have completed that procedure by failure in its operation),
- b) the complaint is referred to the Ombudsman within 6 months of the conclusion, or of the deemed conclusion, of the final level of such internal complaints procedure,
- c) the act or omission giving rise to the complaint, first came to the attention of the complainant (or would have done if acting reasonably) not more than 12 months before the complainant first made the complaint in writing to the body subject to the complaint, and
- d) in any event the act or omission giving rise to the complaint first occurred not more than 36 months before the complainant first made the complaint in writing to the body subject to the complaint;

Provided that none of the provisions of this paragraph shall prevent the Ombudsman from considering, in connection with a substantive complaint, a complaint about the handling of that substantive complaint.

26. The Ombudsman shall not consider a complaint, or shall cease to consider a complaint, if the issue or issues to be considered are being considered by, or have been determined by, a court, tribunal or other judicial body or regulatory authority.
27. The Ombudsman shall not consider any complaint concerning the current or former employment of any person (including the complainant) by British Waterways or by the body subject to the complaint.”

The Ombudsman may also decide not to investigate a complaint if it is considered that:

- the complaint does not concern a substantial issue
- the person complaining has not suffered any injustice involving loss, damage, distress or inconvenience
- the complaint would be better dealt with by a court (‘ADRNow’).

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

If the Ombudsman decides to take the case on, an investigation will be conducted, where the Waterways and any of its subsidiaries may be asked to submit documents and information (they may ask for the Ombudsman to keep it confidential). The decision is binding on the Waterways.

It normally takes between 3 and 6 months to complete a case (Annual Report 2007-2008, p. 9).

- **results – compensation, other**

The following excerpt from the Rules of the Ombudsman is relevant here:

“30. (...) subject to the next paragraph, the Ombudsman may make an award that in the opinion of the Ombudsman is appropriate:

- a) to compensate the complainant for loss or damage suffered by the complainant by reason of the acts or omissions of the body against which the award is made;
- b) to reimburse the complainant for incidental expenses reasonably incurred by the complainant in making and pursuing the complaint; and/or
- c) to compensate the complainant for distress and inconvenience suffered by the complainant by reason of the acts or omissions of the body against which the award is made, save always that the Ombudsman shall not make an award for distress or inconvenience where the cause of complaint relates to commercial or business activities of the complainant.

31. The Ombudsman shall not make an award in relation to any complaint (or in relation to any series of complaints by that complainant that the Ombudsman considers it would be fair in all the circumstances to treat as one consolidated complaint) of more than £100,000.”

- **costs**

Cost-free to the complainant.

### **History (including any reforms, also ongoing reforms)**

Committee established in 2005.

## **Statistics**

See the Annual Report for 2007-2008: [http://www.waterways-ombudsman.org/docs/Waterways\\_Ombudsman\\_Annual\\_Reports\\_2007-08.pdf](http://www.waterways-ombudsman.org/docs/Waterways_Ombudsman_Annual_Reports_2007-08.pdf).

### **Reported cases, problems, issues identified in academic writings**

See the annual report referred to above. The report includes anonymised reports of all cases the Ombudsman dealt with.

The Report concludes that there have been some problems with the internal dispute resolution within Waterways, and there are also some delays and problems with implementation of the Ombudsman's decisions (like paying compensation).

The Report also included information about a customer satisfaction survey which was conducted by the Committee. Overall satisfaction with the service was accompanied with postulates that the views of the complainants ought to be given more weight to, and that the Ombudsman ought to be given more powers (Page 4).

From April 2007 to March 2008 121 enquiries were made (12% increase), and 39 cases were completed (50% increase) (page 7).

Literature on Ombudsmen:

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- **Advising on ADR**. The Essential Guide to Appropriate Dispute Resolution  
Margaret Doyle  
Advice Services Alliance, 2000
- **Conflict Resolution - A Foundation Guide**, Susan Stewart  
Waterside Press, 1998
- **Government and the individual: the citizen's means of redress** (Aspects of Britain), Published by HMSO, 1996
- **Grievances, Remedies and the State**, Patrick Birkinshaw (Modern Legal Studies Series) 2nd ed. Sweet & Maxwell, 1994
- **Ombudsmen in the Public Sector**, Mary Seneviratne, Open University, 1994
- **Ombudsmen: Public Services and Administrative Justice**, Mary Seneviratne  
Butterworths 2002
- **Private Ombudsmen and Public Law**, Rhoda James (Socio-Legal Studies Series)  
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- **Resolving complaints and promoting openness: can the Ombudsman help?** Sir William Reid, Nuffield Trust, 1998
- **Righting wrongs: the Ombudsman in six continents**, Roy Gregory and Phillip Giddings, IOS Press, 2000
- **The Law, Politics, and the Constitution**. Essays in Honour of Geoffrey Marshall  
Edited by David Butler, Vernon Bogdanor and Robert Summers, Oxford University Press, 1999
- **The Ombudsman, the Citizen and Parliament**. A history of the Office of the Parliamentary Commissioner for Administration and the Health Service Commissioner, Roy Gregory and Philip Giddings, Politico's Publishing, 2002.

- Elliott, M. **Asymmetric devolution and ombudsman reform in England**, 2006 Public Law, pp.84-105.

## TRIBUNALS:

There are various types of Tribunals in the UK, covering a very wide range of issues including immigration and asylum, employment matters, care and mental health, charities, consumer credit, education, estate agents, finance, tax, gambling, land, transport, social security and others.<sup>29</sup> Tribunals have been defined by the Leggatt review (see below) as “statutory bodies which provide a specialised machinery for the adjudication of cases that would otherwise be decided by the civil courts” (Introduction).<sup>30</sup> The Leggatt review confirmed that Tribunals formed the largest part of the English justice system, hearing around one million cases each year. The main central administrative body for the Tribunals is the Tribunals Service, established in 2006. The Council on Tribunals was a non-departmental advisory body, sponsored by the Ministry of Justice, which oversaw the organisation and constitution of Tribunals. The latter was replaced in 2007 by the Administrative Justice and Tribunals Council (<http://www.ajtc.gov.uk/>). The task of the latter is to “review the administrative justice system as a whole with a view to making it accessible, fair and efficient,” to “ensure that the relationships between the courts, tribunals, ombudsmen and alternative dispute resolution providers satisfactorily reflect the needs of users” (See the Introductory part for a closer look at the Council).

**The Tribunals have undergone a very significant reform recently. This reform affected the scope of this research programme and its methodology. Indeed, many tribunals which have operated as distinct units so far have already been or will soon be incorporated into the new, integrated tribunals’ structure. These which have already disappeared or are soon to disappear are not analysed in great detail. ?? Instead, the new structure is introduced, the most up-to-date changes analysed and future changes are also presented.**

The reform is the follow-up on the review of Tribunals conducted by Sir Andrew Leggatt (former Lord Justice of Appeal), as requested by the Lord Chancellor, published in March 2001 (Tribunals for Users. One System One Service - <http://www.tribunals-review.org.uk/leggatthtm/leg-00.htm>).

The review of the Tribunals system was aimed at assessing delivery of justice by Tribunals against the criteria of fairness, timeliness, proportionality, effectiveness, independence, and impartiality. The assumption was that Tribunals are a vital part of the system of administering justice, together with civil courts. It was suggested that the Tribunals ought to encourage effective and coherent development of the area of law concerned. The review found that the system of Tribunals has grown considerably, but in a haphazard

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<sup>29</sup> See <http://www.tribunals.gov.uk/> for a comprehensive list and links to the specific tribunals.

<sup>30</sup> This excludes for instance some internal disciplinary bodies for some professions.

way, and does not always meet the needs of the users. It found three reasons for choosing a Tribunal rather than a court, suggesting that these are the advantages of Tribunals:

- Direct participation - if issues are not too complex, users ought to personally prepare their cases and present them to the Tribunal;
- Expertise – Tribunals offer a possibility of greater participation of experts (especially non-lawyers) in panels making decisions;
- Expertise in administrative law – Tribunals being better avenues of redress against decisions taken by administrative authorities (the latter involving a specific mixture of fact and law).

The review stressed the importance of the work of Tribunals, pointing out however that they are often overshadowed by courts. This was one of the problems which the review set out to remedy. The Review emphasised the distinctiveness of Tribunals and recommended establishment of the Tribunals Service (the latter was established in 2006 as the central, unified administration for the Tribunals – see [http://www.tribunals.gov.uk/Documents/Publications/239\\_008\\_TS\\_AR\\_final.pdf](http://www.tribunals.gov.uk/Documents/Publications/239_008_TS_AR_final.pdf) for the Annual Report of the Tribunals Service 2007 - 2008).

Overall, the Review suggested the following issues as particularly problematic:

- Isolation of many Tribunals (from other Tribunals as well as from the Departments which sponsor them, or the work of which they are overseeing);
- On the other hand, ‘unhealthy closeness’ to the Departments – for instance the General Commissioners of Income Tax, although already sponsored by the Lord Chancellor’s Department, “still wholly dependent on the Inland Revenue for case listing and for the flow of information to enable them to take their decisions” (Review, Introduction);
- Lack of communication with the Departments, especially – cases brought before the Tribunals and the decisions taken are not fed back to the Departments for future reference;
- Procedures are often too long and complex;
- There is no coordination between various Tribunals regarding procedures and other organisational features (diversity).

The Leggatt Review was followed by the public consultation on its recommendations. These recommendations concerned, apart from the establishment of the Tribunals Service mentioned above:

- second appeals, precedent and judicial review (paragraphs 27-29);
- judicial appointments (paragraphs 30-31);
- procedural rules (paragraph 32); and
- public funding for representation (paragraph 33).



The Review led to the 2004 White Paper Transforming Public Services: Complaints, Redress and Tribunals,<sup>31</sup> which was summarised in the Consultation Paper Transforming Tribunals (2007).<sup>32</sup> The Tribunals, Courts and Enforcement Act 2007 implements the main recommendations contained in the following reports and papers:

White Paper: “Transforming Public Services: Complaints, Redress and Tribunals” (Cmnd 6243, July 2004);

Consultation Paper “Increasing Diversity in the Judiciary”, (October 2004);

Law Commission Report “Landlord and Tenant – Distress for Rent”, (February 1991);

Report to the Lord Chancellor “Independent Review of Bailiff Law” (J. Beatson QC, July 2000);

White Paper “Effective Enforcement” (March 2003);

Consultation Paper “A Choice of Paths: better options to manage over-indebtedness and multiple debt” (July 2004);

Consultation Paper “Relief for the Indebted, an alternative to bankruptcy” (March 2005);

Consultation on providing immunity from seizure for international works of art loan in the UK (March 2006).<sup>33</sup>

The Tribunals, Courts and Enforcement Act 2007 set out to comprehensively reform the Tribunals system.<sup>34</sup> Some provisions are already in force, and the process of implementation is bound to take some time: for instance, some provisions of the Tribunals, Courts and Enforcement Act (Part 1), and some other legislation, are coming into force on 3 November 2008 and in April 2009.

Thus, the Upper Tribunal and the First-tier Tribunal have been established and they will take over the jurisdiction of most of the existing tribunals (Each Tribunal will be divided into Chambers, which group together jurisdictions dealing with like subjects or where individual Panels need the same types of skilled Members. All of the existing tribunal judges and members (apart from General Commissioners for Income Tax) will transfer into the new system at the same time as their jurisdiction transfers and they will continue to hear the same types of cases that they did previously. See below for an analysis of the scope of responsibility of respective Chambers). This will take place in a number of stages, for instance:

I. since 3 November 2008 the Upper Tribunal acts as the Administrative Appeals Chamber, and the First-tier – as the Social Entitlement Chamber; Health, Education and Social Care Chamber;

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<sup>31</sup> <http://www.dca.gov.uk/pubs/adminjust/transformfull.pdf>.

<sup>32</sup> *Transforming Tribunals. Implementing Part 1 of the Tribunals, Courts and Enforcement Act 2007*: [http://www.justice.gov.uk/docs/tt\\_consultation\\_281107.pdf](http://www.justice.gov.uk/docs/tt_consultation_281107.pdf).

<sup>33</sup> This list of papers was provided in the Explanatory Notes to the Tribunals, Courts and Enforcement Act 2007, p. 1.

<sup>34</sup> See the following website for the explanatory notes for the Act: [http://www.opsi.gov.uk/acts/acts2007/en/ukpgaen\\_20070015\\_en.pdf](http://www.opsi.gov.uk/acts/acts2007/en/ukpgaen_20070015_en.pdf).

II. in April 2009, the Upper Tribunal will act as Finance and Tax; and Land Tribunal, and the First-tier Tribunal as Tax and Duties; Lands; and General Regulatory Tribunal (source – Senior President of Tribunals First Implementation Review 2008: <http://www.tribunals.gov.uk/Documents/SPIImplementationClean7b.pdf>).

The procedure before the First-tier and the Upper Tribunal is being devised by the Tribunal Procedure Committee, which has opened a consultation on the draft procedure rules of the General Regulatory Chamber in March 2009 (<http://www.tribunals.gov.uk/Tribunals/Documents/Grc/GRConsultationPaper.pdf>).

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### **The Tribunals which are coordinated by the Tribunals Service**

**Note: most of them are being transferred into the new Tribunals system!**

### **EMPLOYMENT TRIBUNALS**

<http://www.employmenttribunals.gov.uk/>

**Employment tribunals will remain distinct from the new consolidated Tribunal structure!**

#### **Statutory basis:**

The Rules governing the procedure before Employment Tribunals are: [Regulations 2004 SI 1861/2004](#) (The Employment Tribunals (Constitution and Rules of Procedure); Regulations 2004 SI 1861/2004s; [Regulations SI 2351/2004](#) (The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations SI 2351/2004); [Regulations 2005 SI 1865/2005](#); and The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) (No.2); Regulations 2005 SI 1865/2005. The Statutory Dispute Resolution Procedures (Employment Act 2002 (Dispute Resolution) Regulations) also affect the activity of the Employment Tribunals (employers can be made to pay compensation, also 'uplifted' compensation (see below) if they do not follow the Procedures.<sup>35</sup>

**Important reform: the Employment Act 2008 has made changes to the powers of employment tribunals which will take effect from 6 April 2009 – see the 'history' part.**

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<sup>35</sup> See [http://www.berr.gov.uk/employment/Resolving\\_disputes/statutory-dispute-resolution/index.html](http://www.berr.gov.uk/employment/Resolving_disputes/statutory-dispute-resolution/index.html) for links to the relevant documents.

### **Links with government and finance:**

Employment tribunals are government agencies. The Department for Business, Enterprise and Regulatory Reform (BERR) is the one linked to the Tribunals; its website contains information about the Tribunals. This link with the government is causing controversy with regard to its compliance with the Human Rights Act 1998. The question has been whether government (DTI at the time of the two judgements mentioned below) should be able to be one of the parties in proceedings before Employment Tribunals. In [Scanfuture UK Ltd and ors v DTI 2001](#) ICR 1096, EAT and *Link v DTI*, (both also reported at [TLR 26th April 2001](#) and [2001] IRLR 416, EAT) the Employment Appeal Tribunal held that there was no need to bar the Tribunals from hearing such cases.

### **Governance and structure:**

The Employment Tribunals are headed by the President appointed by the Lord Chancellor, and there are a number of Regional Chairmen and chairmen who oversee the work of the Tribunals. The President determines the number of regional Tribunal offices. Tribunal offices are spread around the country, and each is competent to handle claims according to the postcode list available online. Chairmen and Tribunal members are chosen from three Tribunal panels: the one consisting of chairmen, the one consisting of employer representatives, and the one consisting of employee representatives. Before 2006, the Tribunals were managed by the Employment Tribunals Service, now the latter is part of the Tribunals Service (see introductory remarks above). The Tribunals Service is an agency of the Ministry of Justice (formerly - agency of the Department of Constitutional Affairs).<sup>36</sup>

### **Budget and expenditure:**

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### **Aims:**

The aims of the Employment Tribunals are to resolve disputes in a wide range of cases related to employment, including dismissal, redundancy, breach of employment contract, discrimination, failure to provide equal pay for equal work.<sup>37</sup> Over 60 types of employment disputes can be brought before the Tribunals.

In addition to the overall aims of the Tribunals, the rules of procedure, which are very detailed indeed, contain their own aims referred to as the 'overriding objective'. The overriding objective of the rules of procedure is for the Tribunals and their chairmen to deal with cases justly (as per the Rules of Procedure, Regulations 2004 SI 1861/2004, Rule

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<sup>36</sup> The Employment Tribunals Service had 700 staff and over 30 offices around the country. <http://www.emplaw.co.uk/researchfree-redirector.aspx?StartPage=data%2f050004.htm>.

<sup>37</sup> See the Jurisdiction list with the legal bases: [http://www.employmenttribunals.gov.uk/about\\_us/jurisdiction\\_list.htm](http://www.employmenttribunals.gov.uk/about_us/jurisdiction_list.htm).

3). Dealing with cases justly includes, as far as practicable: “(a) ensuring that the parties are on an equal footing; (b) dealing with the case in ways which are proportionate to the complexity or importance of the issues; (c) ensuring that it is dealt with expeditiously and fairly; and (d) saving expense.” (Rule 3.2).

**Procedure:** (Schedule 1 for Employment Tribunals Rules of Procedure)<sup>38</sup>

- **Who can apply for compensation/refer claims:**

Anyone who is involved in one of the matters under the jurisdiction of the Tribunals (see above) can make a claim, subject to some conditions. **Rule 19 of the Rules of Procedure** provides that:

“(1) An employment tribunal in England or Wales shall only have jurisdiction to deal with proceedings (referred to as "English and Welsh proceedings") where - (a) the respondent or one of the respondents resides or carries on business in England and Wales; (b) had the remedy been by way of action in the county court, the cause of action would have arisen wholly or partly in England and Wales; (c) the proceedings are to determine a question which has been referred to the tribunal by a court in England and Wales; or (d) in the case of proceedings to which Schedule 3, 4 or 5 applies, the proceedings relate to matters arising in England and Wales. (2) An employment tribunal in Scotland shall only have jurisdiction to deal with proceedings (referred to as "Scottish proceedings") where - (a) the respondent or one of the respondents resides or carries on business in Scotland; (b) the proceedings relate to a contract of employment the place of execution or performance of which is in Scotland; (c) the proceedings are to determine a question which has been referred to the tribunal by a sheriff in Scotland; or (d) in the case of proceedings to which Schedule 3, 4 or 5 applies, the proceedings relate to matters arising in Scotland.”

- **Formal requirements for claims and time limits:**

The Statutory Dispute Resolution Procedures establish a three-step process which must be followed by the employer wishing to dismiss an employee, as well as by the employee wishing to bring a claim before the Employment Tribunal (these three steps are: written notification, meeting, and an appeal).

Applicants fill in a form available online. The form must include information about the applicant and the claim (Rule 1.4 of Schedule 1).

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<sup>38</sup> [Regulations 2004 SI 1861/2004](#).

The Tribunal must receive the claim within 3 months from the date when employment ended or from the date when the matter complained of happened. The time limit may be extended in some circumstances:

- If the employee raised the grievance with the employer in writing within the original time limit, it is extended by further 3 months.
- If the employee was in hospital, the Tribunal may consider the claim brought after the expiry of the time limit.

In case of unfair dismissal claims, where the employee requests an interim relief (which is allowed in certain circumstances) the claim must be brought within one week.

Normally if an unfair dismissal claim is brought, the claimant must have worked for the employee for one year. Exceptions are if the employee believes that the reason for dismissal was:

- Being involved in a union;
- Joining or refusing to join a union;
- Being involved in health and safety activities;
- Being a pension scheme trustee;
- Being or proposing to be an employee representative;
- Being a shop worker or a betting worker who refuses to work on a Sunday;
- Using certain rights under the Working Time Regulations.

It is normally required that the employee should first of all raise the complaint in writing with the employer and leave 28 days for a response.

- **Proceedings:**

Claims are normally considered in panels of three members (one legally qualified chairman and two lay members – one from a trade union, employee background and one from the employers' background),<sup>39</sup> but the chairmen have wide powers with regard to managing the conduct of the proceedings. Also, full panels are not always necessary (an Employment Judge can consider some cases – s. 4(3) of the Employment Tribunals Act

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<sup>39</sup> See the Government Response to the Consultation Paper on Resolving Disputes in the Workplace, 2008: <http://www.berr.gov.uk/files/file46233.pdf>, page 43.

1996).<sup>40</sup> The claim is brought by sending the form to the Tribunal (Section 1 of Schedule 1). If the Tribunal Secretary accepts the claim, he informs and respondent of the claim, and advises both parties of the case number (Sections 2, 3).

The claimant may act personally or through a representative if he appoints one.<sup>41</sup>

Section 10 of Schedule 1 of the Rules of Procedure contains detailed rules on the use of case management powers by the chairmen, who of his own initiative or on the request of the parties can make binding orders, for instance requesting one of the parties to submit further information, or requesting any person to appear before the Tribunal to give evidence. Failure to comply with the order may result in an adverse cost order (see below), or in striking out the claim (Section 13).

There are provisions for conciliation (Sections 21 to 24 of Schedule 1), which entails temporary stay of proceedings. Acas, the independent conciliation service, is required by law to 'conciliate' in employment disputes presented to employment tribunals. From April 2009, Acas will provide a free 'pre-claim' conciliation service for workplace disputes that cannot be resolved internally and are likely to become tribunal claims. Acas also conciliates once claims have been started: the Acas officer contacts both parties in the dispute and explores whether the claim could be settled without proceeding to a full tribunal hearing.

There can be four types of hearings:

- a. case management discussion (concerning procedural matters, not anyone's civil rights and obligations),
- b. pre-hearing review (normally preliminary issues concerning proceedings are resolved here, various orders can be made, deposit can be required (see costs below), but as a result of these the claim can be struck out or otherwise concluded with no further need for a hearing),
- c. hearing (to determine outstanding procedural and substantive issues), and

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<sup>40</sup> [http://www.emplaw.co.uk/load/4frame/acttext/ETA%201996%20s\\_4.htm](http://www.emplaw.co.uk/load/4frame/acttext/ETA%201996%20s_4.htm). See also Section 7 on Employment Tribunal Procedure Regulations: <http://www.statutelaw.gov.uk/content.aspx?LegType=All+Primary&PageNumber=21&NavFrom=2&parentActiveTextDocId=3427713&activetextdocid=3427727>.

<sup>41</sup> There are lawyers in the UK who specialize in representing claimants before Employment Tribunals. See an example: Rudi Capek's website (he specializes in 'no-win-no-fee' discrimination claims): <http://www.employmenttribunalhelp.co.uk/index.html>. He charges an hourly fee of £40 + a commission depending on the advancement of the case: 20% if the claim was resolved after the ET1 form was completed but before the witness statement form was completed, 25% if the claim was resolved after the witness statement was completed but before the full hearing, and 30% if the case was resolved after the full hearing (additional 1% per each hearing date).

- d. review hearing (a party can apply for review of an order, decision or a judgement of the Tribunal; this should be done by submitting an application for a review within 14 days from the day when the decision was sent to the parties).

Hearings are normally public, subject to exceptions in Section 16. The proceedings are normally concluded with a judgement (which can include orders for costs, preparation time and wasted costs) (Section 28a of Schedule 1). The responses to the Consultation on Resolving Disputes in the Workplace noted some problems with enforcing the judgements of the Tribunals.<sup>42</sup>

Appeals are brought before the Employment Appeal Tribunal (see below).

- **Results – compensation, other:**

The tribunals may award compensation or make injunctive awards. Compensation in cases of sex, race and disability discrimination is unlimited. Compensation in cases where breach of employment contract is alleged cannot exceed £25,000.

Interim relief may also be claimed. This is in cases of unfair dismissal if the employee believes that the reason for dismissal was:

- Making a protected disclosure (whistle-blowing) – see Public Interest Disclosure Act 1998;
- Carrying out health and safety activities which the employee had been entrusted with;
- Seeking to exercise the right to be accompanied, or to accompany someone, to a disciplinary or grievance hearing;
- Being a workers' representative in certain cases;
- Activities related to trade union membership or activities;
- Seeking to exercise the right to be accompanied or to accompany someone to a meeting to discuss retirement.

According to the Rules of Procedure operating since 2004, the Tribunals must 'uplift' the award by 10 – 50% in cases where it is necessary to reflect the seriousness of breach of statutory procedures by the employer. As mentioned above, the Employment Bill of 2007 changes this provision – it gives discretion to the Tribunals whether to 'uplift' the award, and decreases the maximum uplift to 25%. In fact, the Tribunals have a duty to 'uplift' the award if the failure to follow the Procedures was serious.<sup>43</sup>

### **Costs:**

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<sup>42</sup> See the Government Response to the Consultation Paper on Resolving Disputes in the Workplace, 2008: <http://www.berr.gov.uk/files/file46233.pdf>.

<sup>43</sup> This 'uplift' has been retained in the new Employment Bill of December 2007 (see below), although the Government decided that Tribunals should have discretion on whether to award it. Also, the 'uplift' has been set as between 0 and 25%.

The Rules of Procedure contain very detailed provisions regarding costs.

First of all, Section 20 concerns deposits which parties can be required to pay already during the proceedings if their case has little chance of success. Section 20 provides: “(1) At a pre-hearing review if a chairman considers that the contentions put forward by any party in relation to a matter required to be determined by a tribunal have little reasonable prospect of success, the chairman may make an order against that party requiring the party to pay a deposit of an amount not exceeding £500 as a condition of being permitted to continue to take part in the proceedings relating to that matter. (2) No order shall be made under this rule unless the chairman has taken reasonable steps to ascertain the ability of the party against whom it is proposed to make the order to comply with such an order, and has taken account of any information so ascertained in determining the amount of the deposit.”

A party can apply for a costs order at any time during the proceedings, and until 28 days from the date of issuing of the judgement by the Tribunal. According to Section 38 of Schedule 1, a costs order may be made in favour of a party only if she was legally represented at the Hearing, or if the case was decided without a Hearing - when the proceedings are determined. Otherwise the Tribunal makes a ‘preparation time order’. A costs order can only be made against a party after she has been given the opportunity to argue why such an order should not be made.

Normally, in the practice of the Tribunals, the claimant does not have to pay the respondent’s costs, although a Tribunal can award the costs to the respondent if the claimant or his representative behaved unreasonably in their conduct of the case, or if the claim was so weak that it should not have been brought (Section 40). As a rule, the costs awarded cannot exceed £10,000 (Section 41). In two cases in 2006-2007 where the awarded costs were higher than this limit, this was possible because they were agreed by the parties and confirmed by the Tribunal (possible under Section 41.1.b). Additional costs can be awarded for waste of time (Section 48). The general approach is not to make adverse cost awards, especially against the claimants (it is understood that it could lead to employers threatening employees and forcing them to drop cases).<sup>44</sup>

### **History:**

Employment tribunals were established as Industrial Tribunals by s. 12 of the Industrial Training Act 1964, initially for the purpose of considering appeals by employers against

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<sup>44</sup> See the Government Response to the Consultation Paper on Resolving Disputes in the Workplace, 2008: <http://www.berr.gov.uk/files/file46233.pdf>.



training levies imposed by the Act.<sup>45</sup> Later the jurisdiction of the Tribunals was broadened to include a range of employment law disputes. The Employment Rights (Dispute Resolution) Act 1998 changed the name to Employment Tribunals.

The procedure for resolving disputes in the workplace is soon going to undergo an overhaul. On 7 December 2006, the DTI Secretary of State Alistair Darling launched a review of Government support for resolving disputes in the workplace. He appointed Michael Gibbons to assess the ways in which resolution of disputes in the workplace can be simplified and improved, “to make the system work better for employers and employees,” and to enable disputes to be resolved earlier.<sup>46</sup> The Gibbons Review analysed all aspects of the system. [The terms of reference for the review](#) are here.

[The final report of the review](#) was published on 21 March 2007. Following the Gibbons Review the Government published a consultation document [Resolving disputes in the workplace – A consultation](#). The consultation closed on 20 June 2007. It received over 400 responses. It was focused on methods to resolve more disputes internally, within the workplace, provision of additional advice outside the workplace (strengthening the Acas service), and providing more effective employment tribunals. The Employment Bill was published on 7 December 2007. It “provides for the complete repeal of the statutory dispute procedures. It also provides for repeal of the existing law on the role of procedure in unfair dismissal. The Bill was subject to parliamentary consideration and depending on the outcome of that process the Government hoped that repeal would take place in April 2009. In addition to the Bill, the Government had been introducing other non legislative measures to improve and simplify employment dispute resolution. Details of these measures will be set out in an official Government response to the consultation and posted on the website in due course.”<sup>47</sup>

As a result of these reforms, on 6 April 2009 the statutory dispute resolution procedures will change. “The Employment Act 2002 (Dispute Resolution) Regulations 2004 and relevant provisions of the Employment Act 2002 (the “pre-6th April 2009 regime”), which introduced mandatory “three-step” processes to be followed in the workplace for disciplinary and dismissal procedures raised by an employer and grievances raised by an employee, will have been repealed. A new framework will be in place based on the provisions of the Employment Act 2008. Employment tribunals will consider the procedure that has been followed by the parties in dealing with the disciplinary matter or grievance. A revised Acas statutory Code of Practice on disciplinary and grievance procedures sets out the principles of what an employer and employee should do to

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<sup>45</sup> On the work of the Industrial Tribunals see Judge McKee, *A Personal View of the Work of Industrial Tribunals* *The Modern Law Review*, Vol. 48, no. 3, May 1986, 314 – 322; and J. Carby-Hall, *Industrial Tribunal Procedure in Unfair Dismissal Claims*, *Managerial Law*, Vol. 28, issue 2, i – 76.

<sup>46</sup> Quote for the website of the BERR: [http://www.berr.gov.uk/employment/Resolving\\_disputes/gibbons-review/index.html](http://www.berr.gov.uk/employment/Resolving_disputes/gibbons-review/index.html).

<sup>47</sup> Quote from the BERR website: [http://www.berr.gov.uk/employment/Resolving\\_disputes/gibbons-review/index.html](http://www.berr.gov.uk/employment/Resolving_disputes/gibbons-review/index.html).

achieve a reasonable standard of behaviour. Employment tribunals will consider whether a failure to follow the Acas code was unreasonable, taking into account factors such as the size of the business, and will have discretion to adjust awards up or down between 0 and 25% in relation to either party. The Acas Code will be supported by guidance which does not form part of the code but has been prepared by Acas to help employers and employees understand the code and how to reflect it in their procedures and behaviour. These new arrangements will provide the framework for a more efficient system for dispute resolution which is intended to be easier to use, and enables disputes to be resolved earlier, with less lost time, expense and stress for all parties” (source – BERR - [http://www.berr.gov.uk/whatwedo/employment/Resolving\\_disputes/disputes\\_after\\_6\\_april\\_2009/index.html](http://www.berr.gov.uk/whatwedo/employment/Resolving_disputes/disputes_after_6_april_2009/index.html)).

The BERR publication which explains the main features of the reform provides the following information:

“Sections 1-7 of the Employment Act (2008) apply to the handling of discipline, dismissal and grievance issues. They make the following changes to the law:

- The existing statutory procedures for dealing with discipline, dismissal and grievance issues, as set out in the Employment Act 2002, will be repealed;
- Employment tribunals will have discretionary powers to adjust awards by up to 25% if employers or employees have failed unreasonably to comply with the Acas Code;
- There will be some technical changes to the law relating to Acas’ provision of conciliation services during disputes;
- Tribunals will be allowed to award compensation for financial loss in certain types of monetary claims.

The Act also paves the way for a revised Acas Code. This is concise and principles-based and is supported by accompanying guidance on handling discipline and grievance situations in the workplace.”<sup>48</sup>

Regarding the new Acas Code, the publication explains: “the new Code sets out the principles of what an employer and employee should do to achieve a reasonable standard of behaviour. Unlike the 2004 Code, it does not require employers and employees to follow mandatory steps in the process. Employment tribunals will take the Code into account when considering relevant cases. The tribunal will consider whether a failure to follow the Code was unreasonable, taking into account factors such as the size and resources of the business. If a tribunal regards a failure by either the employee or the employer to follow the Code of Practice as unreasonable, it will have the power to adjust awards up or down by up to 25%.”<sup>49</sup>

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<sup>48</sup> BERR “Avoiding and Resolving Discipline and Grievance Issues at Work. Simpler laws, better services” <http://www.berr.gov.uk/files/file50204.pdf>.

<sup>49</sup> More comprehensive advice and guidance on how to deal with disciplinary and grievance situations is contained in the Acas guidance booklet which accompanies the Code. This does not form part of the Code but has been prepared by Acas to help employers and employees understand the Code and how to reflect

## Statistics:

The annual reports for statistics on claims and awards, as well as the costs awarded to claimants and respondents, are available online: [http://www.employmenttribunals.gov.uk/publications/documents/annual\\_reports/ETS\\_AS06-07.pdf](http://www.employmenttribunals.gov.uk/publications/documents/annual_reports/ETS_AS06-07.pdf). See also the latest statistical information: "Employment Tribunal and EAT Statistics (GB) 1 April 2007 to 31 March 2008: [http://www.employmenttribunals.gov.uk/Documents/Publications/EmploymentTribunal and EAT Statistics v9.pdf](http://www.employmenttribunals.gov.uk/Documents/Publications/EmploymentTribunal_and_EAT_Statistics_v9.pdf)". These reports show an increase in the number of claims accepted, and a decrease in the number of claims rejected, between 2004 to 2007. The rise in the number of claims has been attributed to the complex rules of conduct which the employers and employees must follow according to the Statutory Dispute Resolution Procedures.<sup>50</sup>

Some other interesting statistical data:

The number of multiple claimant cases has grown considerably. In fact, in 2006 over 60% of claims were brought by multiple claimants.<sup>51</sup>

Employers paid more than £4m in compensation for unlawful discrimination in 313 cases in 2006, research has revealed.<sup>52</sup>

In one-quarter of the cases, the amount of compensation was 'uplifted' under the statutory disputes procedures – by as much as 50% in one-third of those cases – according to the survey by the 'Equal Opportunities Review'.<sup>53</sup>

The Statistics for 2007 – 2008 demonstrate a ten-fold rise in equal pay cases over the last 5 years ([http://www.employmenttribunals.gov.uk/Documents/Publications/EmploymentTribunal and EAT Statistics v9.pdf](http://www.employmenttribunals.gov.uk/Documents/Publications/EmploymentTribunal_and_EAT_Statistics_v9.pdf)), and the press release: [http://www.tribunals.gov.uk/Tribunals/Documents/Releases/ET Stats NewsRelease.pdf](http://www.tribunals.gov.uk/Tribunals/Documents/Releases/ET_Stats_NewsRelease.pdf).

Employment Relations Act 1999:

[http://www.opsi.gov.uk/acts/acts1999/ukpga\\_19990026\\_en\\_1](http://www.opsi.gov.uk/acts/acts1999/ukpga_19990026_en_1).

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it in their procedures and behaviour. The guidance also contains sample disciplinary and grievance procedures. To access the Acas Code and accompanying guidance, go to: [www.acas.org.uk/dgcode2009](http://www.acas.org.uk/dgcode2009).

<sup>50</sup> <http://www.personneltoday.com/articles/2007/10/01/42622/compliance-is-key-to-surviving-a-tribunal.html>.

<sup>51</sup> See the Government Response to the Consultation Paper on Resolving Disputes in the Workplace, 2008: <http://www.berr.gov.uk/files/file46233.pdf>.

<sup>52</sup> <http://www.personneltoday.com/articles/2007/07/26/41709/unlawful+discrimination+claims+costs+employers+more+than+4m+in+compensation.html>.

<sup>53</sup> See the website of the Equal Opportunities Review (subscribers only): <http://www.eordirect.co.uk/default.aspx?id=407215>. The results of the research were mentioned on the website of 'Personnel Today' in July 2007 - <http://www.personneltoday.com/articles/2007/07/26/41709/unlawful+discrimination+claims+costs+employers+more+than+4m+in+compensation.html>.

Increase to limits of compensation awarded came into force 1 February 2006:

<http://www.opsi.gov.uk/si/si2005/20053352.htm> ;

further increase in limits 1 February 2008:

[http://www.opsi.gov.uk/si/si2007/uksi\\_20073570\\_en\\_1](http://www.opsi.gov.uk/si/si2007/uksi_20073570_en_1).

### **Reported cases, problems, issues identified in academic writings:**

Research being conducted into the operation of Employment Tribunals:

1. Research and Report Bureau (research into cases brought before the Tribunals)  
<http://www.employmenttribunalinfo.org/?gclid=CLP3qYmXP5UCFQ9oQgodhziEjQ>
2. In August 2006 a judicial mediation pilot has been launched in three Employment Tribunals. It was based on voluntary judicial mediation. The pilot was focused on more complex cases of race, sexual and disability discrimination. It was initially to run for one year, but was extended further because of low uptake initially. A team of researchers from the Centre for Employment Research at the University of Westminster is due to produce an evaluation of the pilot (the report was due in the Spring of 2008).
3. A recent academic review of Employment Tribunals: A. Korn, M. Sethi, *Employment Tribunal Compensation* Third Edition, Oxford: Oxford University Press, 2005.

Employment disputes attract a lot of attention beyond academia – they are followed by the press (both the general press and specialist journals dealing with employment matters in general and employment disputes).

Examples of recent cases which attracted attention:

The case involving a Lambeth park employee (gardener) who received £550,000 for his disability compensation claim: the man, who suffers from learning difficulties, was 34 years old when he lost his job and the compensation covers loss of earnings until retirement. The sum is thought to be a record payout in a disability discrimination case. He was one of 24 claimants for whom GMB brought employment tribunal claims for unfair dismissal. Total compensation awarded was more than £1.3m.<sup>54</sup>

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<sup>54</sup> Source: <http://www.personneltoday.com/articles/2007/11/05/43148/sacked-london-park-worker-wins-record-payout-of-550000-over-disability-discrimination-claim.html>;  
<http://www.gmb.org.uk/Templates/Internal.asp?NodeID=96218>.

For reviews of recent cases before the Employment Tribunals see:  
<http://www.personneltoday.com/articles/list.aspx?navigationid=3&sections=10004>.

## EMPLOYMENT APPEAL TRIBUNAL

**Employment Appeal Tribunal will also remain distinct from the new two-tier structure.**  
(<http://www.employmentappeals.gov.uk/>)

The Employment Appeal Tribunal (EAT) considers appeals (on points of law only) from decisions of Employment Tribunals.

It also considers (albeit much less frequently) appeals from and applications relating to decisions of the Trade Unions Certification Officer, and the Central Arbitration Committee (“permanent independent body with statutory powers whose main function is to adjudicate on applications relating to the statutory recognition and derecognition of trade unions for collective bargaining purposes, where such recognition or derecognition cannot be agreed voluntarily. In addition, the CAC has a statutory role in determining disputes between trade unions and employers over the disclosure of information for collective bargaining purposes, and in resolving applications and complaints under the following regulations: The Information and Consultation Regulations 2004, The European Public Limited-Liability Company Regulations 2004, The Transnational Information and Consultation of Employees Regulations 1999. The CAC also provides voluntary arbitration in industrial disputes).

### **Statutory basis (legal basis)**

Part II of the Employment Tribunals Act 1996 (as amended) ([http://www.opsi.gov.uk/ACTS/acts1996/ukpga\\_19960017\\_en\\_4#pt2-pb1-l1g20](http://www.opsi.gov.uk/ACTS/acts1996/ukpga_19960017_en_4#pt2-pb1-l1g20)), and the Employment Appeal Tribunal Rules 1993 (as amended by the Employment Appeal Tribunal (Amendment) Rules 1996, 2001, 2004 and 2005 and the Information and Consultation of Employees Regulations 2004) ([http://www.employmentappeals.gov.uk/Documents/FormsLeafletsGuidance/EAT\\_Rules.pdf](http://www.employmentappeals.gov.uk/Documents/FormsLeafletsGuidance/EAT_Rules.pdf)). The procedure before the EAT is also governed by the Practice Direction: <http://www.employmentappeals.gov.uk/FormsGuidance/practiceDirection.htm>.

### **Links with government and funding**

Publicly funded. The Employment Appeal Tribunal is a “superior court of record” (s. 20 of the Employment Tribunals Act 1996) – meaning that its judgements set precedent – see below.

## **Governance and structure**

The Tribunal is headed by the President and the Registrar. Hearings are held by one judge or by a judge accompanied by two lay members. Judges are High Court or Circuit judges (permanent judges are listed here: <http://www.employmentappeals.gov.uk/AboutUs/theJudiciary.htm>), and lay members have experience in the area of employment relations (on the employment and the employee side – if they are sitting, one from each side must be selected).

## **Budget and expenditure**

...

## **Aims**

To consider appeals as specified above.

The Rules of the Employment Appeal Tribunal establish an overriding objective:

2(A) 1. The overriding objective of these Rules is to enable the Appeal Tribunal to deal with cases justly.

(2) Dealing with a case justly includes, so far as practicable–

(a) ensuring that the parties are on an equal footing;

(b) dealing with the case in ways which are proportionate to the importance and complexity of the issues;

(c) ensuring that it is dealt with expeditiously and fairly; and

(d) saving expense.

(3) The parties shall assist the Appeal Tribunal to further the overriding objective.

## **Procedure:**

See the latest Practice Direction (2008). See also the EAT Rules (references above). The Procedural requirements for claims are very strict and must be followed: the decision of the Employment Appeal Tribunal in *Kanapathiar v London Borough of Harrow* [2003] IRLR 571 made it clear that the effect of failure to lodge documents required by the Rules with the Notice of Appeal within the time limit specified for lodging of a Notice of Appeal would mean that the Notice of Appeal had not been validly lodged in time. The same now applies to the additional documents required by the amended Rule, namely the Claim and the Response.<sup>55</sup>

- **who can apply for compensation/refer claims**

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<sup>55</sup> EAT Practice Statement, p. 1:

<http://www.employmentappeals.gov.uk/Documents/FormsLeafletsGuidance/PresidentsPracticeStatement.pdf>.

Section 29 of the Employment Tribunals Act specifies:

“(1) A person may appear before the Appeal Tribunal in person or be represented by—

- (a) counsel or a solicitor,
- (b) a representative of a trade union or an employers' association, or
- (c) any other person whom he desires to represent him.”

An appeal may be made by any of the parties to the proceedings before the Employment Tribunal: appeal may be against a judgement or order of the Tribunal, and against decision or order of a Certification Officer. Respondents to appeals are:

- **formal requirements and time limits**

Official forms which should be used are attached to the EAT Rules.

According to Rule 5 of the EAT Rule, the respondents to an appeal shall be—

- “(a) in the case of an appeal from an employment tribunal or of an appeal made pursuant to section 45D, 56A, 95, 104 or 108C of the 1992 Act from a decision of the Certification Officer, the parties (other than the appellant) to the proceedings before the employment tribunal or the Certification Officer;
- (b) in the case of an appeal made pursuant to section 9 or 126 of the 1992 Act from a decision of the Certification Officer, that Officer.
- (c) in the case of an appeal made pursuant to regulation 38(8) of the 1999 Regulations or regulation 47(6) of the 2004 Regulations or regulation 35(6) of the Information and Consultation Regulations from a declaration or order of the CAC, the parties (other than the appellant) to the proceedings before the CAC.

Time limits for bringing appeals depend on whether the appeal is against a judgement, an order or a decision of an Employment Tribunal. The new Practice Directions 2008 specify that if the appeal is against an order or decision, it must be instituted within 42 days from the date of the order or decision. If the appeal is against a judgement, it must be instituted within 42 days from the date on which a written record of the judgement was sent to the parties, or in specified circumstances from when the written reasons were sent to the parties (See also Rule 3 of the EAT Rules).

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

The Rules and Practice Directions concerning the proceedings are very detailed. The proceedings are also regulated by the Employment Tribunals Act.

The notice of an appeal (accompanied by some other documents, as specified in Rule 3 of the EAT Rules – normally copies of the judgement or order appealed against) is brought to the Tribunal’s Registrar. If the appeal concerns national security proceedings (which have some specific arrangements concerning for instance submission of documents or grounds for appeal), the Registrar can at this point decide not to take the case any further – if he considers that there are no reasonable grounds for appeal or if the appeal is an abuse of process before the EAT (although this decision can be reviewed by a judge on the request of the appellant). The respondent is notified of the appeal and given an opportunity to respond or cross-appeal. According to Rule 6.5, “where the respondent does not wish to resist an appeal, the parties may deliver to the Appeal Tribunal an agreed draft of an order allowing the appeal and the Tribunal may, if it thinks it right to do so, make an order allowing the appeal in the terms agreed.”

Section 29 of the Employment Tribunals Act specifies:

“(2) The Appeal Tribunal has in relation to—

- (a) the attendance and examination of witnesses,
- (b) the production and inspection of documents, and
- (c) all other matters incidental to its jurisdiction,

the same powers, rights, privileges and authority (in England and Wales) as the High Court and (in Scotland) as the Court of Session.”

The appeal ought to be accompanied by all the relevant documents and evidence. If one of the parties wishes to submit evidence or documents which were not submitted before the Employment Tribunal, the admission of such new material is subject to the Tribunal judge’s discretion.

Consistent with the overriding objective, judges will give directions for case management: deciding whether a case should be processed using fast track, whether a full hearing is needed, etc. According to Rule 18, “the Appeal Tribunal may, on the application of any person or of its own motion, direct that any person not already a party to the proceedings be added as a party, or that any party to proceedings shall cease to be a party, and in either case may give such consequential directions as it considers necessary.” Rule 24 specifies that “where it appears to the Appeal Tribunal that the future conduct of any proceedings would thereby be facilitated, the Tribunal may (either of its own motion or on application) at any stage in the proceedings appoint a date for a meeting for directions as to their future conduct and thereupon the following provisions of this rule shall apply.”

Some specific rules and requirements apply to cases involving national security, in cases concerning expulsion from or an unjustified discipline by a trade union, those concerning allegations of sexual misconduct or sexual offences, disability cases.

EAT may request witnesses or documents to be produced, and can hold oral hearings.



In some cases, the CPR will apply to the proceedings before the EAT, including some costs rules and ADR (Rule 36). A pilot ADR scheme was agreed with Acas.

According to Sections 35 et seq.:

“ (2) Any decision or award of the Appeal Tribunal on an appeal has the same effect, and may be enforced in the same manner, as a decision or award of the body or officer from whom the appeal was brought.

36 Enforcement of decisions etc

(1) Any sum payable in England and Wales in pursuance of an award of the Appeal Tribunal—

(a) made under section 67 or 176 of the [1992 c. 52.] Trade Union and Labour Relations (Consolidation) Act 1992, and

(b) registered in accordance with Appeal Tribunal procedure rules,

is, if a county court so orders, recoverable by execution issued from the county court or otherwise as if it were payable under an order of that court.

(2) Any order by the Appeal Tribunal for the payment in Scotland of any sum in pursuance of such an award (or any copy of such an order certified by the Secretary of the Tribunals) may be enforced as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

(3) Any sum payable in pursuance of an award of the Appeal Tribunal under section 67 or 176 of the Trade Union and Labour Relations (Consolidation) Act 1992 shall be treated as if it were a sum payable in pursuance of a decision of an industrial tribunal for the purposes of section 14 of this Act.

(4) No person shall be punished for contempt of the Appeal Tribunal except by, or with the consent of, a judge.

(5) A magistrates' court shall not remit the whole or part of a fine imposed by the Appeal Tribunal unless it has the consent of a judge who is a member of the Appeal Tribunal.

37 Appeals from Appeal Tribunal

(1) Subject to subsection (3), an appeal on any question of law lies from any decision or order of the Appeal Tribunal to the relevant appeal court with the leave of the Appeal Tribunal or of the relevant appeal court.

(2) In subsection (1) the “relevant appeal court” means—

(a) in the case of proceedings in England and Wales, the Court of Appeal, and

(b) in the case of proceedings in Scotland, the Court of Session.

(3) No appeal lies from a decision of the Appeal Tribunal refusing leave for the institution or continuance of, or for the making of an application in, proceedings by a person who is the subject of a restriction of proceedings order made under section 33.”

Within 14 days from the date of the judgement or order an application may be made to the EAT for review of this judgement or order. According to Rule 33 (1) "The Appeal Tribunal may, either of its own motion or on application, review any order made by it and may, on such review, revoke or vary that order on the grounds that–

- (a) the order was wrongly made as the result of an error on the part of the Tribunal or its staff;
  - (b) a party did not receive proper notice of the proceedings leading to the order; or
  - (c) the interests of justice require such review.
- (2) An application under paragraph (1) above shall be made within 14 days of the date of the order.
- (3) A clerical mistake in any order arising from an accidental slip or omission may at any time be corrected by, or on the authority of, a judge or member.
- (4) The decision to grant or refuse an application for review may be made by a judge."

An appeal from the decision of the EAT may be made to the Court of Appeal. As mentioned above, judgements of the EAT can set precedent.

- **results – compensation, other**

EAT's decisions are binding. Compensation can be awarded.

- **costs**

Each party pays own costs, and, again, the costs rules are quite detailed. Legal aid can be claimed. The Tribunal makes a costs order at the conclusions of the proceedings (this may include a wasted costs order) (Practice Direction 19 specifies the costs arrangements). Under Rule 34A, "where it appears to the Appeal Tribunal that any proceedings brought by the paying party were unnecessary, improper, vexatious or misconceived or that there has been unreasonable delay or other unreasonable conduct in the bringing or conducting of proceedings by the paying party, the Appeal Tribunal may make a costs order against the paying party. (2) The Appeal Tribunal may in particular make a costs order against the paying party when–

- (a) he has not complied with a direction of the Appeal Tribunal;
- (b) he has amended its notice of appeal, document provided under rule 3 sub-paragraphs (5) or (6), Respondent's answer or statement of grounds of cross-appeal, or document provided under rule 6 sub-paragraphs (7) or (8); or
- (c) he has caused an adjournment of proceedings."

A wasted costs order can also be made against a party representative.

There are different rules for costs awards for litigants in person (Rule 34D), for instance: “the costs allowed under this rule must not exceed, except in the case of a disbursement, two-thirds of the amount which would have been allowed if the litigant in person had been represented by a legal representative.”

### **History (including any reforms, also ongoing reforms)**

Created in 1975 to replace the National Industrial Relations Court. The reforms were introduced in the ‘legal basis’ part.

### **Statistics**

See below.

### **Reported cases, problems, issues identified in academic writings**

Recent judgements on the EAT website, which also has a database of judgements and a schedule for upcoming work: (<http://www.employmentappeals.gov.uk/Public/RecentJudgments.aspx>).

## **ASYLUM AND IMMIGRATION TRIBUNAL**

At the time this report was being written, this Tribunal has not been incorporated into the new two-tier tribunal system. (Written with the assistance of Ms Nadia Khoury, CMS).

However, on 8 May 2009 an announcement was made:

“Justice Minister Bridget Prentice welcomed today’s announcement that the work of the Asylum and Immigration Tribunal (AIT) is to transfer into the new unified tribunal structure. The move was confirmed in the Government’s response to the consultation ‘*Immigration appeals, fair decisions; faster justice*’, published jointly by the Tribunals Service and UK Border Agency (UKBA). The current AIT will be replaced by specialist asylum and immigration chambers in each of the First-tier and Upper Tribunals. Although the benefits of the unified tribunal system will apply to all immigration appeals, the consultation response includes a number of measures that focus on asylum cases, which will help to ensure cases are concluded quicker. Responding to Immigration Minister Phil Woolas’s Written Ministerial Statement Bridget Prentice said: “The move is designed to ensure that we have a quicker, more streamlined, efficient and effective process, with continued access to justice for those people who wish to make appeals.” Appellants will notice little difference in the initial appeal process – they will appeal to the chamber in the First-tier Tribunal instead of the AIT. Where there will be a key difference is that onward appeals will be made to the Upper Tribunal, rather than the High Court. As a superior court of record, the Upper Tribunal will provide an effective appeals system with appropriate levels of judicial scrutiny throughout, and its decisions should not routinely be subject to judicial review, which will ensure that the immigration system does not place an excessive and unjustified demand on the higher courts.” (...) Subject to Parliamentary approval, the AIT is expected to transfer into the new



Any individual who has unsuccessfully applied for asylum or immigration.

- **formal requirements and time limits**

All necessary appeal forms and associated guidance will be sent to the applicant along with the decision on their application.

*Asylum appeals:*

Once a refusal letter is received from the UK Border Agency, the applicant has 10 business days to appeal to AIT. If the applicant is in detention, they will have five business days to appeal. All documents must be in English, unless the proceedings are held in Wales, in which case they may be in Welsh.

*Human Rights appeals:*

Once a refusal letter is received from the UK Border Agency, the applicant has 10 business days to appeal to AIT.

*Immigration appeals in country (refused leave to stay):*

Once a refusal letter is received from the UK Border Agency, the applicant has 10 business days to appeal to AIT. If the applicant is in detention, they will have five business days to appeal.

*Refused entry to UK:*

If the applicant has been refused under the points-based system, they will have no right of appeal to the AIT and will have to apply for an Administrative Review of the decision by UK Visas.

If the applicant has been refused a request to settle in the UK by the Entry Clearance Office (ECO), they will have 28 calendar days from the date they are served with the decision of the ECO.

*Fast-track procedure*

This applies to applicants detained in Harmondsworth or Yarlwood Detention Centre. The AIT must receive the appeal form two business days after the applicant receives notice of the decision.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

### **Initial stages:**

*Asylum appeals/ Human Rights appeal/ Immigration appeals in country:*

Once the appeal is received, the hearing date is set and notices are sent to the applicant and the UK Border Agency. A Case Management Review (CMR) hearing will take place after two weeks from receipt of the appeal. This is a short hearing at which an immigration judge will identify the key issues for the appeal and will issue directions about any further information required for the full hearing. If either the applicant or the respondent do not attend the CMR and do not comply with any issued directions, the immigration judge can determine the appeal in their absence.

The full hearing will take place after a further two weeks.

*Refused entry to UK – Appeals lodged with the ECO:*

An appeal may be lodged with the ECO in response to their decision. The ECO will reconsider the original decision; if they wish to amend this, they will contact the applicant and explain the procedure. If however they consider that the initial decision was correct, they will forward the appeal to the AIT. The ECO will then have to prepare and send the AIT the evidence on which their decision is based; they will have 8 weeks to prepare this evidence if the appeal relates to a non-settlement case, or 16 weeks in relation to a settlement case.

Earliest time an appeal may be heard is:

- Visit visa appeals – 12 weeks after the appeal was lodged.
- Non-settlement appeals – 16 weeks after the appeal was lodged.
- Settlement appeals – 24 weeks after the appeal was lodged.

*Refused entry to UK – Appeals lodged directly with AIT:*

Appeals may be lodged directly with the AIT rather than going through the ECO. The AIT will acknowledge the appeal by sending the applicant and the ECO a Notice of Pending Appeal. The ECO will then reconsider the original decision; if they consider that it should stand, they will have to prepare and send the AIT the evidence on which their decision is based. The ECO will have 11 weeks to prepare this evidence if the appeal relates to a non-settlement case, or 19 weeks in relation to a settlement case.

Earliest time an appeal may be heard is:

- Visit visa appeals – 15 weeks after the appeal was lodged.
- Non-settlement appeals – 19 weeks after the appeal was lodged.
- Settlement appeals – 27 weeks after the appeal was lodged.

If an applicant believes that there are compelling or compassionate reasons for which their appeal should be heard earlier, they should provide a written explanation and this will be placed before an immigration judge to decide whether the appeal should in fact be heard earlier.

### **Hearing and decision**

The applicant, their representative and a representative from the Home Office will normally attend the hearing. The immigration judge (or panel) will decide whether the appeal against the original decision of the Home Office should be allowed or dismissed. This will be provided in writing and is called a 'determination'. This will usually be provided within two weeks of an oral or written hearing and will be sent to the UK Border Agency, to be issued to all parties.

### **Appeal – Application for Reconsideration**

In certain circumstances, the applicant may apply for a reconsideration of the determination; an application can be made for an order requiring the AIT to reconsider the appeal decision, on the grounds that it made an error of law. Such application must be made within five days of receipt of the determination if the recipient is in the UK, or within 28 days if the recipient is outside the UK. The UK Border Agency may also make an application for reconsideration on the same grounds, and this must also be received within five days of the decision. The way in which the appeal is heard i.e. panel or single immigration judge, will determine where an application for reconsideration should be lodged. A new hearing date will be set for this review.

The appeal for reconsideration will then be looked at by a Senior Immigration Judge, who will send the applicant and the UK Border Agency a Notice of Decision. If the appeal for reconsideration is granted, the AIT will arrange for a reconsideration hearing and inform the parties; this will usually be three months following the grant of appeal.

### **Leave to stay granted**

If an applicant has been granted temporary leave to stay, they may still wish to pursue their existing appeal; they will have to lodge a Notice of Intention to Pursue Appeal with the court that currently holds that person's appeal, within 28 calendar days from receipt of the notice granting leave to remain.

- **results – compensation, other**

A determination as to whether the decision of the Home Office should be allowed or dismissed.

- **costs**

Cost-free to the appellant.

### **History (including any reforms, also ongoing reforms)**

The implementation of AIT in 2005, superseded the former Immigration Appellant Authority (IAA).

A full review of AIT services was undertaken in 2006 and can be found here:

<http://www.ait.gov.uk/Documents/AboutUs/AITReviewReport.pdf>

### **Statistics**

In the year 2007/2008, 172,087 cases were received by the AIT and 161,609 were disposed of.

More detailed statistics for 2007/2008 can be found here:

[http://www.ait.gov.uk/Documents/Statistics/2007\\_2008/InternetStats\\_2007\\_08Oct.pdf](http://www.ait.gov.uk/Documents/Statistics/2007_2008/InternetStats_2007_08Oct.pdf)

### **Reported cases, problems, issues identified in academic writings**

Reported cases can be found on the AIT website:

<http://www.ait.gov.uk/Public/SearchResults.aspx>

(<http://www.tribunals.gov.uk/tribunals/asylum.htm>):

(<http://www.ait.gov.uk/>)

### **ASYLUM SUPPORT TRIBUNAL**

(<http://www.asylum-support-tribunal.gov.uk/>)

Considers appeals from decisions made by the Border and Immigration Agency to deny or to discontinue support to asylum seekers. The Agency decides whether the applicant and his dependants meet the test of destitution as set out in legislation (Section 95 of the Immigration and Asylum Act 1999), and makes decisions on providing or continuing to provide support (such as accommodation or cash).

The Tribunal has been transferred to the First-Tier Tribunal (Social Entitlement Chamber).

As the procedure applicable here will be the procedure for the Social Entitlement Chamber, the reader is referred to the part of this paper where the Social Entitlement Chamber Rules of Procedure are examined.



### **Statutory basis (legal basis)**

Sections 102 et seq. and Schedule 10 of the Immigration and Asylum Act 1999. The Act was amended by the Nationality, Immigration and Asylum Act 2002, the Asylum and Immigration (Treatment of Claimants etc.) Act 2004, and by the UK Borders Act 2007.

### **Links with government and funding**

Independent Tribunal.

### **Governance and structure**

The Tribunal is administered by the Tribunals Service – the executive agency of the Ministry of Justice. Adjudicators are appointed by the Secretary of State, who also appoints the Chief Asylum Support Adjudicator and the Deputy Chief Asylum Support Adjudicator, and members of the adjudicators' staff.

### **Budget and expenditure**

The budget allocation for the ASA for the 2003-2004 financial year totalled £1,715,000. These funds were split with £1,000,000 being allocated to the cost of staff remuneration (adjudicators and support staff) and £715,000 being allocated for the day to day running costs of the ASA.

### **Aims**

To consider appeals from decisions of the UK Border Agency not to provide or to discontinue support to asylum seekers.

The asylum seeker has three days from the date of receiving the decision to make an appeal – the form is available online ([http://www.asylum-support-tribunal.gov.uk/Documents/3november/E09\\_NoticeofAppeal.pdf](http://www.asylum-support-tribunal.gov.uk/Documents/3november/E09_NoticeofAppeal.pdf)). The date of the decision must be mentioned, and the decision should be attached. The Adjudicator can extend the time limit in exceptional circumstances.

Outcome of appeals – the Adjudicator can ask the Secretary of State to reconsider the position, substitute the appealed decision for its own decision, or dismiss the appeal.

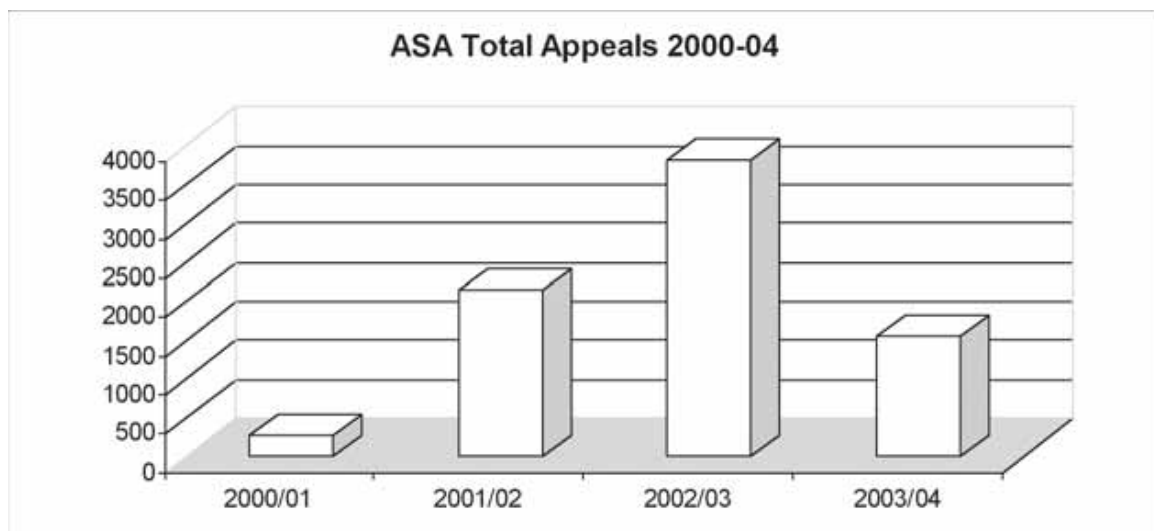
### **History (including any reforms, also ongoing reforms)**

The workload of the Tribunal has changed when the Nationality, Immigration and Asylum Act 2002 was enacted. Section 55 of the Act gives the State Secretary the power to deny state support to asylum seekers who did not seek support as soon as reasonably practicable after arriving in the UK (Annual Report for 2003-04, reference below). Before this Act, the Administrative Court judicially reviewed such decisions, now it is the Asylum

Support Tribunal. This change led to criticisms of members of the Bar, who argued that judicial review would have been preferable – as it is more fair and effective. The Annual Report of the Asylum Support Tribunal contains an interesting counter-argument: an average cost of an appeal case in the Tribunal is £317, compared to an amount upwards from £1000 for judicial reviews. It takes the Tribunal 4 to 12 days to resolve an appeal. Also, the Tribunal has only been challenged in 0.1% of cases in four years (2000 – 2004).<sup>56</sup>

### Statistics

The most recent Annual Report available online is for 2003-04 (<http://www.asylum-support-tribunal.gov.uk/Documents/annrep0304.pdf>). It gives the following breakdown of the number of appeals:



The decrease in the number of appeals is attributed to the changes in the handling of support cases in the National Asylum Support Service, and to the smaller number of people claiming asylum in the UK.<sup>57</sup>

### Reported cases, problems, issues identified in academic writings

The Annual Report for 2003-04 contains short analyses of appeals which the Tribunal considered.

### IMMIGRATION SERVICES TRIBUNAL

(<http://www.immigrationstribunal.gov.uk/index.htm>)

<sup>56</sup> Annual Report for 2003-04, pp. 8 and 9.

<sup>57</sup> Annual Report 2003-04, p. 3. Source of the table – p. 12.

Scheduled to move to the General Regulatory Chamber of the First-Tier Tribunal. Deals with appeals from decisions of Office of the Immigration Services Commissioner and considers disciplinary charges brought against immigration advisors by the Commissioner. See 'Short Guide for Users' - [http://www.immigrationstribunal.gov.uk/Documents/explan\\_IMSET\\_0504\\_13No\\_v08.pdf](http://www.immigrationstribunal.gov.uk/Documents/explan_IMSET_0504_13No_v08.pdf).

### **Statutory basis (legal basis)**

Section 87 and Schedule 7 of the Immigration and Asylum Act 1999.

### **Links with government and funding**

The Immigration Services Tribunal (IMSET) forms part of the Ministry of Justice (MoJ).

Remuneration is provided by the Lord Chancellor.

### **Governance and structure**

The IMSET is part of the Tribunals Service and is supervised to an extent by the Administrative Justice and Tribunals Council.

The IMSET consists of:

- The judicial head and President, HH Judge The Lord Parmoor;
- Judicial members who are legally qualified; and
- Lay members with experience in immigration services or in the law and procedure relating to immigration.

### **Budget and expenditure**

No data.

### **Aims**

The IMSET hears appeals against decisions made by the Office of the Immigration Services Commissioner (OISC) and considers disciplinary charges brought against immigration advisors by the Commissioner. It is exclusively concerned with people providing advice and representation services in connection with immigration matters.

### **Procedure:**

- **who can apply for compensation/refer claims**

The following decisions by the OISC can be appealed by the individuals concerned:

- (a) Refusal to register - A decision to refuse an application by a person or body to be registered as a qualified person to provide immigration advice or immigration services under Schedule 6 paragraph 1 of the Immigration and Asylum Act 1999;
- (b) Withdrawal of exemption - A decision to withdraw a certificate of exemption given under section 84(4) of the Immigration and Asylum Act 1999;
- (c) Limited registration - A decision to register a qualified person with limited effect under Schedule 6 paragraph 2(2) of the Immigration and Asylum Act 1999;
- (d) Refusal to continue registration - A decision to refuse an application for continued registration or cancel a registration made under schedule 6, paragraph 3 of the Immigration and Asylum Act 1999;
- (e) Registration variation - A decision to vary a registration made under schedule 6, paragraph 3(6) of the Immigration and Asylum Act 1999; or
- (f) Registration variation - A decision to vary a registration made under schedule 6, paragraph 3A of the Immigration and Asylum Act 1999, as amended by Section 140 of the Nationality, Immigration and Asylum Act 2002.

The OISC can bring charged under paragraph 9(1)(e) of Schedule 5 of the Immigration and Asylum Act 1999.

- **formal requirements and time limits**

A person appealing against a decision must send a written notice of appeal with a form called 'Notice of Appeal against a decision of the Immigration Services Commissioner', along with the information required in Rule 5 of the Immigration Services Tribunal Rules and a copy of the decision being appealed. This must be lodged within 28 days of the decision being appealed; if the notice is filed subsequent to this time period, the appellant can ask the IMSET to extend the deadline and provide a reason for doing so.

Disciplinary charge cases are started by the Immigration Services Commissioner sending a written notice of charge to the IMSET, which should contain the information set out in Rule 12 of the Immigration Services Tribunal Rules.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

Notice of appeal or charge is communicated to the other party (through an acknowledgment of appeal) who is invited to respond.

Both parties will then be required to send to the IMSET, and to one another, copies of all the documents, evidence and information in support of their cases. IMSET will then issue

directions as appropriate concerning preparation of the case. The acknowledgment of appeal will state a target hearing date.

If a hearing does take place, the IMSET may announce its decision at its conclusion, or reserve its decision and draw up a formal order to be sent out to the parties, with a written statement of its reasons.

- **results – compensation, other**

The appeal or charge will be upheld or dismissed.

- **costs**

No costs to complainants.

### **History (including any reforms, also ongoing reforms)**

The Government published the White Paper "Fairer, Faster and Firmer" in July 1998. This included proposals to regulate people who provide immigration services and advice. The Immigration and Asylum Act 1999 became law in November of that year, leading to the creation of the Office of the Immigration Services Commissioner (the regulatory body) and the Immigration Services Tribunal (the appeal body).

The IMSET was launched on 30th October 2000.

The Immigration Services Tribunal is scheduled to transfer into the General Regulatory Chamber (GRC) with new rules of procedure, when this is set up. The GRC is due to commence in September 2009, subject to Parliamentary approval. This new chamber will bring together individual tribunals that hear appeals on regulatory issues.

### **Statistics**

Seven appeals were recorded in 2008; three were dismissed, one was allowed and two were withdrawn; one is still pending.

No charges were received in 2008.

The register on the tribunal's website provides more details:  
<http://www.immigrationstribunal.gov.uk/registers.htm>

### **Reported cases, problems, issues identified in academic writings**

A database of IMSET decisions can be found on the tribunal's website:

<http://www.immigrationstribunal.gov.uk/decisions.htm>

## SPECIAL IMMIGRATION APPEALS COMMISSION

(<http://www.siac.tribunals.gov.uk/>)

Deals with appeals brought against decisions of the Home Office concerning deportation or exclusion of someone from the UK on the national security or other public policy grounds. It also hears appeals against decisions depriving a person of a citizenship status (under the British Nationality Act 1981, as amended by the Nationality, Immigration and Asylum Act 2002).

All enquiries in relation to SIAC can be made via the Asylum & Immigration Customer Service Centre.

### **Statutory basis (legal basis)**

Section 1 of the Special Immigration Appeals Commission Act 1997.

### **Links with government and funding**

The Special Immigration Appeals Commission (SIAC) is administered by the Tribunals Service, an executive agency of the Ministry of Justice.

Remuneration is provided by the Lord Chancellor.

### **Governance and structure**

The SIAC panel consists of three members. One must have held high judicial office, and one must be, or have been, a senior legally qualified member of the Asylum & Immigration Tribunal (AIT). The third member will usually be someone who has experience of national security matters.

### **Budget and expenditure**

No data.

### **Aims**

SIAC deals with appeals in cases where the Secretary of State for the Home Department exercises statutory powers to deport, or exclude, someone from the UK on national security grounds, or for other public interest reasons.

SIAC also hears appeals against decisions to deprive persons of citizenship status, where the Secretary of State has certified that the decision to deprive was based wholly or partly in reliance on information which he believes should not be made public.

**Procedure:**

- **who can apply for compensation/refer claims**

A person who wishes to appeal against a decision of the Home Office as covered above.

- **formal requirements and time limits**

If the individual is in detention, the appeal must be lodged within five days of service of the decision; they may serve the appeal on the person holding them in custody or may send it to SIAC.

If the individual is not in detention and in the UK, the appeal must be lodged within 10 days of service of the decision.

If the individual is not in the UK, the appeal must be lodged within 28 days of service of the decision.

If the individual is not able to appeal until they have departed from the UK, the appeal must be lodged within 28 days of their departure.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

SIAC hearings are usually heard in open court and the public and press can attend; however, the judge can decide to hear evidence in closed sessions.

Most of the cases before SIAC are under anonymity orders so the individuals cannot be named. Appellants can apply to SIAC to waive their right to anonymity.

If the Home Office proposes to rely upon 'closed' evidence (evidence which it objects to disclosing to the appellant on the grounds that disclosure is likely to harm the public interest) in its response to the appeal, neither the appellant nor their legal representatives will be entitled to see this evidence. The appellant will be notified if this is the case and their best interests in relation to such evidence will then be represented in Closed Appeal Hearings before SIAC by a Special Advocate (a security cleared, independent barrister). The appellant will be entitled to choose a Special Advocate from a list maintained by the Special Advocates Support Office (SASO).

In cases where closed evidence is relied upon, the appellant or their appointed representative will be contacted in due course by SASO and assistance will be provided in the appointment of a Special Advocate.

A decision by SIAC can be appealed to the Court of Appeal on points of law.

- **results – compensation, other**

The appeal can be allowed or dismissed.

- **costs**

Cost-free to appellants.

### **History (including any reforms, also ongoing reforms)**

SIAC was created in 1997.

### **Statistics**

SAIC made eight determinations in 2008.

Exact details can be found on SIAC's website:

<http://www.siac.tribunals.gov.uk/outcomes2007onwards.htm>.

### **Reported cases, problems, issues identified in academic writings**

Judgements can also be found on the SIAC's website:

<http://www.siac.tribunals.gov.uk/outcomes.htm>.

## PROSCRIBED ORGANISATIONS APPEAL COMMISSION

The Commission deals with appeals in cases where the Secretary of State for the Home Department refuses to de-proscribe organisations believed to be involved in terrorism.

All enquiries in relation to POAC can be made via the Asylum & Immigration Customer Service Centre.

### **Statutory basis (legal basis)**



Terrorism Act 2000 (especially Schedule 3), amended by the Terrorism Act 2006. Schedule 2 of the Act contains a list of proscribed organisations.

### **Links with government and funding**

Members are appointed by Lord Chancellor, who also pays the costs and salaries of the members. The Lord Chancellor established the Commission's Rules of Procedure (see below).

### **Governance and structure**

The Commission sits in panels of three: one of them should hold, or had held, a high judicial office.

### **Budget and expenditure**

No data.

### **Aims**

As specified on the Commission's website: "the Proscribed Organisations Appeal Commission (POAC) is a superior court of record created by the Terrorism Act 2000. It deals with appeals in cases where the Secretary of State for the Home Department refuses to de-proscribe organisations believed to be involved in terrorism. Proscribed organisations are listed in Schedule 2 of the Terrorism Act 2000. Under the Terrorism Act 2006, the Secretary of State for the Home Department may specify alternative names when a proscribed organisation is operating under more than one name. Section 22 of this Act allows for an appeal to POAC when the Secretary of State for the Home Department refuses to change the order specifying alternative names." (<http://www.siac.tribunals.gov.uk/poac/aboutus.htm>).

### **Procedure:**

The Proscribed Organisations Appeal Commission (Procedure) Rules 2007 regulate the procedure before the Commission ([http://www.opsi.gov.uk/si/si2007/draft/pdf/ukdsi\\_9780110762470\\_en.pdf](http://www.opsi.gov.uk/si/si2007/draft/pdf/ukdsi_9780110762470_en.pdf)). See the Explanatory Memorandum to the Rules: [http://www.tamilnation.org/terrorism/uk/poac\\_explanatory\\_note.pdf](http://www.tamilnation.org/terrorism/uk/poac_explanatory_note.pdf).

- **who can apply for compensation/refer claims**

Organisations which were refused to be de-proscribed.

- **formal requirements and time limits**

As provided in Rule 6 of the Rules of Procedure 2007:

“(1) Subject to paragraph (2), the signatory of a notice of appeal mentioned in rule 7(2) must file the notice with the Commission no later than 42 days after the day on which the appellant is informed of the Secretary of State’s refusal—  
(a) to de-proscribe the organisation, or  
(b) to provide for a name to cease to be treated as a name for the organisation.  
(2) The Commission may accept a notice of appeal filed after the expiry of the period in paragraph (1) if it is satisfied that, by reason of special circumstances, it would be unjust not to do so.”

The notice of appeal must be submitted in writing, with the decision appealed against attached. The Commission may strike out a notice of appeal if it appears to the Commission that—

(a) it discloses no reasonable grounds for bringing the appeal; or  
(b) it is an abuse of the Commission’s process. (Section 19 of the Rules).

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

Normally, hearings are heard in open court. However, the judge can decide to hear evidence in closed sessions. POAC cases may be held under anonymity orders so the individuals cannot be named. The Secretary of State may wish to rely on material which he or she objects to disclosing to the appellant or his representative for reasons of national security or public interest. In such cases, Paragraph 7 of Schedule 3 of the Terrorism Act 2000 allows for the Attorney General to appoint a Special Advocate to represent the interests of the appellant. Rules 9 and 10 of the POAC Procedure Rules 2007 set out the functions of a Special Advocate, namely to cross examine witnesses, make written submissions and to make submissions at any hearings from which the appellant has been excluded. Special Advocate is appointed by the law officer nominated by the Secretary of State after having received the notification of the notice of appeal, in order to represent the interests of the appellants.

Section 11 of the Rules specifies that the Commission must, unless it orders otherwise, fix a directions hearing as soon as it is reasonably practicable after the notice of appeal has been filed. The parties and any special advocate may be present at the hearing. In addition, the Commission may give directions concerning the conduct of the proceedings (Section 20). Failure to comply with these directions may result in the Commission considering the appeal on the material available to it, or striking out the appeal.

A number of appeals can be heard together if they give rise to common issues of fact or law or if there is any other reason why this should be so.

The Secretary of State must apply to POAC for permission to withhold material. The Special Advocate may challenge this and POAC must rule on the matter.

Onward appeal against POAC decisions is to the Court of Appeal on points of law if the first appeal was heard in England or Wales; the Court of Session if the first appeal was heard in Scotland; or the Court of Appeal in Northern Ireland if the first appeal was heard in Northern Ireland. The special advocate system can operate in the Court of Appeal although, given that these appeals are on points of law, it is less likely to be necessary.

The Proscribed Organisations Appeal Commission (Procedure) (Amendment) Rules of 2007 introduced an amendment with regard to appeals: “the applicant must file any application for permission to appeal with the Commission no later than 10 days after the day on which the applicant received the determination containing the decision under rule 28(3).”

- **results – compensation, other**

An appeal is accepted or rejected.

- **costs**

Cost-free to the appellants.

### **History (including any reforms, also ongoing reforms)**

Introduced by the Terrorism Act 2000, as specified above. See the Parliamentary debate on the Draft Proscribed Organisations Appeal Commission (Fifth Standing Committee on Delegated Legislation) of January 2001 for an explanation for the rationale for the new Commission and some reservations by the MPs.<sup>58</sup>

### **Statistics**

No statistical reports are available.

### **Reported cases, problems, issues identified in academic writings**

The case concerning People’s Mojahadeen Organisation of Iran decided in November 2007 (appeal allowed). Permission to appeal to the Court of Appeal refused.

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<sup>58</sup> <http://www.publications.parliament.uk/pa/cm200001/cmstand/deleg5/st010117/10117s01.htm>.

## ADJUDICATOR TO HM LAND REGISTRY

<http://www.ahmlr.gov.uk/>

The Adjudicator considers disputes which arose in the Land Registry, rectifies documents, and in future will have the power to determine appeals from the Land Registry decisions concerning Network Access Agreements. It is an independent judicial office created by the Land Registration Act 2002.

### **Statutory basis (legal basis)**

Land Registration Act 2002.

### **Links with government and funding**

Independent judicial office – also independent from the Land Registry.

### **Governance and structure**

The Office consists of: the Adjudicator, two deputy Adjudicators, and 10 part-time deputy Adjudicators.

### **Budget and expenditure**

No data.

### **Aims**

These are the cases the Adjudicator deals with:

- Applications to the Land Registry where there is a dispute between the people involved and no agreement has been reached. The Registrar must refer these cases to the Adjudicator, unless the application or objection is considered groundless (Reference Cases).
- Applications direct to the Adjudicator for correcting or setting aside a document relating to registered land (these can be brought by private individuals - Rectification Cases). Here the powers of the Adjudicator are the same as the powers of the High Court.

[http://www.ahmlr.gov.uk/Documents/Short\\_guide\\_FinalVersion\\_Aug08.pdf](http://www.ahmlr.gov.uk/Documents/Short_guide_FinalVersion_Aug08.pdf)

Section 4 of Schedule 5 of the Land Registration Act specifies that a person who is aggrieved by a decision of the registrar with respect to entry into, or termination of, a

network access agreement (these are agreements which people who are not members of the Land Registry may conclude with the registrar in order to grant them access to the land registry network) may appeal against the decision to the adjudicator.

In considering appeals, the Adjudicator is to be following the overriding objective of dealing with cases justly. As specified in the Rules of Procedure for the Adjudicator (reference below) (Section 3):

“The overriding objective of these Rules is to enable the adjudicator to deal with matters justly.

(2) Dealing with a matter justly includes, so far as is practicable -

(a) ensuring that the parties are on an equal footing;

(b) saving expense;

(c) dealing with the matter in ways that are proportionate -

(i) to the value of the land or other interests involved;

(ii) to the importance of the matter;

(iii) to the complexity of the issues in the matter; and

(iv) to the financial position of each party; and

(d) ensuring that the matter is dealt with expeditiously and fairly.

(3) The adjudicator must seek to give effect to the overriding objective when he -

(a) exercises any power given to him by these Rules; or

(b) interprets these Rules.

(4) The parties are required to help the adjudicator to further the overriding objective.”

**Procedure:**

The Rules of Procedure: Statutory Instrument 2003 No. 2171, The Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, amended by The Adjudicator to Her Majesty's Land Registry (Practice and Procedure) (Amendment) Rules

2008. See the following guide to the amended Rules: <http://www.ahmlr.gov.uk/Documents/ProposedWebsiteVersion.pdf>.  
Network access appeal rules: 2008 No. 1730, Land Registration, England and Wales, The Network Access Appeal Rules 2008.

- **who can apply for compensation/refer claims**

Reference cases:

Commenced by the registrar at the Land Registry.

Rectification cases:

These cases are brought by the person who is wishing to correct or set aside a document.

Network access appeal cases:

Brought by a person who has been aggrieved by a decision of the registrar with respect to entry into, or termination of, a network access agreement.

- **formal requirements and time limits**

Reference cases:

After the case is brought, the Adjudicator decides who is going to be an applicant and who is going to be the respondent in the dispute. The applicant must within 28 days from being notified send a statement of case and all the documents he wishes to rely on to the Adjudicator.

Rectification cases:

They must be brought in writing on an official form available on the website of the Adjudicator. All the necessary documents should be attached.

The Adjudicator then notifies the person against whom the applicant wishes the order to be made against. This person has 28 days to respond.

Network access appeal cases:

Must be brought in writing, and all the necessary documents must be attached.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

The proceedings in all three types of cases follow the same fundamental principles. Generally, the Adjudicator has very wide powers with regard to the conduct of the proceedings – he can make directions, conduct hearings or consider cases without hearings (the latter – subject to the parties’ written consent).

Under S. 110(1) of the Land Registry Act, and S. 6 of the Rules (Reference cases: “in proceedings on a reference under section 73(7), the adjudicator may, instead of deciding

a matter himself, direct a party to the proceedings to commence proceedings within a specified time in the court for the purpose of obtaining the court's decision on the matter"), the Adjudicator can also direct the parties to commence court proceedings regarding the whole of the matter or a part of it. In such cases, the Adjudicator adjourns the proceedings while the court is considering the case. When the Adjudicator receives the final order of the court, he should close the proceedings without making the final decision, although he may still make an order if this is necessary to implement the decision of the court.

Appeals from the Adjudicator's decisions are brought to the High Court (the permission of the Adjudicator must be obtained).

- **results – compensation, other**

Decision depends on the subject of the appeal.

- **costs**

There are no fees payable to the adjudicator. Legal aid is not available to assist in the costs of legal assistance, however.

In network access appeal cases, the adjudicator may on the application of a party or on the adjudicator's own initiative make an order as to costs.

"In deciding what order (if any) as to costs to make the adjudicator must have regard to all of the circumstances including—

- (a) the conduct of the parties during the proceedings;
- (b) whether a party has succeeded on the whole or part of their case; and
- (c) specifically in relation to the registrar, whether the registrar's decision which is the subject matter of the appeal is irrational.

(3) The adjudicator may make a costs order against a legally qualified representative of a party if the adjudicator considers that a party has incurred costs of the proceedings unnecessarily as a result of negligence or delay by the legally qualified representative.

(4) The adjudicator may only make a costs order under paragraph (3) if the adjudicator considers that it is just in all of the circumstances for the legally qualified representative to compensate a party who has incurred the whole or part of those costs.

(5) No costs order may be made under this rule without first giving the paying party (including a legally qualified representative who is ordered to pay costs under this rule) an opportunity to make representations against the making of an order." (Section 32 of the Rules on network access appeal cases).

Section 42 of the Rules of 2003, amended in 2008, applies to reference and rectification cases. It allows the Adjudicator to make a costs order under the following conditions:

“(4) An order as to costs may, without limitation:

- (a) require a party to pay the whole or a part of the costs of another party and
  - (i) specify a fixed sum or proportion to be paid; or
  - (ii) specify that costs from or until a certain date are to be paid;
- (b) if the adjudicator considers it impracticable to make an order in respect of the relevant part of a party’s costs under paragraph (a), specify that costs relating to a distinct part of the proceedings are to be paid;
- (c) specify an amount to be paid on account before costs are agreed or assessed; or
- (d) specify the time within which costs are to be paid.

(5) The adjudicator may

- (a) summarily assess the whole or a part of a party s costs; or
- (b) specify that, if the parties are unable to reach agreement on an amount to be paid, the whole or a part of a party s costs be assessed in a specified manner.”

The costs may be assessed on a standard basis or on an indemnity basis. In any case, however, the costs awarded must have been incurred reasonably and be reasonable in amount.

Under S. 43 of the Rules, “the adjudicator may, on the application of a party or otherwise, make an order as to costs thrown away provided the adjudicator is satisfied that (a) a party has incurred costs of the proceedings unnecessarily as a result of the neglect or delay of the legal representative; and (b) it is just in all the circumstances for the legal representative to compensate the party who has incurred or paid the costs thrown away, for the whole or part of those costs.”

### **History (including any reforms, also ongoing reforms)**

Amendments to the rules were mentioned above.

### **Statistics**

The website of the Adjudicator contains a very small number of cases.

### **Reported cases, problems, issues identified in academic writings**

See above.

LANDS TRIBUNAL

[\(http://www.landstribunal.gov.uk/\)](http://www.landstribunal.gov.uk/)



As explained on the Tribunal's website: "from June 2009, subject to Parliamentary approval, the Lands Tribunal will become the Lands Chamber of the [Upper Tribunal](#). Transfer orders will be laid before Parliament for approval shortly."

"Orders transferring the functions of the Lands Tribunal to a chamber of the Upper Tribunal affect the structure of the tribunal. The judicial functions of the Land Tribunal will not be changed. The Lands Tribunal will continue to exercise its original and appellate jurisdictions essentially as it does now and will continue to be known as the Lands Tribunal for the time being.

Leasehold Valuation Tribunals (LVT), Residential Property Tribunals (RPT) and Valuation Tribunals (VT), from whom the Lands Tribunal hears appeals, will continue in their present form, although it is expected that in due course LVT and RPT and later on the VT, will form part of a new First-tier Lands Chamber (<http://www.landtribunal.gov.uk/news.htm>).

Established by the Lands Tribunal Act 1949 to determine questions of disputed compensation arising out of the compulsory acquisition of land; to decide rating appeals; to exercise jurisdiction under section 84 of the Law of Property Act 1925 (discharge and modification of restrictive covenants); and to act as arbitrator on references by consent. Under the 1949 Act, other jurisdictions may be added and a number have been since the Tribunal came into existence on 1 January 1950.

The Tribunal's jurisdiction is exercised in England and Wales.

**Note: because the Tribunal is a court of law, it is not analysed in detail here. Appeals from its decisions go to the Court of Appeal.**

#### RESIDENTIAL PROPERTY TRIBUNALS SERVICE

[http://www.rpts.gov.uk/about\\_us/about\\_us.htm](http://www.rpts.gov.uk/about_us/about_us.htm)

See the Residential Property Tribunals Service Annual Report 2007-08: [http://www.rpts.gov.uk/pubs\\_and\\_forms/pdf/RPTS\\_Annual\\_Report.pdf](http://www.rpts.gov.uk/pubs_and_forms/pdf/RPTS_Annual_Report.pdf). Caseload in 2007 was 8227 (up from 8161). Total budget: £10.493.000.

The RPTS is sponsored by the Government: Communities and Local Government. Umbrella organisation for the five regional offices called Rent Assessment Panels which provide an independent, fair and accessible tribunal service in England for settling disputes involving private rented and leasehold property through 3 types of panels (occasionally a fourth type – Rent Tribunals – is also convened):

## 1. LEASEHOLD VALUATION TRIBUNALS

[http://www.rpts.gov.uk/about\\_us/lvt.htm](http://www.rpts.gov.uk/about_us/lvt.htm)

Statutory Tribunal (non-departmental public body) resolving disputes concerning residential leasehold property in the private sector.

### **Statutory basis (legal basis)**

Created by the Housing Act 1980 (transferred the jurisdiction from the Lands Tribunal). Later the jurisdiction was amended by the Leasehold Reform, Housing and Urban Development Act 1993, and Commonhold and Leasehold Reform Act 2002.

Application for verification of service charges (testing their reasonability) are made under S. 27A of the Landlord and Tenant Act 1985. Application for dispensation with the service charge consultation requirements are made under S. 20ZA of the Landlord and Tenant Act 1985. Application to vary administration charges imposed on the tenant can be made under Schedule 11 of the Commonhold and Leasehold Reform Act 2002. Application to vary estate charges can be made under Section 159 of the latter Act. Application to vary a lease can be made under Part IV of the Landlord and Tenant Act 1987. Disputes which can be referred also concern the application by a tenant to manage property (under Chapter I of Part II of the Commonhold and Leasehold Reform Act 2002). Application for the LVT to appoint a manager can be made under Section 24 of the Landlord and Tenant Act 1987. Application for the LVT to determine certain issues related to forfeiture of a lease can be made under Section 168(4) of the Commonhold and Leasehold Reform Act 2002. Applications with regard to lease extensions, new leases and the right of first refusal can be made under the Leasehold Reform Act 1967, the Leasehold Reform Act and Urban Development Act 1993, and the Landlord and Tenant Act 1987.

### **Links with government and funding**

Chairman appointed by the Lord Chancellor, and other members by the Secretary of State. See above for RPTS – sponsored by Government.

### **Governance and structure**

The Chairman is appointed by the Lord Chancellor. A Chairman may be a lawyer or a valuer (a surveyor who has expertise in valuation). Exceptionally, the chairman may be a lay person. The Chairman is responsible for the smooth running of the proceedings and will write up the reasons for the Committee's decision. Other members are appointed by the Department for Communities and Local Government. They may be lawyers or valuers or lay people. When a Tribunal is set up to consider an application there will usually be three, but occasionally two, members including the Chairman. Each Panel has a President,

assisted by one or more Vice Presidents, who is responsible for the members and, in particular, appoints members to hear and decide a particular case. He or she will not be involved in the decision regarding a case unless they are on the LVT dealing with that case.

Clerks: administrative staff who will deal with correspondence and, where relevant, the collection of fees. When the application is received, it is the clerk who will deal with the paperwork until you have received a final decision in your case. The clerks are able to speak to you about the processes and procedures relating to your application. They cannot give general legal advice or advise you about the law relating to your application. Each [Rent Assessment Panel](#) has a Regional Manager who is responsible for the work of the clerks. (Source: [http://www.rpts.gov.uk/about\\_us/lvt.htm](http://www.rpts.gov.uk/about_us/lvt.htm)).

## **Budget and expenditure**

### **Aims**

The Tribunal can:

- decide the price to be paid when a leaseholder wants to buy (enfranchise), extend or renew the lease of their home and the value cannot be agreed with the leaseholder;
- vary estate management schemes under the Leasehold Reform, Housing and Urban Development Act 1993;
- adjudicate in disputes about the right of first refusal procedure (which gives leaseholders the right of first refusal to buy the freehold when the landlord wishes to sell it) and the compulsory acquisition of the landlord's interest in blocks of flats;
- decide liability for payment of service charges and can settle disputes about the landlord's choice of insurer.
- decide applications on dispensation of service charge consultation requirements, administration charges, the right to manage, the appointment of managers, the variation of leases and estate charges. (source: [http://www.rpts.gov.uk/our\\_services/ld.htm](http://www.rpts.gov.uk/our_services/ld.htm)).

### **Procedure:**

- **who can apply for compensation/refer claims**

(Source: LVT Guidance on Procedure:

[http://www.rpts.gov.uk/pubs\\_and\\_forms/pdf/LVTguidance.pdf](http://www.rpts.gov.uk/pubs_and_forms/pdf/LVTguidance.pdf))

With regard to charges and management appeals (service charges payable by a tenant to a landlord, administration charges, appointment of a manager, variation of leases, estate charges, or forfeiture): tenants or landlords interested in verification of service charges,

dispensation with the service charge consultation requirements, variation of administration charges imposed on the tenant, variation of estate charges, variation of a lease, disputes concerning applications of tenants to manage property, applications to appoint a manager,

With regard to forfeiture appeals: some disputes concerning forfeiture of a lease can be resolved (applications can be made by landlord or tenant).

With regard to insurance disputes: (tenants are sometimes required to take on insurance) landlord or tenant.

Source: LVT Guidance on Procedure:

[http://www.rpts.gov.uk/pubs\\_and\\_forms/pdf/Lease\\_Enfranchisement.pdf](http://www.rpts.gov.uk/pubs_and_forms/pdf/Lease_Enfranchisement.pdf).

With regard to lease extensions, new lease appeals, and rights of first refusal: landlord or tenant.

It is not necessary to have legal representation, although applicants may use legal assistance and/or be represented.

- **formal requirements and time limits**

Official forms available from the LVT must be filled in and submitted to the panel office of the LVT. Sometimes the County Court considering a case involving an issue over which a LVT has jurisdiction can stay the case and refer the issue to be decided by the LVT. Then the claimant in the case becomes an applicant to the LVT.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

Cases can be decided following a hearing (where parties and witnesses are attending – there are two possible tracks – fast track (takes up to 10 weeks to decide) and standard track (here there is a pre-trial review, the Tribunal can give directions, there can be another preliminary hearing, and then a final hearing), or based on written documents. Hearing may be requested by one of the parties. They involve a Chairman and one or two other Tribunal members.

Parties dissatisfied with the final decisions can ask for a permission to appeal to the Lands Tribunal (permission must be asked for within 21 days from the date when the party received the final decision). If the LVT refuses permission, a party has 14 days to ask the Lands Tribunal directly for permission.

- **results – compensation, other**

Depend on the type of application.

- **costs**

Fees are payable for some applications (the right to manage applications, forfeiture applications, and management estate charges applications). These are: application fee and hearing fee. Application fees vary from £50 to £350 depending on type of case and the amount involved. Hearing fees are £150. Sometimes the fees can be waived (for people on benefits for instance).

Costs orders cannot normally be made, although the LVT can award the fees paid by a party.

### **History (including any reforms, also ongoing reforms)**

See above for legal bases.

### **Statistics**

See the Residential Property Tribunal Service Annual Report 2007-08: [http://www.rpts.gov.uk/pubs\\_and\\_forms/pdf/RPTS\\_Annual\\_Report.pdf](http://www.rpts.gov.uk/pubs_and_forms/pdf/RPTS_Annual_Report.pdf). It reports a 3% increase in caseload, especially on the leasehold side. Leasehold enfranchisement cases rose by 36%.

The Annual Report also indicated that in 75% cases the first hearing is booked within 20 weeks of receipt. The reasoned decision is delivered within 6 weeks of hearing in 90% cases.

All decision and reasons documents made by Rent Assessment Committees and Leasehold Valuation Tribunals from 01 January 2003 are being provided on the following website: [http://www.rpts.gov.uk/decisions/rpts\\_decisions.htm](http://www.rpts.gov.uk/decisions/rpts_decisions.htm).

### **Reported cases, problems, issues identified in academic writings**

Law Commission has a project on proportionate dispute resolution in housing cases: (Issues Paper and Consultation Paper were issued: [http://www.lawcom.gov.uk/housing\\_disputes.htm](http://www.lawcom.gov.uk/housing_disputes.htm)).

## **2. RENT ASSESSMENT COMMITTEES**

[http://www.rpts.gov.uk/about\\_us/rac.htm](http://www.rpts.gov.uk/about_us/rac.htm)

Rent Assessment Committee ("RAC") was set up under the provisions of the Rent Act 1977. "It is an independent decision making body which is completely unconnected to the parties or any other public agency. The Committee will look at the matter of the rent

dispute for the property following an application to the Committee” ([http://www.rpts.gov.uk/about\\_us/rac.htm](http://www.rpts.gov.uk/about_us/rac.htm)).

### **Statutory basis (legal basis)**

Rent Act 1977, Rent Acts (Maximum Fair Rent) Order 1999.

### **Links with government and funding**

See above.

### **Governance and structure**

See above.

### **Budget and expenditure**

See above.

### **Aims**

The Committee determines applications concerning:

- Determination of a fair rent for a regulated tenancy where one of the parties objected to the rent.
- Determination of a rent in an open market and under an assured tenancy on application from a tenant.

### **Procedure:**

See the Guidance on Rules (Fair Rents): [http://www.rpts.gov.uk/pubs\\_and\\_forms/pdf/fair\\_rents.pdf](http://www.rpts.gov.uk/pubs_and_forms/pdf/fair_rents.pdf).  
and the Guidance on Rules (Market Rents under assured and assured shorthold tenancies under the Housing Act 1988) [http://www.rpts.gov.uk/pubs\\_and\\_forms/pdf/MR2.pdf](http://www.rpts.gov.uk/pubs_and_forms/pdf/MR2.pdf).

- **who can apply for compensation/refer claims**

Fair rent claims are referred by the Rent Officer when a landlord and/or tenant dispute the rent fixed by him.

Market rents claims are brought by a tenant.

- **formal requirements and time limits**

No specific time limits in the Guidance on Rules (Fair Rents).

Market rents claims can be brought either at any time before the proposed increase in rent, at any time during fixed term tenancy (or within the first 6 months of the fixed term tenancy if the tenancy began on or after 28 February 1997).

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

Parties can decide on the necessity to hold a hearing, or can opt in for the procedure to be conducted based on the written documents. The Committee may inspect premises.

In making the final decision on fair rent, the Committee will follow Section 70 of the Rent Act 1977 (this Section determines the criteria for establishing a fair rent – such as a notional market rent and what is referred to as the ‘scarcity element’).

Final decision of the Committee determines the fair rent (normally decisions are made on the day of the hearing or inspection). The Committee’s decision is effective on the day it was made and the rent is payable then.

In cases concerning market rents: the Committee will determine a market rent (considering rents for similar properties in the area and the number of such properties available). Rents are payable from the date determined by the Committee.

Appeals from the Committee’s decision can be brought to the High Court within 28 days from receipt of full reasons for the decision. The appeal can be on the point of law or as judicial review (the latter must be brought within 3 months from receipt of full reasons).

- **results – compensation, other**

Determination of rent due.

- **Costs**

No costs to landlords and tenants.

**History (including any reforms, also ongoing reforms)**

**Statistics**

See above (website for case reports:  
[http://www.rpts.gov.uk/decisions/rpts\\_decisions.htm](http://www.rpts.gov.uk/decisions/rpts_decisions.htm)).

**Reported cases, problems, issues identified in academic writings**

See above.

### **3. RESIDENTIAL PROPERTY TRIBUNALS**

[http://www.rpts.gov.uk/about\\_us/rpt.htm](http://www.rpts.gov.uk/about_us/rpt.htm)

Set up under Rents Act 1977, and the Housing Act 2004.

#### **Statutory basis (legal basis)**

Rents Act 1977, Housing Act 2004.

#### **Links with government and funding**

See above.

#### **Governance and structure**

See above. Residential Property Tribunals are organised by Rent Assessment Panels (part of the Residential Property Tribunal Service).

#### **Budget and expenditure**

See above.

#### **Aims**

The Housing Act 2004 set out 49 new jurisdictions for Residential Property Tribunals. These are in 6 general areas:

- Housing Health & Safety Rating System (HHSRS)
- Licensing of Houses in Multiple Occupation
- Selective Licensing
- Management Orders
- Empty Dwelling Management Orders (EDMOs)
- Right to Buy (whether a dwelling-house is particularly suitable for occupation by elderly persons - therefore, whether a tenant has the right to buy);

#### **Procedure:**

- **who can apply for compensation/refer claims**

Depending on the type of case:



Appeals and applications by holders of freeholds or leaseholds against Improvement Notices, Prohibition Orders, Emergency Remedial Action and Prohibition Orders, Demolition Orders and applications for Slum Clearance, normally made by the Local Housing Authority (HHSRS jurisdiction). There are 17 types of applications which can be made here (see the Guidance: [http://www.rpts.gov.uk/pubs\\_and\\_forms/pdf/HHSRS\\_Booklet.pdf](http://www.rpts.gov.uk/pubs_and_forms/pdf/HHSRS_Booklet.pdf)).

In the Right to Buy cases – tenant who is disputing the Local Housing Authority or a Housing Association’s decision that a dwelling is particularly suitable for occupation by elderly persons (see the Guidance: [http://www.rpts.gov.uk/pubs\\_and\\_forms/pdf/RTB\\_Booklet.pdf](http://www.rpts.gov.uk/pubs_and_forms/pdf/RTB_Booklet.pdf)).

In Empty Dwellings Management Order (EDMO) Appeals and Applications cases – depending on the application it can be the Local Housing Authority, the ‘relevant proprietor’ (freeholder), or an interested third party – the latter claiming compensation from the Local Housing Authority for interfering with his/her rights by having issued an interim EDMO (see the Guidance: [http://www.rpts.gov.uk/pubs\\_and\\_forms/pdf/EDMO\\_Booklet.pdf](http://www.rpts.gov.uk/pubs_and_forms/pdf/EDMO_Booklet.pdf)).

In cases involving licensing of Houses in Multiple Occupation or selective licensing of other residential accommodation - there are ten different types appeals and applications which can be made, normally against the Local Housing Authority, by different persons depending on the type of application (see Guidance: [http://www.rpts.gov.uk/pubs\\_and\\_forms/pdf/HMO\\_Booklet.pdf](http://www.rpts.gov.uk/pubs_and_forms/pdf/HMO_Booklet.pdf)).

In cases involving interim or final management orders – a number of different types of applications can be brought, and depending on the type it can be the Local Housing Authority, a relevant landlord or a third party (the latter – for compensation) (see Guidance: [http://www.rpts.gov.uk/pubs\\_and\\_forms/pdf/MO\\_Booklet.pdf](http://www.rpts.gov.uk/pubs_and_forms/pdf/MO_Booklet.pdf)).

- **formal requirements and time limits**

Applications are made on official forms available online.

In the Right to Buy cases - within 56 days of the decision appealed from.

In HHSRS cases – different forms and time limits – see Guidance (reference above).

In EDMO cases – normally within 28 from the decision.

In cases involving licensing – normally within 28 days from the decision.

In cases involving management orders – normally within 28 days from the decision.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

In HHSRS cases – the Tribunal may hold a hearing or make a paper determination. The Tribunal can make directions and call case management conferences. Sometimes expert evidence will be required – parties can appoint their own expert, or agree on a joint expert. Appeals can be brought to the Lands Tribunal.

In EDMO cases the procedure is the same.

In licensing cases the procedure is the same.

In management orders cases the procedure is the same.

In the Right to Buy cases – unless one of the parties requests a hearing, it will be decided based on written submissions (a paper determination).

Appeals can be brought to High Court, there is also a possibility of bringing judicial review procedure.

- **results – compensation, other**

Depending on the type of case (examination of appeals from decisions – upholding decisions or changing them, or asking the body to reconsider, compensation in some cases only – normally payable to third parties).

- **costs**

In HHSRS cases there is a fee of £150 (payable for some applications, not others, see Guidance – reference above). This fee can be waived for those on benefits. The Tribunal can then make a costs order against the losing party (up to £500), although this is possible only in specific circumstances: if a party failed to comply with an order made by the Tribunal, if an application was dismissed, or if a party behaved vexatiously or unreasonably. The party also has to be given an opportunity to express his/her views before the costs order is made.

In EDMO cases there is a fee of £150 for some applications only (like those by third parties). It can be waived for those on benefits. Again, the Tribunal can in some circumstances (see above) make a costs order against a party.

In licensing cases there is a fee of £150 for some applications only. It can be waived for those on benefits. Costs orders may be made as above.

Similar rules apply to management orders cases.

### **History (including any reforms, also ongoing reforms)**

See above.

### **Statistics**

See above.

### **Reported cases, problems, issues identified in academic writings**

Decisions are published on the website:  
[http://www.rpts.gov.uk/decisions/rpts\\_decisions.htm](http://www.rpts.gov.uk/decisions/rpts_decisions.htm).

### VALUATION TRIBUNALS SERVICE

<http://www.valuation-tribunals.gov.uk/index.html>

Non-departmental public body which provides support (accommodation, staff, IT and equipment, training and general advice about procedure) to Valuation Tribunals. Created as a corporate body by the Local Government Act 2003 and formally established as a non-departmental public body on 1 April 2004. It is sponsored by the Department for Communities and Local Government (DCLG, and formerly the Office of the Deputy Prime Minister). It comprises a Chairman and Members appointed by the Secretary of State, commonly referred to as the 'VTS Board'. The majority of Board members must be valuation tribunal Presidents or Chairmen.

"The VTS currently employs 123 members of staff, supporting a lay and volunteer tribunal membership of approximately 900 members. Members of valuation tribunals come from all walks of life and receive training to support them in their statutory role in the hearing and determining of business rate and council tax appeals. They are unpaid and commit to one hearing per month, but receive reimbursement of expenses incurred based on prescribed amounts determined by the Secretary of State. In certain circumstances, members may also receive reimbursement of any financial loss incurred as a result of undertaking tribunal duties. Again, such amounts are prescribed by the Secretary of State."<sup>59</sup>

The Valuation Tribunals are undergoing a very significant reform and restructuring at present. In 2006, the Communities and Local Government consulted on proposals for modernisation and reorganisation of the Tribunals. This included proposals to establish a single Valuation Tribunal for England with a President, and also that the members, chairmen, vice-presidents and the President should be selected by the Judicial Appointments Commission and appointed by the Lord Chancellor. Responses to the

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<sup>59</sup> Source – 'Shaping the Future' the Forward Plan for the Valuation Tribunal Service 2008 – 2011, [http://www.valuation-tribunals.gov.uk/publications/Forward\\_Plan\\_2008-11.pdf](http://www.valuation-tribunals.gov.uk/publications/Forward_Plan_2008-11.pdf).

consultation paper, *Valuation Tribunals – Modernisation and Reorganisation*, were to be made by 8 September 2006.<sup>60</sup>

Following this Consultation paper, another Consultation was issued: this one concerned the proposed establishment of ‘Appeals Direct’ for Council Tax: <http://www.communities.gov.uk/documents/localgovernment/pdf/153617.pdf>.

Most recommendations were now adopted in legislation, and the process of reform is in full swing.

## VALUATION TRIBUNALS

### **Statutory basis (legal basis)**

“There are a number of Acts of Parliament and Statutory Instruments relating to the work and jurisdiction of VTs. The tribunals were established on 1 May 1989 as successors to Local Valuation Panels, constituted by the Local Government Act 1948. The Local Government Finance Act 1988 renamed Local Valuation Panels and Courts as Valuation and Community Charge Tribunals. Jurisdiction was extended to include appeals against certain aspects of the newly created community charge, together with valuation assessment appeals against the 1990 revaluation of non-domestic properties. Jurisdiction continued in respect of the right to hear appeals against Land Drainage assessments. Further powers were extended to consider the validation of completion notices. The Local Government Finance Act 1992 extended jurisdiction to deal with council tax valuation and liability appeals. Their jurisdiction was further extended to deal with appeals arising from the 1995, 2000 and 2005 revaluations of non-domestic properties. They were renamed valuation tribunals. Section 72 of the Local Government Act 2003 further empowered valuation tribunals to hear appeals against the valuation officer’s decision to invoke a penalty for failure to provide requested rent return information. The appeals regulations are found in the following Statutory Instruments:

- **Council Tax Liability**  
Valuation and Community Charge Tribunals Regulations 1989 SI 1989/439  
(as amended by SI 1993/292)
- **Council Tax Valuation**  
Council Tax (Alteration of Lists and Appeals) Regulations 1993 SI 1993/290

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<sup>60</sup> [Summary of Responses](#) , [Government’s Conclusion](#).

- **Non-Domestic Rating**  
Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993 SI 1993/291
- Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2005 SI 2005/65” (source: [http://www.valuation-tribunals.gov.uk/valuation\\_tribunals.html](http://www.valuation-tribunals.gov.uk/valuation_tribunals.html)).

The Local Government and Public Involvement in Health Act 2007 (Commencement No.8) Order 2008 SI 3110 sets out that the current 56 valuation tribunals in England will have their jurisdictions transferred to the Valuation Tribunal for England on 1 October 2009.

### **Links with government and funding**

Independent of the Valuation Office Agency, whose staff value homes and business properties for council tax and business rates,<sup>61</sup> and of the billing authorities (local councils), which deal with council tax and rates bills. Support provided by the Valuation Tribunals Service sponsored by the Department for Communities and Local Government.

### **Governance and structure**

There are currently 56 Valuation Tribunals across England, administered by 16 offices. Each Valuation Tribunal currently has a President and a number of Chairmen and members. They are all local volunteers who receive training and are experienced in hearing appeals. They come from a wide cross section of society. They are not paid but they are allowed to make claims to cover travel, meals and, where necessary, earnings lost due to their tribunal duties. From 1 October 2009 there will be one Valuation Tribunal with one President only (see legal basis above).

### **Budget and expenditure**

#### **Aims**

As specified above (see legal basis), Valuation Tribunals have a statutory duty to deal with non-domestic (business) rate, council tax (valuation and liability) and drainage rate appeals.

#### **Procedure:**

- **who can apply for compensation/refer claims**

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<sup>61</sup> The Valuation Office Agency is an executive agency of HM Revenue & Customs. Its function in relation to council tax in England is to compile and maintain council tax valuation lists of domestic properties for each local ‘billing authority’. This means that in England the VOA’s listing officers have the task of valuing all domestic properties, placing them in one of eight council tax bands and then into the appropriate valuation list, and of keeping these valuation lists up-to-date.

- **formal requirements and time limits**
- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

Usually, three members hear an appeal, although two members can hear an appeal if everyone at the hearing agrees.

- **results – compensation, other**
- **costs**

### **History (including any reforms, also ongoing reforms)**

See legal basis, and also the following information was provided on the Tribunals' website:

“The Poor Relief Act of 1601 is generally recognised as the legislation that brought in a rating system, a property tax based on the value of real estate. The Overseers of each parish were empowered to make a rate and collect it from every inhabitant or occupier of land, to support the poor of that parish. At that time you could appeal to the Quarter Sessions about the rate, but not about your individual assessment for it. The Union Assessment Committees Act 1862 brought Local Assessment Committees into being for hearing appeals against the rate. These were judicial but informal, an ethos that is retained today. These committees became Local Valuation Courts in 1948 and were renamed Valuation and Community Charge Tribunals in 1988. In 1992, with the demise of community charge, they were again renamed as VTs. Until 1 April 2004, VTs employed their own staff, but relied on a government department (latterly the Office of the Deputy Prime Minister) for overall management and funding” ([http://www.valuation-tribunals.gov.uk/valuation\\_tribunals.html](http://www.valuation-tribunals.gov.uk/valuation_tribunals.html)).

See above for latest reforms to the Valuation Tribunals system.

### **Statistics**

See the Annual Reports of the VTS: [http://www.valuation-tribunals.gov.uk/Annual\\_Report.html](http://www.valuation-tribunals.gov.uk/Annual_Report.html).

### **Reported cases, problems, issues identified in academic writings**

See the Newsletters of the VTS for details on recent changes, cases and appeals - <http://www.valuation-tribunals.gov.uk/newsletters/index.shtml>.

## **CARE AND MENTAL HEALTH TRIBUNALS**

### **Care Standards Tribunal**

[\(http://www.carestandardtribunal.gov.uk/\)](http://www.carestandardtribunal.gov.uk/) – now First Tier Tribunal.

The Tribunal considers appeals against a decision to restrict or bar an individual from working with children or vulnerable adults and decisions to cancel, vary or refuse registration of certain health, childcare and social care provision.

#### **Statutory basis (legal basis)**

First established by The Protection of Children Act 1999. Also Education Act 2002. See the following website for a full list of legislation providing the right appeal: <http://www.carestandardtribunal.gov.uk/RulesLegislation/rightToAppeal.htm>.

The Rules of procedure for appeals submitted before 3 November 2008 are: Protection of Children, Vulnerable Adults and Care Standards Tribunal Regulations SI 2002 816, as amended. The Rules of procedure for appeals submitted after 3 November 2008 are: the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 ([http://www.opsi.gov.uk/si/si2008/uksi\\_20082699\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20082699_en_1)). These Rules are analysed below (Tribunal system after the reform).

From 3 November 2008 a part of the Health, Education and Social Care Chamber of the First-Tier Tribunal.

#### **Links with government and funding**

Independent judicial body in the Ministry of Justice Tribunals Service. Judicial officers considering appeals are appointed by the Lord Chancellor. See General Section on Tribunals.

#### **Governance and structure**

The Tribunal is presided over by the President and the Deputy President. It has legal members as well as lay members (<http://www.carestandardtribunal.gov.uk/AboutUs/membership.htm>).

Each case is heard by a panel consisting of a legal member ('judge') and two lay members.

## **Budget and expenditure**

See General Section on Tribunals.

## **Aims**

The Tribunal considers appeals against the following (source: the Tribunal's website: <http://www.carestandardtribunal.gov.uk/AboutUs/aboutUs.htm>):

Decisions of the Secretary of State for Education and Skills to:

- Include an individuals' name on the Protection of Children Act List;
- Restrict or prohibit someone from teaching or otherwise working with children in schools or other education establishments;
- Cancel the registration of an independent school;

Decisions of the Secretary of State for Health to:

- Include an individuals' name on the Protection of Vulnerable Adults List

Decisions of the Commission for Social Care Inspection and the Welsh Assembly Government in respect of the registration of:

- Care homes
- Residential Family Centres
- Domiciliary Care Agencies
- Nurses Agencies
- Fostering Agencies and Voluntary Adoption Agencies

Decisions of the Healthcare Commission and the Welsh Assembly Government in respect of:

- The registration of private and voluntary healthcare provision such as independent hospitals, clinics and medical agencies.

Decisions of the Chief Inspector of Schools in England ([Ofsted](#)) and the Welsh Assembly Government in respect of the:

- Registration under the Early Years Childcare Register
- Registration under the General Childcare Register
- Disqualification and refusal to waive disqualification from registration as a child minder or day care provider;
- Registration of Children's homes; and:
- A refusal to waive disqualification of a person from providing, managing or having a financial involvement in a children's home or; being employed in a children's home.



Decisions of the General Social Care Council and the Care Council Wales in respect of:

- The registration of social workers;
- The registration of social care workers.

The Tribunal also deals with applications from people issued with an Order by the Courts disqualifying them from working with children who wish to have the disqualification revoked. Such applications will be handled by the Health, Education and Social Care Chamber under the First-tier Tribunal (Health, Education and Social Care Chamber) Rules until October 2009.

**Procedure:**

**(See Guidance “Appealing to the First-tier Tribunal (Care Standards). A guide to the appeals procedure”** of 3 November 2008 (which will be updated as the Tribunal’s jurisdiction is being changed, available at: [http://www.carestandardtribunal.gov.uk/Documents/forms/HESC\\_CSPublicguidance\\_27Oct.pdf](http://www.carestandardtribunal.gov.uk/Documents/forms/HESC_CSPublicguidance_27Oct.pdf)). As specified above (Statutory basis), the new Rules of 2008 apply for appeals brought from 3 November 2008.

- **who can apply for compensation/refer claims**

Persons can appeal if they:

- Have received a decision they do not agree with about their registration as:
  - A child minder or other child care provider
  - A care home provider or manager
  - A children’s home provider or manager
  - An independent healthcare provider or manager
  - The provider of an agency that delivers personal or nursing care in someone’s home
  - The provider of an agency that delivers fostering or adoption services
  - A social worker or social care worker.
- Have been barred from teaching or otherwise working with children by the Secretary of State for Education and Skills (the arrangements for barring an individual from working with children or vulnerable adults are changing. A new body – the Independent Safeguarding Authority (ISA), which was established in January 2008, will be taking over such decisions from the respective Secretary of State during the latter half of 2008. In addition, the appeal arrangements against a decision of the ISA will be different from the arrangements against a decision of the Secretary of State. All appeals against a decision of the ISA will be considered by the Administrative Appeals Chamber of the Upper Tribunal).

- Have been barred from working with vulnerable adults by the Secretary of State for Health.
- **formal requirements and time limits**

Applications from individuals wishing to have their names removed from the PoCA list or PoVA list, to have prohibition of teaching, acting as proprietor of independent schools, or working in schools and further education institutions lifted, or to have a court order banning them from working with children revoked can only be made after a minimum time period has elapsed. This is 5 years if an individual was younger than 18 at the relevant time and 10 years in other cases.

Table 2 of the Guidance on Appeals provides specific time limits for appeals in specific cases (often it is 3 months from the date of the original decision).

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

Appeal forms are available online on the Tribunal's website: <http://www.carestandardtribunal.gov.uk/formsguidance.htm>.

**See analysis of procedure in the part of the analysis concerning Tribunals after the reform.**

- **results – compensation, other**

**As above.**

- **costs**

**As above.**

**History (including any reforms, also ongoing reforms)**

See below for review of Tribunals and their reform.

**Statistics**

The website of the Tribunal contains analyses of decisions - <http://www.carestandardtribunal.gov.uk/Public/search.aspx>.

**Reported cases, problems, issues identified in academic writings**

## **Mental Health Review Tribunal**

<http://www.mhrt.org.uk/> – now First Tier Tribunal.

The First-tier Tribunal (Mental Health) hears applications and references from people detained under the Mental Health Act 1983 (as amended by the Mental Health Act 2007) and directs discharge if the statutory requirements for discharge have been satisfied (sometimes also when they have not been satisfied).

### **Statutory basis (legal basis)**

Mental Health Act 1983, as amended by the Mental Health Act 2007.

### **Links with government and funding**

The Tribunal judiciary and members are appointed by the Lord Chancellor.

### **Governance and structure**

The Tribunal's jurisdiction covers the whole of England. There are two Regional Tribunal Judges, currently based in London and Preston (they appoint panel members for specific cases). There is a separate Mental Health Tribunal for Wales, which is administered and based in Cardiff and a separate Mental Health Review Tribunal for Scotland.

The Tribunal is administered by the Tribunals Service, and the Secretariat in Leicester.

Now part of the First-tier Tribunal (Mental Health) (Health, Education and Social Care Chamber).

Tribunal judges preside at Tribunal hearings – they are normally senior practitioners, or in restricted patients cases – Circuit judges, or Recorders who are also Queens Counsel. Tribunal medical members are consultant psychiatrists with several years experience – their task is to examine the patient.

Tribunal members are members of the community (outside legal and medical professions, but with experience of working in healthcare or welfare fields) who are meant to provide balance in the decision-making of the Tribunal.

### **Budget and expenditure**

### **Aims**

The aim of the Tribunal is to assess appeals made by people detained under the Mental Health Act 1983 and to direct discharge when the requirements for discharge have been met. In exceptional circumstances the Tribunal may also direct discharge when these requirements have not been met (although this does not apply to 'restricted patients'). ("A restricted patient is a patient who is subject to a restriction order (from a court) or a restriction direction (e.g. for a prisoner transferred to hospital) Persons found unfit to plead in criminal proceedings may be treated as restricted patients depending on the court order.") (Guidelines for restricted patients: <http://www.mhrt.org.uk/Documents/3nov08/InformationforRestrictedPatients.pdf>).

In making the latter decisions the Tribunal takes into account the following: the freedom of an individual, public interests and the interests of the patient.

The Tribunal may make the following decisions:

- direct discharge immediately or after some further period of time,
- recommend leave of absence,
- recommend Supervised Community Treatment, or
- recommend transfer to another hospital.

#### **Procedure:**

Source: <http://www.mhrt.org.uk/FormsGuidance/patientsFamilyRelatives.htm>.

- **who can apply for compensation/refer claims**

Patients who wish to have their case reviewed, their legal representatives, or their nearest family members can make appeals. Application forms are available online: <http://www.mhrt.org.uk/FormsGuidance/forms.htm>.

Some patients are automatically referred to the Tribunal without making an appeal: this happens if they were detained under Section 3 of the Mental Health Act and have not had their detention reviewed by the Tribunal in the past 6 months, or if they had their detention renewed and have not made an appeal within: 3 years if they are 18 and over, and 1 year if they are younger than 18.

- **formal requirements and time limits**

Patients who were detained under Section 2 of the Mental Health Act can make an appeal within 14 days from the start of the detention. Patients who were detained under Section 3 can only appeal once in 6 months. Patients detained under Section 37 can only appeal after the initial period of 6 months has elapsed, and after that only once every 6 months.

See the Rules for the Health, Education and Social Care Chamber of the First-tier Tribunal (below) for more details.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

The hearings normally take place in hospitals or community units where the patients are detained. If the patient has been detained under Section 2, the hearing will take place within 7 days from the receipt of the appeal by the Tribunal's office in Leicester, in other cases: for non-restricted patients it must be within 8 weeks, and for restricted patients – within 16 weeks. Decisions are normally made at the end of the hearing, accompanied by written reasons a few days later.

- **results – compensation, other**

See above for the types of decisions the Tribunal can make.

- **costs**

See rules of procedure as specified above.

### **History (including any reforms, also ongoing reforms)**

The Rules of Procedure before the Mental Health Review Tribunal were examined in 2006 and there were plans to change them (the Tribunals Rules Advisory Group was established in December 2005, under the chairmanship of Professor Jeremy Cooper – the work of the Group was later incorporated into the changes in the overall Tribunals system and procedure – see “Changes to the Mental Health Review Tribunal from November 2008”, <http://www.mhrt.org.uk/Documents/ChangesTotheMHRTfromNov08.pdf>).

### **Statistics**

The paper “Changes to the Mental Health Review Tribunal from November 2008 indicates the following prediction with regard to appeals from the decisions of the Tribunal:

“The Government believes the onward appeals process is likely to lead to a significant reduction in MHRT JRs because JR is the only current route available to appellants wishing to challenge decisions of the MHRT. It is expected there will be around fifty to sixty applications for permission for onward appeals per year under the new system, an increase of about a third on the current level of JR's for the MHRT. Based on current behaviour in JR cases, it is estimated that only some of these will result in actual onward appeals, of which some will be dealt with orally rather than on the papers.” (at page 3)

### **Reported cases, problems, issues identified in academic writings**

No data.

## CHARITY TRIBUNAL

(<http://www.charity.tribunals.gov.uk/>)

The Charity Tribunal is an independent body set up under the Charities Act 2006 to:

- Hear appeals against the decisions of the Charity Commission (the Commission is the regulator and registrar of charities in England and Wales)
- Hear applications for review of decisions of the Charity Commission
- Consider references from the Attorney General or the Charity Commission on points of law (source – “Charity Tribunal Explanatory Leaflet. A short guide for users” of March 2008 - <http://www.charity.tribunals.gov.uk/documents/CharityTribunalExplanatoryLeaflet-approvedv3-0-14-03-08.pdf>).

(See [http://www.charity.tribunals.gov.uk/documents/AnnexA\\_Tableofcategories.pdf](http://www.charity.tribunals.gov.uk/documents/AnnexA_Tableofcategories.pdf) for Table of Categories of grounds for appeal/application, who can appeal and the time limits).

For example: if the Commission decides to enter an organisation or not to enter it into the register of charities, or if it decides to remove or not to remove it from the register: persons who are charity trustees or anyone else who may be affected may appeal or make an application to review the decision.

NOTE: If an individual believes that there has been a failure in the Charity Commission's standards of service or that they have been treated unfairly and been caused unnecessary problems or concerns, the complaint can be made to the Independent Complaints Reviewer (ICR) for the Charity Commission. “Examples of poor service or unfairness can include:

Failure to follow proper procedures

Discourtesy

Discrimination or injustice

Excessive delay

Not answering your complaint fully and promptly

Failure to apologise properly for mistakes

The ICR is managerially independent of the Charity Commission and her service is free to complainants. The ICR will not usually consider any complaint later than six months after the

Commission has completed its own investigations and offered a final response.” (Source: <http://www.charity.tribunals.gov.uk/usefulinks.htm>).

The Charity Tribunal only has jurisdiction in respect of Charity Commission decisions made on or after the 18th March 2008. The Charity Commission is established by law as the regulator and registrar of charities in England and Wales. The Tribunal will transfer to the General Regulatory Chamber within the First Tier Tribunal.

### **Statutory basis (legal basis)**

Charities Act 2006, and the Charity Tribunal Rules 2008 (SI 2008, No. 221) ([http://www.charity.tribunals.gov.uk/documents/charity\\_rules.pdf](http://www.charity.tribunals.gov.uk/documents/charity_rules.pdf)). Appeals can also be made under the Charities Act 1993.

### **Links with government and funding**

Part of the Tribunals Service. Tribunal Members are appointed by the Lord Chancellor (having been recommended by the Judicial Appointments Commission).

### **Governance and structure**

The Tribunal is headed by the President. It has 5 legal members and 7 ordinary members.

### **Budget and expenditure**

### **Aims**

The aim, as specified above, is to consider appeals from decisions of the Charity Commission, and applications from individuals or organisations wishing to review those decisions. The Tribunal also considers references made by the Attorney General and the Charity Commission. The appeals can concern for instance decisions by the Commission to include an institution/organisation in the register of charities, or decisions requesting the name of the charity to be changed, or orders suspending a person’s membership in a charity.

### **Procedure:**

- **who can apply for compensation/refer claims**

Appeals and applications may be made by individuals or organisations. (See [http://www.charity.tribunals.gov.uk/documents/AnnexA\\_Tableofcategories.pdf](http://www.charity.tribunals.gov.uk/documents/AnnexA_Tableofcategories.pdf) for

Table of Categories of grounds for appeal/application and who exactly can make appeals and applications).

Also the Attorney General and the Charity Commission may make references.

Applications must be made in writing, preferably using a form available online: <http://www.charity.tribunals.gov.uk/documents/CharityTribunal-AppealApplicationFormapprovedv0-3-130308.pdf>.

The Explanatory Leaflet for Users explains that the employees of the Tribunal cannot give advice concerning the merits of claims – so the advice is to seek assistance from a Citizens Advice Bureau, a solicitor or other professional adviser specialising in working with the Charity Tribunal.

- **formal requirements and time limits**

The appeals/applications must be made in writing and contain all the required information (see Rule 17.4 of the Charity Tribunal Rules of Procedure). They are made in the form of Notice of Appeal. An appeal to the Charity Tribunal must be made within 42 days of the Charity Commission's final decision or within 42 days of the final decision being published on the Charity Commission's website. An appeal to the Tribunal will be 'out of time' if it is not made within 42 days of the Charity Commission's final decision. If an appeal is made outside of the time limit the reasons for the delay must be described in the Notice of Appeal Form, which will be considered by the Tribunal (a request for a direction under Rule 3 of the Charity Tribunal Rules of Procedure to allow such 'out of time' appeal must be made – see also Rule 4). If the Tribunal refuses to allow this 'out of time' appeal, an appeal to the High Court in England and Wales can be made for a Judicial Review of the Tribunal's decision.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

Hearings can be arranged anywhere in England and Wales (source – “Charity Tribunal Explanatory Leaflet. A short guide for users” of March 2008 - <http://www.charity.tribunals.gov.uk/documents/CharityTribunalExplanatoryLeaflet-approvedv3-0-14-03-08.pdf>).

On receipt of the Appeal the Tribunal reviews the papers and, if necessary, requires further evidence/supporting documents. The Tribunal notifies the Charity Commission to submit a response within 28 days. The appellant then has 28 days to respond to the Tribunal. Once all the evidence is collected, the case will be managed to prepare it for a



Tribunal hearing. It may be referred for judicial direction – see Charity Tribunal Rules (Rule 3, and Rule 6 for consequences of failure to comply with directions – including dismissing the appeal).

“The judiciary may decide to hold a Preliminary Hearing to resolve any outstanding issues. A Preliminary Hearing is not the full hearing of an appeal, although a Chairperson may sometimes allow or dismiss an appeal. The judiciary may decide to hold a Pre-Hearing Review to enable the Tribunal to issue appropriate directions to parties to ensure that the Tribunal has before it everything necessary to make a decision at the full hearing. At this, or any stage before the full hearing, if both parties agree the Tribunal may decide to determine the appeal on the papers without holding a full hearing. Notice of a hearing is sent to the parties by post.” (source – the website of the Tribunal - <http://www.charity.tribunals.gov.uk/formsguidance.htm>).

The parties normally receive at least 28 days written notification of the date, time and place of the hearing (Rule 21.1). Sometimes the matter can be determined without a hearing. The procedure followed during the hearing is determined by the Tribunal (see Rule 29).

The Tribunal Chairperson may deliver their decision orally at the end of the hearing or in writing at a later date. Even where the Tribunal has delivered an oral decision, parties will also get a written decision sent to them.

The Tribunal may review and revoke its own decision at the request of the parties or of its own initiative (if an administrative error was made) (Rule 34). Appeals from the Tribunal’s decisions (on points of law) can be made to the High Court (first an application for permission to appeal needs to be made to the Tribunal).

- **results – compensation, other**

Results depend on the type of appeal/application made - (See [http://www.charity.tribunals.gov.uk/documents/AnnexA\\_Tableofcategories.pdf](http://www.charity.tribunals.gov.uk/documents/AnnexA_Tableofcategories.pdf) for the list). They do not include awarding compensation.

- **costs**

**Rule 33 specifies:**

(1) No costs order may be made by the Tribunal under section 2B(6) or (7) of the 1993 Act or under rule 24 (withdrawal of appeal or application and unopposed appeals or applications) without first giving the paying party an opportunity to make representations against the making of an order.

(2) Where the Tribunal makes a costs order it may make an order—

- (a) that an amount fixed by the Tribunal must be paid by the paying party to the receiving party; or
- (b) that the costs are to be assessed by the Tribunal on such basis as the Tribunal specifies.

**Bar Pro Bono Unit may provide assistance:** <http://www.barprobono.org.uk/>.

**History (including any reforms, also ongoing reforms)**

**Statistics**

**Reported cases, problems, issues identified in academic writings**

The website of the Tribunal is regularly updated with current cases: <http://www.charity.tribunals.gov.uk/currentcases.htm>.

## **CONSUMER CREDIT APPEALS TRIBUNAL**

(<http://www.consumercreditappeals.tribunals.gov.uk/>):

“The Consumer Credit Act 1974 provides a licensing regime, administered by the Office of Fair Trading for traders in the consumer credit business or consumer hire business. Those wishing to conduct regulated business require to be licensed by the OFT. The OFT grants consumer credit licences to those it considers fit to hold one, on the basis of criteria set out in the Consumer Credit Act 1974. The Consumer Credit Act 2006 amended and updated the 1974 Act and provided for the establishment of an independent tribunal - the Consumer Credit Appeals Tribunal. The Consumer Credit Appeals Tribunal hears appeals arising from licensing decisions of the OFT including decisions to suspend or revoke a consumer credit licence. The Tribunal hears appeals from licensing decisions made by the OFT on or after 6 April 2008. Appeals in respect of licensing decisions made by the OFT prior to 6 April 2008 are to the Secretary of State. The Tribunal also hears appeals from decisions of the OFT under the Money Laundering Regulations 2007.”  
(source: <http://www.consumercreditappeals.tribunals.gov.uk/>)

Both the Office of Fair Trading and the Appellant have the opportunity to present their case before the Tribunal. Appeals to the Tribunal are usually heard by a panel consisting of a Chairman and two wing members. Once the Tribunal has made its decision the parties will be notified accordingly.

**Statutory basis (legal basis)**

As above – Consumer Credit Act 2006. Also – Money Laundering Regulations 2007 (SI 2007/2157). The rules of procedure are set out in: The Consumer Credit Appeals Tribunal Rules 2008 (in force since 6 April 2008) <http://www.consumercreditappeals.tribunals.gov.uk/Documents/consumercreditrules.pdf>.

### **Links with government and funding**

The Tribunal is part of the Tribunals Service, an executive agency of the Ministry of Justice and is administered from Bedford Square, London.

### **Governance and structure**

The Tribunal has a President (judicial head); other judicial members - Chairmen; lay members “who are suitably qualified by experience or otherwise to deal with appeals of the kind that may be made to the Tribunal” (Explanatory Leaflet. A short guide for appellants”, reference below, p. 3); and a Secretary responsible for administration. The Tribunal's premises are based in London. Hearings can take place there. The Tribunal can sit anywhere in UK, and indeed sometimes it does so.

### **Budget and expenditure**

### **Aims**

As mentioned above, the Consumer Credit Appeals Tribunal considers appeals from certain decisions made by the OFT. These decisions could be: “refusal to register, cancellation of registration or imposition of a penalty under the Money Laundering Regulations 2007 (the 2007 Regulations); or various decisions under the Consumer Credit Act 1974 as amended including refusal to issue, renew or vary a licence, exclusion of a person from a group licence, compulsory variation or suspension or revocation of a standard or group licence, refusal to end suspension of a licence in accordance with terms of application, refusal to make an order in accordance with terms of application, imposition of or refusal to withdraw a consumer credit prohibition order or restriction. The Tribunal however only has the functions conferred upon it by the Consumer Credit Act or the 2007 Regulations. This means that an appeal may only be made to the Tribunal if the Act or the 2007 Regulations specifically provides that a person has the right to appeal to the Tribunal.” (Explanatory Leaflet. A short guide for appellants, reference below, p. 3)

### **Procedure:**

(see

[http://www.consumercreditappeals.tribunals.gov.uk/Documents/QS\\_CCAT\\_explanatory.pdf](http://www.consumercreditappeals.tribunals.gov.uk/Documents/QS_CCAT_explanatory.pdf) for “Explanatory Leaflet. A short guide for appellants” of April 2008).

- **who can apply for compensation/refer claims**

Applications may be made by individuals or companies to whom the decision in question has been directed.

- **formal requirements and time limits**

The Rules of procedure are quite similar in content and structure to the rules for other tribunals (for example the Charities Tribunal above).

An appeal is made in a form of a Notice of Appeal within 28 from the date when the appellant was notified of the Regulator's decision (although a request may be made for the Tribunal to accept an appeal made after this time limit has expired). Rule 15.4 specifies the elements of a valid Notice of Appeal.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

Having received the Notice of Appeal, the Tribunal notifies the Regulator of the appeal, and the latter has 28 days to file a statement of case, which is also sent to the appellant. Normally a hearing will be held, and the parties are given no less than 28 days' notice of the date and place of the hearing. Generally, hearings are public, and they are held close to the business premises of the appellant.

The decision of the Tribunal is notified to the parties.

The Tribunal may, on request of the parties or of its own initiative, review its decisions. Appeals from the decisions of the Tribunal on points of law may be made, subject to the approval by the Tribunal, to the Court of Appeal or to the Court of Session (Rule 28). If the Tribunal refuses permission, a request may be made directly to the Court of Appeal or to the Court of Session.

Similarly with other Tribunals, the Consumer Credit Appeals Tribunal may give directions during the proceedings, and can even strike out an appeal if the parties do not follow the directions. Parties can be represented before the Tribunal by a representative (lawyer or not).

- **results – compensation, other**

Depending on the subject of the appeal – do not include compensation awards.

- **costs**

The Tribunal does not charge fees, but each appellant has to pay his own expenses. Public funding is not available. A costs order may be made by the Tribunal against either of the parties – if it is made against the appellant the reason would be vexatious, unreasonable or frivolous behaviour in bringing the case or otherwise in relation to the appeal.

## **History (including any reforms, also ongoing reforms)**

Established in 2006, no reforms noted so far.

## **Statistics**

## **Reported cases, problems, issues identified in academic writings**

The Tribunal has the obligation to keep an open register of appeals and of its decisions – accessible to the public. Four decisions are at present published on the website of the Tribunal: <http://www.consumercreditappeals.tribunals.gov.uk/decisions.htm>.

## **CRIMINAL INJURIES COMPENSATION APPEALS PANEL**

(<http://www.cicap.gov.uk/index.htm>): (See the Criminal Injuries Compensation Authority below).

The Panel considers appeals against review decisions of the Criminal Injuries Compensation Authority (CICA), on claims for compensation made on or after 1 April 1996, under the Criminal Injuries Compensation Scheme (at present there is a new Scheme of 2008 – see the Criminal Injuries Compensation Authority below for more details).

It is part of the First Tier Tribunal (Social Entitlement Chamber).

## **Statutory basis (legal basis)**

There are three different schemes, depending on when the application was received:  
Scheme 2008 for applications received on or after 3 November 2008,  
Scheme 2001 for applications received between 1 April 2001 and 31 October 2008,  
Scheme 1996 for applications received between 1 April 1996 and 31 March 2001.  
See also the following link for Practice Statements and Protocols:  
<http://www.cicap.gov.uk/RulesLegislation/practiceStatementsProtocols.htm>.

## **Links with government and funding**

Part of the Tribunals Service.

## **Governance and structure**

The Panel has approximately 70 part-time Tribunal Judges and Members who are qualified to decide criminal injury compensation appeals. They are appointed by the Lord Chancellor and include people with legal and medical qualifications, and lay people from diverse backgrounds. The Tribunal is supported by administrative staff based in Glasgow and London. Appeals are processed in Glasgow. The judicial lead for Criminal Injury Compensation cases (the Principal Judge), and his support team, is based in London. The Tribunal is independent from the Criminal Injuries Compensation Authority and looks at its decisions “afresh” (<http://www.cicap.gov.uk/FormsGuidance/howToAppeal.htm>).

## **Budget and expenditure**

### **Aims**

The aim is to enable victims of violent crime to have their appeals decided sensitively fairly and independently in accordance with the Scheme.

### **Procedure:**

- **who can apply for compensation/refer claims**

Victims of crime dissatisfied with the decision of the Criminal Injuries Compensation Authority (after the internal revision).

- **formal requirements and time limits**

The appeal must be brought within 90 days from the date when the victim received the review decision letter. The form is available online: <http://www.cicap.gov.uk/FormsGuidance/howToAppeal.htm>. In exceptional cases the Panel will accept appeals brought after the time limit has expired (for instance if the appellant was waiting for further medical reports in order to make a decision whether to appeal).

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

**Procedure followed is regulated by the Rules of Procedure for the Social Entitlement Chamber (see below).**

As specified in the Practice and Guidance Statement CI-6 “Appeals on error of law against final decision of the Tribunal” ([http://www.cicap.gov.uk/Documents/Rules/FTT\\_CI\\_6\\_PracticeStatement\\_JRs\\_211008.pdf](http://www.cicap.gov.uk/Documents/Rules/FTT_CI_6_PracticeStatement_JRs_211008.pdf)): “the only legal remedy open to an appellant who wishes to challenge the final

decision of the Tribunal in this jurisdiction is to apply to bring judicial review proceedings of the decision: (in respect of incidents occurring and decisions made in England & Wales) to the Upper Tribunal, or (in respect of incidents and decisions made in Scotland) to the Outer House of the Court of Session on the grounds that the decision was erroneous in law.”

Once the appeal is admitted, a copy of the Notice of Appeal and any supporting documents are sent to the Authority. The Authority then has 6 weeks to send a response bundle (copy of the appeal, relevant documents, and the summary which includes details of the incident and injuries, the decision made, and any issues raised by the Authority concerning eligibility for compensation or its amount) to the appellant and the Tribunal. The appellant has one month (with a possibility of extension of this time) for sending any further documents. The response and the documents submitted by the appellant are the basis for the Tribunal’s decision.

A case can go to a hearing (a panel of two or three Judges and members) or be decided by a Tribunal Judge or member. Normally if a decision is made by a single Tribunal Judge or member the appellant can request for it to be reconsidered during a hearing. See a Guide on the following website:

<http://www.cicap.gov.uk/Documents/FormsGuidance/HowToAppeal/HearingPanelbookletfinal281008.pdf>

If the appeal is against the Authority’s decision refusing to consider a case because of a time limit, or a decision to re-open a case because the applicant’s medical condition has changed, a Tribunal Judge or member makes decisions. The decisions are final (normally given within 2 months from the expiry of the time the appellant was given to submit further information). If the appeal is granted, the application is sent back to the Authority to decide whether the appellant ought to receive compensation and in what amount.

If the appeal is against the Authority’s decision not to award any compensation or if the appellant is not satisfied with the amount, the case may be decided following a hearing, or without a hearing.

If the Tribunal decides not to accept the appeal made out of time or that an oral hearing is not necessary, a decision will be made and the appellant will be advised of the decision. These decisions of the Tribunal are final.

If the Tribunal decides that compensation should be awarded, but adjourns the hearing to await further medical evidence, the appellant can request an interim payment. If the Tribunal decides during a hearing that compensation is payable but the hearing is adjourned for the exact amount to be assessed, the Tribunal may refer this issue to be decided by a single Tribunal Member (although the appellant can also request for the decision of the Member to be reconsidered at a hearing by the panel).

Judicial review on points of law from the decisions of the Tribunal can be made (should be made as soon as possible) to the Upper Tribunal (England and Wales) or to the Outer House of the Court of Session (Scotland).

- **results – compensation, other**

An appeal is either accepted or rejected by the Tribunal. The Tribunal may also decide on the amount of compensation due to the applicant.

The Authority pays the awards decided upon by the Tribunal (interim payments can be requested, as mentioned above).

Compensation payments will be reduced if the appellant received another type of compensation (for instance: as a result of court proceedings).

- **costs**

The Authority bears the costs of all the medical and other reports and documents (although the appellant may pay for an independent report – it is not likely that these costs will be reimbursed).

The Tribunal will cover reasonable costs of attending the hearing, and in particular: public transport or a car, subsistence, loss of earnings and childcare. It will not cover the costs of the fees and expenses of legal and other representatives, the witnesses travelling from abroad, and any witnesses other than those who give or would be able to give relevant evidence, and expenses of anyone attending the hearing to offer moral support (unless previously agreed) (<http://www.cicap.gov.uk/Documents/FormsGuidance/HowToAppeal/HearingPanelbookletfinal281008.pdf>).

### **History (including any reforms, also ongoing reforms)**

See the general section on Tribunals.

### **Statistics**

Caselaw is available on the website of the Tribunals Service: <http://www.cicap.gov.uk/Public/publicsearch.aspx>.

### **Reported cases, problems, issues identified in academic writings**

As above: <http://www.cicap.gov.uk/Public/publicsearch.aspx>.



See the National Audit Report “Compensating Victims of Violent Crime” ([http://www.nao.org.uk/whats\\_new/0708/0708100.aspx](http://www.nao.org.uk/whats_new/0708/0708100.aspx)) – the Report mostly reviews the operation of the Authority (the conclusion was that its performance worsened considerably – this led to significant reforms of the Authority’s procedures – see below).

## SPECIAL EDUCATIONAL NEEDS AND DISABILITY TRIBUNAL (SENDIST)

<http://www.sendist.gov.uk/>

From 3rd November the Special Educational Needs and Disability Tribunal became part of the First-tier Tribunal. The existing judges and non-legal members of the Special Educational Needs and Disability Tribunal all transferred into the new two-tier system. Special Educational Needs and Disability now sits in the Health, Education and Social Care (HESC) Chamber of the First-Tier Tribunal. Appeals against the panel's decisions now go to the Upper Tribunal instead of to the High Court.

Parents whose children have special educational needs can appeal to the First-tier Tribunal (Special Educational Needs and Disability) against decisions made by Local Education Authorities in England about their children's education. The Tribunal also considers disability discrimination in schools cases.

### **Statutory basis (legal basis)**

Education Act 1993, Disability Discrimination Act 1995, Special Educational Needs and Disability Act 2001 ([http://www.opsi.gov.uk/acts/acts2001/ukpga\\_20010010\\_en\\_1](http://www.opsi.gov.uk/acts/acts2001/ukpga_20010010_en_1)). The Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 apply, as well as the Practice Direction, First-tier Tribunal, Health, Education and Social Care Chamber, Special Educational Needs or Disability Discrimination in Schools Cases, 2008 (<http://www.tribunals.gov.uk/Tribunals/Documents/Rules/SpecialEducationalNeedsHESC.pdf>).

### **Links with government and funding**

As specified on the website of the Tribunal, “The Tribunal is independent. The Lord Chancellor appoints the Tribunal Judges, and the Secretary of State for Education and Skills appoints the members. But the Government cannot influence the tribunal's decision, and the tribunal has no connection with any LA.” (<http://www.sendist.gov.uk/AboutUs/index.htm>)

### **Governance and structure**

The Chamber president is His Honour Judge Phillip Sycamore who is supported by four judicial officers. The Tribunal has 175 chairs and members who make appeal decisions. The majority of hearings take place at Tribunals Service venues across the country.

The individual appeals and claims are heard by a panel of three (chaired by a judge, and including two non-legal (specialist) members.

## **Budget and expenditure**

### **Aims**

To consider appeals against decisions of LAs by parents in cases involving special educational needs, and claims of disability discrimination in schools and nurseries.

### **Procedure:**

- **who can apply for compensation/refer claims**

Parents of children appealing against Local Authorities' (LA) decisions (See Guidance on Appeals:

[http://www.sendist.gov.uk/Documents/FormsGuidance/ForParents/How\\_to\\_Appeal\\_a\\_n\\_SEN\\_Decision\\_FINAL.pdf](http://www.sendist.gov.uk/Documents/FormsGuidance/ForParents/How_to_Appeal_a_n_SEN_Decision_FINAL.pdf)) or making claims of disability discrimination in schools (See Guidance on making such claims: [http://www.sendist.gov.uk/Documents/FormsGuidance/ForParents/How\\_to\\_make\\_a\\_Claim\\_FINAL\\_Jan09.pdf](http://www.sendist.gov.uk/Documents/FormsGuidance/ForParents/How_to_make_a_Claim_FINAL_Jan09.pdf)).

LA – this term covers a local council's local education authority, and children's services. Appeals can be made if the LA:

- Will not **carry out a statutory assessment** of a child's special educational needs, following a request by a parent or by a child's school.
- Refuses to **make a statement** of a child's special educational needs, after a statutory assessment.
- Refuses to **reassess** a child's special educational needs if the LA has not made a new assessment for at least six months, following a request by a parent or by a child's school.
- Decides **not to maintain (decides to cancel)** a child's statement.
- Decides **not to change the statement** after reassessing a child.
- Refuses to **change the school** named in a child's statement, if the statement is at least one year old (only a school that is funded by an LA). This is limited to the same type of school as the school named in the statement and it is not possible to ask the Tribunal to

- alter Parts 2 or 3 (described below in the Guidance – p. 3).

Disability discrimination claims can be made against schools, nursery schools and nursery classes in schools, as well as some functions of the LA in providing education for children. A claim can concern:

- admission arrangements for schools
  - the education and associated services provided by schools
  - exclusions from schools (Guidance, p. 3).
- **formal requirements and time limits**

Appeals against an LA's decisions must be made within 2 months from the date when the parents received a final written decision.

Claims of disability discrimination must be brought within 6 months from the alleged discrimination, and 8 months if the parents used the Equality and Human Rights Commission.

The Guidance notes and the Practice Direction referred to above contain requirements on what the appeals and claims documents ought to contain. The Guidance notes contain the claim forms.

**The following must be proven by the parents in disability discrimination claims:**

Disability (defined in the Disability Discrimination Act 1995, also in Annex 1 to the Guidance).

Disability discrimination (this is treating someone less favourably or placing him/her at a disadvantage) – and the Guidance indicates that sometimes it is justified: for example because of costs, practicality, or health and safety considerations (p. 4). Disability discrimination can concern admissions, education, associated services, and exclusions.

That discrimination was linked to disability.

Some claims need to be brought to LA appeal panels (those concerning certain maintained schools, voluntary schools, city technology colleges and academies).

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

As specified above, the Rules of Procedure of the First-Tier Tribunal apply.

The Tribunal has 10 days to register the claim, and then it sends the claim to the relevant responsible body. The body has 30 working days to respond. The claim then goes through a claims management process (a hearing can be arranged).

The Guidance on disability discrimination claims specifies that it should not take longer than 5-6 months to complete the case.

○ **results – compensation, other**

Appeals can be accepted (partly, wholly) or rejected. The LA needs to enforce the Tribunal's decisions: within a fixed period, beginning with the date the decision was issued.

- To start the assessment or reassessment process - **4 weeks**
- To make a statement - **5 weeks**
- To change a statement - **5 weeks**
- To change the school named in line with parents wishes - **2 weeks**
- To continue a statement - **immediately**
- To cancel (cease to maintain) a statement – **immediately** (source – Guidance: p. 14).

**As specified on the Tribunal's website, if** the Tribunal decides that there has been disability discrimination, it can order any action it considers reasonable to put right the effect of that discrimination, short of paying financial compensation.

“Examples might include:

- Training for school staff
- Drawing up new guidance for staff
- Additional tuition, to make up for lost learning
- A written apology
- Trips or other opportunities to make up for activities that your child may have missed.” (<http://www.sendist.gov.uk/AboutUs/ourPowers.htm>)

The responsible body must perform the decision of the Tribunal (if it does not happen, the parents can apply to the High Court for an enforcement order).

○ **costs**

No costs to the parents. The parents and witnesses can claim reimbursement of travel expenses, and the witnesses can also claim reimbursement of lost earnings.

Appeals can be made to the Administrative Appeals Chamber of the Upper Tribunal (on points of law) (with the Tribunal's permission), or the parents can ask the Tribunal to set its decision aside.

**History (including any reforms, also ongoing reforms)**

**Statistics**

**Reported cases, problems, issues identified in academic writings**

See Annual Reports on the Tribunal website:  
<http://www.sendist.gov.uk/FormsGuidance/annualReports.htm>.

## **ESTATE AGENTS APPEAL PANEL**

(<http://www.estateagentappeals.tribunals.gov.uk/>):

The Panel considers appeals from estate agents against decisions by the Office of Fair Trading (OFT). Under the Estate Agents Act 1979 the OFT can make an order which prohibits someone from acting as an estate agent (this is possible when the person has been convicted of fraud or dishonesty or have engaged in a practice which was declared undesirable by the Secretary of State, and in addition when the OFT is convinced that the person is unfit to continue working as estate agent). OFT also issues warning orders against those who are not meeting their duties under the Act.

Information from the website of the Office of Fair Trading:  
([http://www.oft.gov.uk/advice\\_and\\_resources/resource\\_base/EARS/](http://www.oft.gov.uk/advice_and_resources/resource_base/EARS/))

“From 1 October 2008 the Estate Agents Act 1979 is amended to introduce a requirement for persons engaging in estate agency work in residential property to be a member of an OFT approved estate agents redress scheme. Details of schemes that are currently approved and available for estate agents to join are on the main [Estate Agents Redress Scheme pages](#). Further details of the approved estate agents redress schemes, including how to join, are available on the redress schemes' own websites or by contacting them direct. The Secretary of State for Business Enterprise and Regulatory Reform made an Order under The Estate Agents Act 1979 (as amended by The Consumers, Estate Agents and Redress (CEAR) Act 2007) on 1 July 2008. This requires those engaging in estate agency work in respect of residential property to join an approved estate agents redress scheme by the time the Order comes into force on 1 October 2008.”

Approved applications are (analysed elsewhere):

**Ombudsman for Estate Agents (OEA)**  
**Surveyors Ombudsman Service (SOS)**

### **Statutory basis (legal basis)**

Estate Agents Act 1979 (Article 7 – right to appeal to the Secretary of State)  
[http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1979/cukpga\\_19790038\\_en\\_1#pb2-l1g7](http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1979/cukpga_19790038_en_1#pb2-l1g7). Estate Agents (Appeals) Regulations 1981  
([http://www.estateagentappeals.tribunals.gov.uk/Documents/Estate\\_Agents\\_Appeals\\_Regulations\\_1981\\_as\\_at\\_March\\_2008.pdf](http://www.estateagentappeals.tribunals.gov.uk/Documents/Estate_Agents_Appeals_Regulations_1981_as_at_March_2008.pdf)).

### **Links with government and funding**

Responsibility for administration of the Panel rests with the Tribunals Service. “The Secretary of State appoints people to hear appeals on his behalf, the appointments being made from a standing panel of suitability qualified independent persons. The panel that is appointed to hear each appeal usually has three members with an experienced lawyer as chairman (it is known as “the appointed persons” or simply “the panel”). Although a government minister appoints the panel members, they are independent of, and their conduct in respect of your appeal is not influenced by, the Government. The panel will write a report to the Secretary of State on the hearing, giving its recommendations on the outcome of the appeal.” (Explanatory leaflet. A short guide for appellants of 2008 [http://www.estateagentappeals.tribunals.gov.uk/Documents/QS\\_EAAP\\_Explain.pdf](http://www.estateagentappeals.tribunals.gov.uk/Documents/QS_EAAP_Explain.pdf), p. 4).

### **Governance and structure**

Since 1 April 2008, the Tribunals Service has been responsible for the administration of appeals to the Secretary of State under the 1979 Act.

Decisions on appeals under section 7 of the 1979 Act are made by the Secretary of State for Business, Enterprise and Regulatory Reform (BERR) in the light of his policy on appeals.

There is a standing panel of four legally qualified Chairmen and 10 wing members. Appeals are generally heard by a panel of three, a Chairman and two wing members; the hearing is generally held at a location reasonably close to the appellant’s place of business (source – website of the Tribunals Service: <http://www.estateagentappeals.tribunals.gov.uk/aboutus.htm>).

### **Budget and expenditure**

#### **Aims**

**The Estate Agents Appeal Panel** deals with appeals made by estate agents against decisions of the OFT on behalf of the Secretary of State. By virtue of the Estate Agents Act 1979, the OFT can make an order prohibiting a person from acting as an estate agent. “A prohibition order can be made where, for example, a person has been convicted of an offence involving fraud or other dishonesty, provided that the OFT is, in addition, satisfied that the person is not fit to carry on estate agency work. It is also open to the OFT to issue warning orders where, for example, someone has not met their duties under the 1979 Act. Appeals from such decisions made by the OFT can be made to the Secretary of State, under section 7 of the 1979 Act. These appeals are heard on behalf of the Secretary of

State by a panel of independent persons appointed for that purpose.” (source – website of the Tribunals Service: <http://www.estateagentappeals.tribunals.gov.uk/aboutus.htm>).

#### **Procedure:**

- **who can apply for compensation/refer claims**

Persons who have received an order of the OFT can bring a notice of appeal.

- **formal requirements and time limits**

Persons who have received an order of the OFT can bring a notice of appeal to the Secretary of State within 28 days from receipt of notice of the decision to make an order. The notice of appeal should be accompanied by the notice of grounds for appeal.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

Notice of appeal and notice of grounds for appeal, if accepted by the Secretary of State, are sent to the OFT, which has 28 days to reply. The appellant then has another 28 days to make a response. The grounds may be amended by the Secretary of State (on the request of the appellant) (Regulation 6 of the 1981 Regulations). Appeals can be disposed of without a hearing or after a hearing has been held (Regulations 8 – 17).

Appeals are made to the Secretary of State, and the Panel hears the appeals in the name of the latter. Both the OFT and the appellant can argue their case before the panel which then makes a report to the Secretary of State. The report includes the recommendations of the panel as to whether the appeal should be allowed or dismissed. It is the Secretary of State’s policy that he will, save in exceptional cases, follow the recommendations of the panel and will not depart from the panel’s recommendations without first having invited the parties to make representations (source: Explanatory leaflet. A short guide for appellants of 2008 [http://www.estateagentappeals.tribunals.gov.uk/Documents/QS\\_EAAP\\_Explain.pdf](http://www.estateagentappeals.tribunals.gov.uk/Documents/QS_EAAP_Explain.pdf)).

Appeals from the decisions of the Secretary of State on points of law can be made to the High Court, the Court of Session, or a judge of the High Court in the Northern Ireland.

- **results – compensation, other**

Appeals can be accepted or rejected.

- **Costs**

Under Section 7.2 of the Estate Agents Act the Secretary of State can make directions as to costs to be covered by one or the other party.

**History (including any reforms, also ongoing reforms)**

**Statistics**

**Reported cases, problems, issues identified in academic writings**

The Panel's website informs that there are no recent decisions.

FINANCE AND TAX TRIBUNALS

[\(http://www.financeandtaxtribunals.gov.uk/\)](http://www.financeandtaxtribunals.gov.uk/)

**Financial Services and Markets Tribunal**

Independent body established by Section 132 of the Financial Services and Markets Act 2000. It hears references arising from decision notices issued by the Financial Services Authority in a variety of regulatory or disciplinary matters:

1. Authorisation and permission or regulated activities under the Act;
2. Penalties for market abuse (a legal assistance scheme was established under Section 134(1) of the Act for individuals bringing market abuse cases before the Tribunal);
3. Disciplinary measures (if regulated people or firms breach their obligations under the Act);
4. Official listing (the FSA may suspend listing of certain securities);
5. Others (other disciplinary measures against employees of regulated individuals or firms, etc.).

**Statutory basis (legal basis)**

Financial Services and Markets Act 2000, and Financial Services and Markets Tribunal Rules 2001 (<http://www.opsi.gov.uk/si/si2001/20012476.htm>).

**Links with government and funding**

Administered by the Tribunals Service, similarly with other Tribunals.



## **Governance and structure**

There are 8 legally qualified members and 17 non-legal members.

## **Budget and expenditure**

## **Aims**

To deal with references involving decisions by the FSA.

## **Procedure:**

- **who can apply for compensation/refer claims**

An individual or a firm to whom a decision notice of the FSA is directed can make references to the Tribunal. Third parties may make contributions during proceedings.

- **formal requirements and time limits**

Rule 4 of the Tribunal Rules 2001 provides:

“(1) A reference shall be made by way of a written notice ("the reference notice") signed by or on behalf of the applicant and filed by the applicant.

(2) In any case not covered by section 133(1)(a) (which provides that a reference must be made before the end of the period of 28 days beginning with the date on which a decision notice or supervisory notice is given), the period specified for the purposes of section 133(1)(b) (such other period as may be specified for making a reference) shall be the period of 28 days beginning with the date on which the Authority notice is given.”

This Rule also contains formal requirements as to the contents of the reference notice.

See also Financial Services and Markets Tribunal. Explanatory Leaflet. A short guide for Applicants (2008 - <http://www.tribunals.gov.uk/Finance/Documents/FSMTExplanatoryleaflet.pdf>).

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

After the Authority is informed of the reference, it has 28 days to submit a statement of the case in support of the referred action. The applicant then has 28 days to reply to the statement of the case.

The Tribunal may give directions to the parties throughout the proceedings. A pre-hearing review is usually held where the parties are informed of the directions. A preliminary hearing may also be held to determine any issue of fact or law.

A reference may be determined with or without a hearing (Part III of the Tribunal Rules 2001 provides detailed rules concerning hearings).

The Tribunal may review and set aside its decision if it was made wrongly or if new evidence came to light. Appeals from the decisions of the Tribunal are to be brought to the Court of Appeal (subject to permission by the Tribunal).

- **results – compensation, other**

The Tribunal reviews the FSA's action and decides on the future steps.

- **costs**

As specified in the Short Guide to Applicants, "as a general rule, public funding is not available for references to the Financial Services and Markets Tribunal. However, where a matter relating to alleged market abuse is referred to the Tribunal under section 127(4) of the Act a special scheme of legal assistance has been established to provide financial help."

The Tribunal may make a costs order, and Rule 21 specifies that:

"(1) In this rule, "costs order" means an order under paragraph 13 of Schedule 13 (power of Tribunal to order payment of costs) that a party pay the whole or part of the costs or expenses incurred by another party, and "the paying party" and "the receiving party" mean, respectively, the parties against whom and in whose favour the Tribunal makes, or (as the case may be) considers making a costs order.

(2) The Tribunal shall not make a costs order without first giving the paying party an opportunity to make representations against the making of the order.

(3) Where the Tribunal makes a cost order it may order -

(a) that an amount fixed by the Tribunal shall be paid to the receiving party by way of costs or (as the case may be) expenses; or

(b) that the costs shall be assessed or (as the case may be) expenses shall be taxed on such basis as it shall specify -

(i) in England and Wales, by a costs official;

(ii) in Scotland, by the Auditor of the Court of Session;

(iii) in Northern Ireland, by the Taxing Master of the Supreme Court of Northern Ireland."

## **History (including any reforms, also ongoing reforms)**

### **Statistics**

See the Quarterly Review available on the following website:  
<http://www.tribunals.gov.uk/Finance/Documents/FSMTposter.pdf>

### **Reported cases, problems, issues identified in academic writings**

The decisions are reported on the website:  
<http://www.tribunals.gov.uk/Finance/Decisions/Financial.htm>

## **Pensions Regulator Tribunal**

<http://www.tribunals.gov.uk/Finance/PensionsRegulator.htm>

Independent judicial body which hears appeals from certain determinations of the Pensions Regulator.

### **Statutory basis (legal basis)**

Section 102 of the Pensions Act 2004, and the Pensions Regulator Tribunal Rules 2005 (<http://www.opsi.gov.uk/si/si2005/20050690.htm>).

### **Links with government and funding**

Administered by the Tribunals Service, similarly with other Tribunals.

### **Governance and structure**

The President of the Tribunal is a judge; the Tribunal has some legal members (chairmen) and some lay members.

### **Budget and expenditure**

### **Aims**

As specified above – to hear appeals from the Pensions Regulator’s determinations.

### **Procedure:**

- **who can apply for compensation/refer claims**

Persons (firms or individuals) to whom Pensions Regulator’s notice was directed and who have wish to appeal against the determinations of the Pensions can make appeals.

See “Pensions Regulator Tribunal. Explanatory Leaflet. A short guide for appellants” 2008 - <http://www.tribunals.gov.uk/Finance/Documents/PRTExplanatoryleaflet.pdf>.

The determinations against which appeals can be made can be either in a determination notice or a final notice (only those specified by the Act): they could involve for example imposition of financial penalty, suspension or prohibition of a trustee, an order winding up or freezing a scheme (Explanatory Leaflet, p. 3).

- **formal requirements and time limits**

References must be made in writing (reference notice) (Rule 4 of the Tribunal Rules 2005 – it contains all the necessary elements of the notice). Where the applicant was given a determination notice (following standard procedure) or final notice (following special procedure) by the Regulator, a copy shall be filed with the reference notice. They must be made within 28 days from receipt of the disputed decision notice (although the appellant can make a reference after the expiry of the time period, and it will be accepted by the Tribunal if there are genuine reasons for the delay – see Rule 15 of the Tribunal Rules 2005 (directions varying time limits).

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

After receiving the reference notice, the Tribunal sends it to the Pensions Regulator which has 28 days to provide statement of the case in support of the decision. The statement is sent to the appellant who has 28 days to respond.

Similarly with other Tribunals, the Pensions regulator Tribunal can give directions during the proceedings. There can be a pre-hearing review where the Tribunal gives directions, and a preliminary hearing. The case can be disposed of without a hearing (for example if the parties agree in writing or if the Regulator did not submit the statement of the case – Rules 20 and 21).

- **results – compensation, other**

Depending on the subject – appeal can be upheld or rejected.

- **costs**

There is no fee for appeals. Costs to the parties will depend on the complexity of the case and whether a legal representative is used. Normally, the appellants cannot receive public funding. However, in exceptional circumstances the Tribunal may decide to grant a

financial assistance order to the appellant if the interests of justice and the financial situation of the appellant justify this.

According to Rule 26 of the Tribunal Rules 2005:

“(3) The Tribunal shall not make a costs order without first giving the paying party an opportunity to make representations against the making of the order.

(4) Where the Tribunal makes a costs order it may order -

(a) that an amount fixed by the Tribunal shall be paid to the receiving party by way of costs or expenses;  
or

(b) that the costs shall be assessed or expenses shall be taxed -

(i) in England and Wales, by a costs officer;

(ii) in Scotland, by the Auditor of the Court of Session;

(iii) in Northern Ireland, by the Taxing Master of the Supreme Court of Northern Ireland,

on such basis as the Tribunal shall specify.”

If the Tribunal decides, of its own initiative or following an application by a party, that the decision was made in error, or if additional evidence comes to light, it can review its own decision and set it aside.

Appeals from the Tribunal’s decisions on points of law can be made to the Court of Appeal (subject to permission by the Tribunal).

### **History (including any reforms, also ongoing reforms)**

### **Statistics**

Decisions of the Tribunal are available on the website:

<http://www.tribunals.gov.uk/Finance/Decisions/Pensions.htm>

### **Reported cases, problems, issues identified in academic writings**

### **Claims Management Services Tribunal**

<http://www.tribunals.gov.uk/Finance/ClaimsManagementServices.htm>

Independent judicial body established by the Compensation Act 2006 (Section 12) to deal with appeals by individuals or companies engaged in claims management business in the areas including: personal injury, endowment misspelling, employment, housing disrepair, against decisions by Claims Management Regulator refusing them authorisation or imposing sanctions on them.

### **Statutory basis (legal basis)**

Compensation Act 2006 (Section 12), and the Claims Management Services Tribunal Rules 2007 ([http://www.opsi.gov.uk/si/si2007/uksi\\_20070090\\_en\\_1](http://www.opsi.gov.uk/si/si2007/uksi_20070090_en_1)) (these Rules are very similar to the rules of other finance tribunals).

### **Links with government and funding**

Similarly with other Tribunals, administered by the Tribunals Service.

### **Governance and structure**

There are 8 legally qualified Tribunal judges (including the President) and 17 members.

### **Budget and expenditure**

### **Aims**

As specified above: to consider appeals from individuals and companies engaged in the claims management business against decisions of the Claims Management regulator.

### **Procedure:**

- **who can apply for compensation/refer claims**

See the Claims Management Services Tribunal Explanatory Leaflet. A short guide for Appellants 2008 (<http://www.tribunals.gov.uk/Finance/Documents/CMSTExplanatoryleaflet.pdf>) and the Tribunal Rules 2007 mentioned above.

Individuals and companies to whom the Regulator's decisions are directed can appeal.

- **formal requirements and time limits**

See above finance tribunals – similar requirements (specified in the Rules). Notice of appeal form is available online: <http://www.tribunals.gov.uk/Finance/Documents/CMSTnoticeofappeal.pdf>

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

See above.

- **results – compensation, other**

Similar with other finance tribunals – see above – depending on the subject of appeal.

- **costs**

Similarly with other finance Tribunals, there is no fee. Costs to the parties will depend on the complexity of the case and whether legal representatives are used. No public funding is available to the appellants.

The Tribunal may make a costs order following Rule 26.

### **History (including any reforms, also ongoing reforms)**

#### **Statistics**

No statistical information available.

#### **Reported cases, problems, issues identified in academic writings**

**Consumer Credit Tribunal (see above)**

**Estate Agents Appeal Panel (see above)**

### **General Commissioners of Income Tax – now First-Tier Tribunal (Tax)**

<http://www.generalcommissioners.gov.uk/>, <http://www.tribunals.gov.uk/tax/>

First-tier Tribunal (Tax) hears appeals against decisions relating to tax made by Her Majesty's Revenue and Customs (HMRC). Appeals can concern direct and indirect tax (direct tax is a tax that is usually levied directly on an individual or organisation, such as

income tax or corporation tax, indirect tax is usually levied on goods or services rather than on an individual or organisation, such as VAT or Customs Duty).

The Tax Chamber was established on 1 April 2009 (See press release at the following website:

[http://www.tribunals.gov.uk/Tribunals/Documents/Releases/PN\\_0209\\_NewTaxAppealsSystemLaunched\\_final.pdf](http://www.tribunals.gov.uk/Tribunals/Documents/Releases/PN_0209_NewTaxAppealsSystemLaunched_final.pdf)). It replaces former separate Tax Tribunals:

- the General Commissioners;
- the Special Commissioners;
- VAT & Duties; and
- Section 706 Tribunals.

Appeals against HMRC decisions heard in the Tax Chamber include:

- Income Tax
- Corporation Tax
- Capital Gains Tax
- Inheritance Tax
- Stamp Duty Land Tax
- PAYE coding notices
- National Insurance Contributions
- Statutory Payments
- VAT or duties such as custom duties, excise duties or landfill tax, aggregates or climate change levies
- The amounts of tax or duty to be paid, against penalties imposed upon them and against certain other decisions.

Source – Tribunal’s website: <http://www.tribunals.gov.uk/tax/>. (see also the same website for transitional arrangements).

The Tribunal does not deal with administrative complaints against the conduct of HMRC officials (source: “Making an appeal. Explanatory Booklet”, 2009, <http://www.tribunals.gov.uk/tax/Documents/MakinganappealWEB.pdf>).

### **Statutory basis (legal basis)**

The Tribunals, Courts and Enforcement Act 2007 (See below for analysis),  
The First-Tier Tribunal and the Upper Tribunal (Chambers) Order 2008 (allocating specific powers to the Chamber), and  
The Tribunal Procedure (First-Tier Tribunal) (Tax Chamber) Rules 2009  
([http://www.opsi.gov.uk/si/si2009/uksi\\_20090273\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20090273_en_1))



## **Links with government and funding**

As with other Tribunals, administered by the Tribunals Service.

## **Governance and structure**

Appeals are heard by panels that are constituted according to the needs of the case, and may be heard by legally qualified Judges, non-legally qualified expert Members or a mix of the two. The jurisdiction of the tax tribunal is UK-wide, and hearings are held in Tribunal Service venues across the United Kingdom.

## **Budget and expenditure**

### **Aims**

To hear appeals in tax cases, as specified above.

### **Procedure:**

- **who can apply for compensation/refer claims**

Appeals can be made by individuals or organisations.

- **formal requirements and time limits**

They depend on the type of case, but normally the time limit is 30 days from the date of both the original decision and any decision following review. An appeal brought outside the time limit can still be accepted if there are reasons for it.

The appeal forms are available online:

<http://www.tribunals.gov.uk/tax/Documents/NoticeofAppealPDFV1.pdf>.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

Rule 2 of the Tribunal Procedure Rules 2009 establishes the overriding objective of dealing with cases justly, and Rule 3 specifies that the Tribunal should seek to bring to the attention of the parties the possibility of using ADR, and facilitate its use if the parties so wish.

The Rules specify the Tribunal's powers to give directions, and to make costs orders (Part 2).

Part 3 of the Rules regulates the procedure before the Tribunal. It starts with the appellant bringing a notice of appeal, application notice or notice of reference. There can be several types of cases. Rule 23 specifies:

“(1) When the Tribunal receives a notice of appeal, application notice or notice of reference, the Tribunal must give a direction allocating the case to one of the categories set out in paragraph (2).

(2) The categories referred to in paragraph (1) are—

(a) Default Paper cases, which will usually be disposed of without a hearing;

(b) Basic cases, which will usually be disposed of after a hearing, with minimal exchange of documents before the hearing;

(c) Standard cases, which will usually be subject to more detailed case management and be disposed of after a hearing; and

(d) Complex cases”.

Rule 28 provides that:

“(1) If a case has been allocated as a Complex case the Tribunal may, with the consent of the parties, refer a case to the President of the Tax Chamber with a request that the case be considered for transfer to the Upper Tribunal.

(2) If a case has been referred by the Tribunal under paragraph (1), the President of the Tax Chamber may, with the concurrence of the President of the Finance and Tax Chamber of the Upper Tribunal (if that is a different person) direct that the case be transferred to and determined by the Upper Tribunal.”

Cases can be concluded with or without a hearing (the latter – if both parties agree and if the Tribunal agrees that it is possible to decide a case without a hearing – Rule 29).

Appeals from the Tribunal’s decisions on the points of law are to be brought before the Upper Tribunal (Finance and Tax), subject to approval by the First-Tier Tribunal <http://www.tribunals.gov.uk/financeandtax/AboutUs.htm>.

The form available online (<http://www.tribunals.gov.uk/tax/Documents/FTT1TaxformNOTESv1.0.pdf>) should be sent to the tribunal office that heard the case so that it is received no later than **56 days** after the date the tribunal sent the appellant one of the following:-

- Full written statement of reasons
- Notification that the statement of reasons has been amended or corrected following a review

- Notification that an application for the decision to be set aside has been unsuccessful. (Source – Guidance notes on completing the First-tier Tribunal application for permission to appeal to the Upper Tribunal - <http://www.tribunals.gov.uk/tax/Documents/FTT1TaxformNOTESv1.0.pdf>).

- **results – compensation, other**

Depending on the type and subject of appeal – reversal or a decision upholding an earlier decision of a HMRC. If it accepts that your appeal is valid, the Tribunal can replace the decision appealed against with the decision it thinks should have been made. In other cases it can only direct HMRC to reconsider their decision. If it does not accept that the appeal is valid it will uphold the decision appealed against.

- **costs**

Here the context is different than in case of some other tribunals – the appeals concern tax obligations, and thus in some cases the disputed taxes need to be paid before the appeal is brought. As explained in “Making an Appeal. Explanatory Booklet”, 2009: “in indirect tax appeals, the tax tribunal cannot hear an appeal that relates to disputed tax” unless the tax in dispute was paid or deposited, or the Tribunal (or HMRC) have waived that requirement” (the latter happens if the appellant demonstrated financial hardship).

There is no need to pay a fee to appeal to the tax tribunal, although the Tribunal does not reimburse travelling expenses for attending a tribunal hearing, and other costs related to legal advice or assistance. In some rare circumstances, the Tribunal may make an award of costs against either of the parties: for example if either of the parties behaved unreasonably or if the case is complex.

### **History (including any reforms, also ongoing reforms)**

As mentioned above, the new Chamber was established in 2009 to replace former separate Tax Tribunals:

- the General Commissioners;
- the Special Commissioners;
- VAT & Duties; and
- Section 706 Tribunals.

### **Statistics**

Decisions of all the former tax tribunals are available on the website: <http://www.financeandtaxtribunals.gov.uk/Aspx/default.aspx>.

## Reported cases, problems, issues identified in academic writings

### GAMBLING APPEALS TRIBUNAL

<http://www.gamblingappealtribunal.gov.uk/>

Independent body established to hear appeals against decisions of the Gambling Commission (<http://www.gamblingcommission.gov.uk/Client/index.asp>). The Commission issues licenses to operate to companies, as well as personal functional and personal management licenses to individuals in management positions. Thus, the appeals can concern the existing licenses or licensing applications. The Commission's internal review process must be completed before the appeal is brought before the Tribunal.

In March 2009 the Tribunal was scheduled to move into the General Regulatory Chamber of the First-Tier Tribunal (the date was moved to January 2010) (<http://www.tribunals.gov.uk/Tribunals/PlannedChanges/generalregulatorychamber.htm>).

As explained on the website of the Tribunal:

"The Tribunal deals with the following appeals categories as referred to in Sections 80, 127 and 336 of the Gambling Act 2005:

- An appeal against the decision not to issue or renew an operating or personal licence
- An appeal against the decision to attach a condition to a personal or operating licence
- An appeal against the decision to refuse to continue the effect of an operating licence when a new controller takes over
- An appeal against the decision to refuse to vary an operating or personal licence
- An appeal against the notification to lapse an operating or personal licence due to mental or physical incapacity
- An appeal following a review to:
  1. Attach a warning
  2. Attach an additional condition to a licence
  3. Remove or amend a condition attached to a licence
  4. Make, amend or remove an exclusion (for remote licences only)
- An appeal following a review to suspend a licence
- An appeal following a review to revoke a licence
- An appeal following a review to impose a financial penalty on an operating or personal licence
- An appeal against a decision to void a bet"  
(<http://www.gamblingappealtribunal.gov.uk/ruleslegislation.htm>)

## **Statutory basis (legal basis)**

Gambling Act 2005 ([http://www.opsi.gov.uk/acts/acts2005/ukpga\\_20050019\\_en\\_1](http://www.opsi.gov.uk/acts/acts2005/ukpga_20050019_en_1)),  
The Gambling Tribunal Rules 2006 (SI 2006 No. 3293)  
(<http://www.opsi.gov.uk/si/si2006/20063293.htm>), to be replaced by the First-Tier  
Tribunal (Regulatory Chamber) Rules in 2010.  
The Gambling Appeals Tribunals Fee Regulations 2006 (SI2006, No. 3287)  
(<http://www.opsi.gov.uk/si/si2006/20063287.htm>).

## **Links with government and funding**

As with other Tribunals, administered by the Tribunals Service. Members of the Tribunal are appointed by the Lord Chancellor, following a recommendation by the Judicial Appointments Commission.

## **Governance and structure**

The Tribunal has a President (judicial head) and 11 legal members. Normally appeals are heard by one Chairman, but more complex cases can be heard by a panel of three members.

## **Budget and expenditure**

### **Aims**

To consider appeals as specified above.

### **Procedure:**

- **who can apply for compensation/refer claims**

License holders and applicants for a licence with the Commission can make appeals.

- **formal requirements and time limits**

The Commission's internal review procedure must first be exhausted.

An appeal is made in writing, preferably on the Notice of Appeal form available online: <http://www.gamblingappealtribunal.gov.uk/Documents/GATNoticeofAppealPPSept2007.pdf>. If an appeal is made in a letter form, the Tribunal's website contains requirements as to the contents: <http://www.gamblingappealtribunal.gov.uk/formsguidance.htm> (see also Rule 4 of the Tribunal Rules 2006 (reference above). The appeal form/letter should be accompanied by a fee or a fee exemption or remission application (see below for fees).

The time limit for appeals is one month from the time when the Commission made the decision appealed against. Appellants can also appeal outside these time limits, but this is subject to the Tribunal's permission (permission may be given if there were good reasons for the appellant missing the time limit and if it is in the interest of justice to do so – Rule 12 of the Tribunal Rules). If the Tribunal refuses permission for an appeal outside the time limits the appellants may also appeal to the High Court in England and Wales and the Court of Session in Scotland for a judicial review of the Tribunal's refusal.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

See the "Gambling Appeals Tribunal. Explanatory Leaflet. A Short Guide for Users", 2007, <http://www.gamblingappealtribunal.gov.uk/Documents/GATExplanatoryLeafletfinal.pdf>.

As specified in Rules 5 and 6 of the Tribunal's rules, after the appeal is accepted by the Tribunal, it is sent to the Commission which has 28 days to file a statement of the case (in support of its decision). The appellant then has 28 days to respond to this statement.

Rules 7 and 8 contain specific provisions on disclosure during the proceedings.

The Tribunal may make directions during proceedings. Specific types of directions are mentioned in Rules 11 and 13 (the latter – fixing the time and date of a hearing) of the Tribunal Rules. A preliminary hearing may be held if there are any issues of fact or law to be decided as a preliminary matter. A pre-hearing review may also be held, when the Tribunal makes appropriate directions.

Part 3 of the Tribunal Rules contains very detailed provisions on the conduct of the hearing (although in some cases a hearing is not held – for instance if both parties agree in writing).

The Tribunal may review its decision, of its own initiative and on the application of a party – if it was made in error or if new evidence came to light (Rule 29).

Appeals from the Tribunal's decisions on point of law can be brought before the High Court in England and Wales and the Court of Session in Scotland (Part 4 of the Tribunal Rules).

- **results – compensation, other**

Depending on the subject of the appeal – the Commission's decision can be upheld or changed. The Commission can also be asked to reconsider its decision.

- **costs**

See Fee Guidance Notes, 2008:  
[http://www.gamblingappealtribunal.gov.uk/Documents/FGNotesOct08\\_GAT.pdf](http://www.gamblingappealtribunal.gov.uk/Documents/FGNotesOct08_GAT.pdf)

The fees are sometimes quite considerable (p. 4 of the Notes, and Schedule of the Fee Regulations 2006 (reference above): even 13,070 for a casino operating license, although the remaining types of fees are lower – for instance 8,710 for a lottery operating license), they depend on the type of license involved. However, the Guidance Notes also explain that some appellants may ask for a fee reduction, others will not need to pay at all (there are criteria concerning income and financial hardship – see Rule 3 of the Fee Regulations 2006 (reference above)).

The Tribunal may make a costs order – see Rule 28 of the Tribunal Rules:  
The following is an excerpt of the Rules:

“(2) The Tribunal may make a costs order against an appellant if it considers the bringing of the appeal, or the appellant's conduct in relation to the appeal, to be unreasonable or improper.

(3) The Tribunal may make a costs order against the Commission if it considers—

(a) that the Commission's decision or action which is the subject of the appeal was unreasonable to the extent that no reasonable person having the Commission's powers and being subject to the Commission's duties could have made that decision or taken that action; or

(b) that the Commission's conduct in relation to the appeal was unreasonable or improper to the extent that no reasonable person having the Commission's powers and being subject to the Commission's duties would have conducted themselves in that way; or

(c) that both paragraphs (a) and (b) apply.

(4) If the Tribunal allows the appellant's appeal but does not make a costs order against the Commission it must, unless it considers that there is a good reason not to do so, order the Commission to pay the appellant an amount equal to any fees paid by the appellant.

(5) The Tribunal must not make a costs order or a fee reimbursement order without first giving the party against whom the order is made an opportunity to make representations against the making of the order.

### **History (including any reforms, also ongoing reforms)**

See above for the introduction of changes which are soon to take place (transfer to the First-Tier Tribunal).

## Statistics

Not available on the Tribunal website.

## Reported cases, problems, issues identified in academic writings

### GENDER RECOGNITION PANEL

<http://www.grp.gov.uk/>

Established by the Gender Recognition Act 2004 to consider applications of transsexual people to have the gender they transferred into recognised.

For now the GRP is unaffected by the changes in the Tribunals structure. The current plan is to transfer GRP to the Social Entitlement Chamber of the First Tier Tribunal with appeals to the Upper Tribunal from 2009 (<http://www.grp.gov.uk/ruleslegislation.htm>).

#### Statutory basis (legal basis)

Gender Recognition Act (2004)  
[http://www.opsi.gov.uk/acts/acts2004/ukpga\\_20040007\\_en\\_1#pb1-l1g1](http://www.opsi.gov.uk/acts/acts2004/ukpga_20040007_en_1#pb1-l1g1)). Sections 1 – 8 regulate applications.

#### Links with government and funding

As with other Tribunals, it is a part of the Tribunals Service.

#### Governance and structure

The Panel has a President, a Deputy President, three legal members and six medical members. The operation of the Panel is also reviewed by the User Group: which provides an opportunity to discuss matters relating to the Panel's, non case specific, operations and processes with representatives from the Panel and administration. The third user group meeting was held on 5th November 2008 and it is intended that next meeting will be held in October / November 2009 (<http://www.grp.gov.uk/aboutus.htm>).

#### Budget and expenditure

#### Aims



As above.

**Procedure:**

- **who can apply for compensation/refer claims**

According to Section 1 of the Act, applicants must be over 18 years old and must prove that:

- They have, or have had, gender dysphoria;
- They have lived fully for the last two years in your acquired gender, and
- They intend to live permanently in your acquired gender (new gender).

<http://www.grp.gov.uk/formsguidanceagrapplication.htm> (here also one can find the form for making an application).

Section 3 of the Act requires applications to include 'evidence':

(a) a report made by a registered medical practitioner practising in the field of gender dysphoria and a report made by another registered medical practitioner (who may, but need not, practise in that field), or

(b) a report made by a chartered psychologist practising in that field and a report made by a registered medical practitioner (who may, but need not, practise in that field).

(2) But subsection (1) is not complied with unless a report required by that subsection and made by—

(a) a registered medical practitioner, or

(b) a chartered psychologist,

practising in the field of gender dysphoria includes details of the diagnosis of the applicant's gender dysphoria.

(3) And subsection (1) is not complied with in a case where—

(a) the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics, or

(b) treatment for that purpose has been prescribed or planned for the applicant,

unless at least one of the reports required by that subsection includes details of it."

There is also a recognition process for applicants from overseas:

“Many other countries and territories now make provision in their law for transsexual people to change gender. Having obtained legal recognition for their change of gender in a country or territory outside of the UK, they may then wish to have that gender change recognised in the UK. For example, they may wish to marry someone here, or they may be living or working here.

Except where the original change of legal gender took place within the European Union (EU) or European Economic Area (EEA), the Gender Recognition Act 2004 does not provide for overseas gender changes to be automatically recognised in the UK. However, it does allow a person whose change of gender has been recognised overseas to apply for a gender recognition certificate on the basis of a simplified procedure, provided the country or territory in question is one which has been approved for this purpose by the Secretary of State.”  
(<http://www.grp.gov.uk/formsguidancelistapprovedcountriesterritories.htm>).

- **formal requirements and time limits**

No specific time limits are set out.  
See above for requirements.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

See the following website for the Gender Recognition Application Process:  
[http://www.grp.gov.uk/documents/GRP\\_process.pdf](http://www.grp.gov.uk/documents/GRP_process.pdf).

The following is the information on the Panel’s website:

1. “On receipt of your application form, we will send you an acknowledgement.
2. We will then take payment for the application.
3. We will examine and verify your application. If we believe that we need additional information, we will write and tell you what other evidence you need to send us.
4. Once we have collected all the evidence we will present your case to the panel.
5. The panel may ask for more evidence - if they do, we will write and tell you what else you need to send us.
6. The panel will then decide whether your application is successful or not.
7. If your application is unsuccessful, we will write and tell you why.
8. If the application is successful, we will inform the General Registrars Office and the Inland Revenue and we will send you your gender recognition certificate.”  
(<http://www.grp.gov.uk/ruleslegislation.htm>)

Section 8 of the Act specifies the appeals procedure:

“(1) An applicant to a Gender Recognition Panel under section 1(1), 5(2) or 6(1) may appeal to the High Court or Court of Session on a point of law against a decision by the Panel to reject the application.

(2) An appeal under subsection (1) must be heard in private if the applicant so requests.

(3) On such an appeal the court must—

(a) allow the appeal and issue the certificate applied for,

(b) allow the appeal and refer the matter to the same or another Panel for re-consideration, or

(c) dismiss the appeal.”

- **results – compensation, other**

See above. Section 4 of the Act specifies that:

“(1) If a Gender Recognition Panel grants an application under section 1(1) it must issue a gender recognition certificate to the applicant.

(2) Unless the applicant is married, the certificate is to be a full gender recognition certificate.

(3) If the applicant is married, the certificate is to be an interim gender recognition certificate.”

- **costs**

There is an application fee: the maximum fee is 140, but there are cases where applicants may be relieved of having to pay it, or may only pay a reduced fee. See the Fee Guidance (March 2009) online: [http://www.grp.gov.uk/documents/guidance/GRP\\_Fees\\_March09.pdf](http://www.grp.gov.uk/documents/guidance/GRP_Fees_March09.pdf).

### **History (including any reforms, also ongoing reforms)**

#### **Statistics**

No statistics are available on the website.

#### **Reported cases, problems, issues identified in academic writings**

Important judgements in cases concerning transsexuals are on the Panel's website:  
<http://www.grp.gov.uk/ruleslegislation.htm>.

## INFORMATION TRIBUNAL

Formerly known as the Data Protection Tribunal <http://www.informationtribunal.gov.uk/>

This is the information about the Tribunal's functions on the website of the Tribunal:  
<http://www.informationtribunal.gov.uk/>

"The Information Tribunal, formerly known as the Data Protection Tribunal, hears appeals from notices issued by the Information Commissioner under:

- Freedom of Information Act 2000 (FOIA)
- Data Protection Act 1998 (DPA)
- The Privacy and Electronic Communications Regulation 2003 (PECR)
- The Environmental Information Regulations 2004 (EIR)

When a Minister of the Crown issues a certificate on grounds of national security, a special panel of the Information Tribunal called the [National Security Appeals Panel](#) (NSAP), manages and hears any appeals."

The Information Tribunal is planned to be transferred to the General Regulatory Chamber of the First-Tier Tribunal in January 2010 (<http://www.tribunals.gov.uk/Tribunals/PlannedChanges/generalregulatorychamber.htm>).

### **Statutory basis (legal basis)**

As mentioned above:

- Freedom of Information Act 2000 (FOIA)
- Data Protection Act 1998 (DPA)
- The Privacy and Electronic Communications Regulation 2003 (PECR)
- The Environmental Information Regulations 2004 (EIR)

The list of legislation applicable in this area can be found on the following website:  
<http://www.informationtribunal.gov.uk/ruleslegislation.htm>.

The following statutory instruments apply:

The Information Tribunal (Enforcement Appeals) Rules 2005  
<http://www.opsi.gov.uk/si/si2005/20050014.htm>

The Information Tribunal (Enforcement Appeals) (Amendment) Rules 2005  
<http://www.opsi.gov.uk/si/si2005/20050450.htm>

The Information Tribunal (National Security Appeals) Rules 2005  
<http://www.opsi.gov.uk/si/si2005/20050013.htm>

See also Practice Notes:  
[http://www.informationtribunal.gov.uk/Documents/formsguidance/InformationTribunalPracticeNotes\\_191208.pdf](http://www.informationtribunal.gov.uk/Documents/formsguidance/InformationTribunalPracticeNotes_191208.pdf).

### **Links with government and funding**

As with other Tribunals: part of the Tribunals Service.

### **Governance and structure**

The Chairman and 7 Deputy Chairs are solicitors and barristers with at least 7 years' experience. There are also 34 non-legal members (people with experience in the field of data protection – for instance those who have worked with data controllers). Except for NSAP cases, a panel composed of the Chairman or a Deputy Chairman along with two Non Legal Members, all appointed by the Lord Chancellor, hears appeals.

Operation is also overseen and supported by the Users Group, the latest meeting of which took place on 19 March 2009 (<http://www.informationtribunal.gov.uk/aboutus.htm>) – also to discuss the transfer to the General Regulatory Chamber of the First-Tier Tribunal.

### **Budget and expenditure**

#### **Aims**

As specified above: to hear appeals against the following types of notices of the Information Commissioner:

- decision notices,
- information notices,
- special notices, and
- enforcement notices.

**Procedure** (the Tribunal's website contains guidance on making appeals in this complex area: <http://www.informationtribunal.gov.uk/formsguidance.htm>):

- **who can apply for compensation/refer claims**

All those to whom a decision of an Information Commissioner was directed can make appeals against this decision.

- **formal requirements and time limits**

An appeal must be made in writing on an application form (Notice of Appeal form) available online:

<http://www.informationtribunal.gov.uk/Documents/NoticeofAppealformJan07.pdf>.

Formal requirements on the contents of the Notice and the attachments are in the Rule 4 of the Information Tribunal (Enforcement Appeals) Rules 2005 (SI 2005/14) as amended by the Information Tribunal (Enforcement Appeals) Rules 2005 (SI 2005/450).

The time limit for appeals is 28 days from the date of receiving the Commissioner's notice. Permission may be sought to make an appeal after this deadline.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

After receiving the Notice, the Tribunal sends it to the Commissioner who has 21 days for response. As with other Tribunal proceedings, a preliminary hearing can be held, as well as a directions hearing (see "Initial and Possible Directions: <http://www.informationtribunal.gov.uk/Documents/InitialDirectionsNov2007.pdf>).

Cases can also be decided without a hearing.

Decisions of the Tribunal (other than decisions of the National Security Appeals Panel) can be appealed on a point of law to the High Court under section 59 of the Freedom of Information Act 2000. A Notice of Appeal must be received by the High Court within 28 days of the date of decision.

- **results – compensation, other**

Depending on the subject of the appeal – the Commissioner's decision may be upheld or changed. The Commissioner may also be asked to reconsider the decision.

- **costs**

As with many other Tribunals, there are no costs to making appeals. However, the costs of appeals can still be quite considerable, especially if the appellant uses legal advice

and assistance. Each party pays his/her own costs here, although the Tribunal can make a costs order (Rule 29 of the Tribunal Rules 2005).

There is no legal aid available for cases before the Information Tribunal. The Tribunal's website suggests the following organisations who may be able to offer assistance (<http://www.informationtribunal.gov.uk/formsguidanceappeal.htm>):

The Bar Pro Bono Unit - national charity matching barristers prepared to undertake pro-bono work with those who need their help. [www.barprobono.org.uk](http://www.barprobono.org.uk).

LawWorks - national charity matching solicitors prepared to undertake pro-bono work with those who need their help. [www.lawworks.org.uk](http://www.lawworks.org.uk).

Friends of the Earth's Rights and Justice Centre provides free advice to members of the public in relation to their rights under the Environmental Information Regulations 2004 and is able to represent requesters at appeals before the Information Tribunal in appropriate cases.

### **History (including any reforms, also ongoing reforms)**

As mentioned above, the Information Tribunal (previously called Data Protection Tribunal) was established to hear appeals under the Data Protection Act 1984. It continued to hear appeals after the Data Protection Act 1998 (DPA) came into effect (<http://www.informationtribunal.gov.uk/aboutus.htm>). The Tribunal was renamed the Information Tribunal when it was given the power to hear information appeals under the Freedom of Information Act 2000 (FOIA), the Privacy and Electronic Communications Regulations 2003 (PECR) and the Environmental Information Regulations 2004 (EIR).

### **Statistics**

No statistical information available on the website of the Tribunal.

### **Reported cases, problems, issues identified in academic writings**

See the following link to the recent instance of the House of Lords approval of the Tribunal's decision (*Sugar v BBC*):  
<http://www.informationtribunal.gov.uk/DBFiles/Appeal/i59/SugarLordsJudgment.pdf>.

See the following link for current cases:  
<http://www.informationtribunal.gov.uk/currentcases.htm>.

See the following for the Tribunal's decisions:  
<http://www.informationtribunal.gov.uk/Public/search.aspx>.

## TRANSPORT TRIBUNAL

<http://www.transporttribunal.gov.uk/>

Originally established in 1985 (Transport Act) to hear appeals from decisions of the Traffic Commissioners in relation to the Heavy Goods Vehicles and Public Service Vehicles Operators Licencing Systems.

Now (since 1 April 2002) it also considers appeals against decisions of the Registrar of Approved Driving Instructors, resolves disputes under the Postal Services Act 2000, and the Tribunal members act as the London Service Permit Appeals Panel.

As explained in the Explanatory Note. A Short Guidance for Users (reference below):

“Most of the Tribunal s work consists of appeals against decisions of Traffic Commissioners. Heavy Goods Vehicle Appeals relate to truck operators licences (O licences) and operating centres & Public Service Vehicle Appeals relate to bus operators and services, including financial penalties. The Tribunal also hears and decides appeals against decisions of the Registrar of Approved Driving Instructors. (In addition the Tribunal deals with disputes over postal charges)”.

It is set to move (at least some of its jurisdiction – namely appeals against decisions of the Driving Standards Agency) to the General Regulatory Chamber of the First-Tier Tribunal (the Chamber is to be established, subject to the Parliamentary approval, in September 2009)

(<http://www.tribunals.gov.uk/Tribunals/PlannedChanges/generalregulatorychamber.htm>).

### **Statutory basis (legal basis)**

As mentioned above – Transport Act 1985, the Tribunal Rules were enacted in 2002 and since then they were amended – see <http://www.transporttribunal.gov.uk/RulesLegislation/rulesLegislation.htm>.

### **Links with government and funding**

As with other Tribunals – part of the Tribunals Service.

### **Governance and structure**

The President is the judicial head, and the Tribunal has are legal and non-legal members.

### **Budget and expenditure**

### **Aims**



As specified above.

**Procedure:**

- **who can apply for compensation/refer claims**

Anyone to whom the decision appealed against, and some third parties, was directed can appeal.

The Short Guide for Users explains that the following persons can make appeals:

**“3.1 Appeals against decisions by Traffic Commissioners**

a) Operators - You can appeal against the decision if you are the applicant for a licence, or the licence-holder, or the former licence-holder. You may be an individual or a company or a partnership.

b) Other Parties

Sometimes a statutory objector has become involved in the case, and has the right to bring an appeal, or respond to an appeal brought by an operator. Objectors may include the Police, a local authority, any other planning authority, the Road Haulage Association, the Freight Transport Association, the British Association of Removers or a Trades Union.”

**“3.2 Driving Instructor Appeals**

a) Both approved driving instructors and trainee instructors may appeal.”

As explained in the Short Guide for Users (reference below):

In Heavy Goods Vehicles and Public Service Vehicles appeals:

“A right of appeal arises when, for example, a Traffic Commissioner:

- a) refuses to grant a licence, or
- b) refuses to vary an existing licence, or
- c) attaches conditions to the licence, or grants a licence which allows fewer vehicles than the number applied for, or
- d) [PSV cases] determines that registered local bus services have not been operated properly, and imposes financial penalties , or
- e) revokes, suspends or curtails an existing licence, or
- f) disqualifies an individual or a company.”

In Driving Instructor Appeals:

“A right of appeal arises when, for example, the Registrar:

- a) refuses to enter a name on the register,
- b) refuses to maintain a name on the register,

- c) removes a name from the register, or
- d) refuses to grant or revokes a trainee's licence."

- **formal requirements and time limits**

The appeals are made by a written statement, with all the necessary requirements specified in Rule 12 for appeals from decisions of Traffic Commissioners and Rule 18B for appeals from the Registrar. Notice of appeal forms are available online in the Explanatory Leaflet. A Short Guide for Users (reference below).

The time limits are:

In appeals against Traffic Commissioners – 28 days.

In appeals against the Registrar – 28 days for trainee instructors and 14 days for qualified instructors.

Appellants may make appeals after the deadline if the Tribunal allows them to do so.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

See the "Transport Tribunal. Explanatory Leaflet. A Short Guide for Users", 2004 ([http://www.transporttribunal.gov.uk/Documents/formsGuidance/ExplanTT0504\\_24No v08.pdf](http://www.transporttribunal.gov.uk/Documents/formsGuidance/ExplanTT0504_24No v08.pdf)).

After the appeal is brought, orders of the Commissioner or the Registrar are not automatically suspended, but they may be suspended by the Tribunal at the request of the appellant (See Section 5 of the Short Guide).

In appeals against Commissioner's decision:

After the notice of appeal (available online in the Explanatory Leaflet – reference above) is received, the Tribunal sends it to the Commissioner and some other parties (Secretary of State, operators, objectors, and all 'representors'). They are given the opportunity to submit responses.

In appeals against decisions of the Registrar:

According to the *Transport Tribunal Rules 2000*, after receipt of the notice of appeal, the Tribunal will require the Registrar to provide within 14 days a statement of case together with details of the evidence. The Tribunal then sends copies to the Appellant who is in turn required to respond within 14 days with his statement of case.

Normally a hearing takes place, during which the complainant may be represented by a legal representative.

Appeals from the Tribunal's decisions on the point of law can be brought, subject to the Tribunal's permission, to the Court of Appeal in England and the Court of Session in Scotland.

- **results – compensation, other**

Depending on the subject of the appeal.

- **costs**

There is no fee payable to the Tribunal, but other costs must be borne by the parties. Tribunal may also make a costs order (Rule 39 of the Tribunal Rules). No legal aid is available for these proceedings. (the Traffic Commissioner is never a party to a Transport Tribunal case, but the Registrar always is.)

### **History (including any reforms, also ongoing reforms)**

#### **Statistics**

See the decisions' register on the website:  
<http://www.transporttribunal.gov.uk/DecisionsDigest/decisionsDigest.htm>.

#### **Reported cases, problems, issues identified in academic writings**

See above.

### **SOCIAL SECURITY & CHILD SUPPORT AND WAR PENSIONS TRIBUNALS**

<http://www.tribunals.gov.uk/tribunals/socialsecurity.htm>

I. Social Security and Child Support Appeal Tribunal (<http://www.appeals-service.gov.uk/>) – the LARGEST TRIBUNAL, handles 25% of all cases (source – Leggatt Review, Introduction, also: Wraith R E and Hutchesson P G Administrative Tribunals (London 1973); Farmer J Tribunals and Government (London, 1974); Justice/All Souls Review of Administrative Justice Administrative Justice Some Necessary Reforms (Oxford, 1988); Harris M and Partington M (eds.) Administrative Justice in the 21st Century (Oxford, 1999)).

The Appeals Service is to be wound up on 3 November and its jurisdiction transferred to the First-tier Tribunal (Social Entitlement Chamber).

The Social Security and Child Support Appeals (SSCSA) Tribunal deals with disputes about:

- Income Support; Jobseeker's Allowance
- Incapacity Benefit; Disability Living Allowance
- Attendance Allowance
- Retirement Pensions
- Child Support Maintenance; Tax Credits
- Statutory Sick Pay (SSP)/ Statutory Maternity Pay (SMP)
- Compensation Recovery Scheme/ Road Traffic (NHS) charges
- Vaccine Damage
- Decisions on Housing Benefit and Council Tax Benefit.

The Rules which apply here are analysed below: The Tribunal Procedure (First-Tier Tribunal) (Social Entitlement Chamber) Rules 2008

[http://www.opsi.gov.uk/si/si2008/uksi\\_20082685\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20082685_en_1)

- II. Social Security and Child Support Commissioners (<http://www.osscsc.gov.uk/>)  
– taken over by the Upper Tribunal on 3 November 2008.

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## TRIBUNALS SYSTEM AFTER THE REFORM

Section 3 of the 2007 Act established the First-Tier Tribunal and Upper Tribunal. Sections 22(1) and 22(2) of the Act provide that the Tribunal Procedure Rules are to be established by the Tribunal Procedure Committee to govern the procedure before First-Tier and Upper Tribunals. These Rules are accompanied by Practice Directions.

As explained in the Explanatory Memorandum to The Tribunal Procedure (First-Tier Tribunal (War Pensions and Armed Forces Compensation Chamber) Rules,<sup>62</sup> The Tribunal Procedure (Upper Tribunal) Rules 2008,<sup>63</sup> The Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, and the Tribunal Procedure (First-Tier Tribunal) (Social Entitlement Chamber) Rules 2008,<sup>64</sup> as far as practicable, the rules for different Chambers are expressed in the same terms (especially as regards the

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<sup>62</sup> 2008 No. 2686 (L. 14).

<sup>63</sup> 2008 No. 2698 (L. 15).

<sup>64</sup> 2008 No. 2699 (L. 16).

power of the tribunals to manage cases).<sup>65</sup> The Rules introduce the overriding objective to deal with cases justly. For instance, Section 2 of the Social Entitlement Chamber Rules specifies:

“(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must—

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.”

The Rules of the Upper Tribunal (reference below) contain similar provisions concerning the overriding objective (S. 2).

#### **UPPER TRIBUNAL:**

- Administrative Appeals Chamber;
- Finance and Tax (planned for 2009); and
- Lands (planned for 2009)

The Upper Tribunal, starting from 3 November 2008, took over the Work of the Social Security, Child Support, and Pensions Appeal Commissioners. The Commissioners formerly handled appeals from Tribunals which have now been transferred to the Social Entitlement Chamber as well as the War Pensions and Armed Forces Compensation Chamber in the First-Tier Tribunal. The Upper Tribunal also considers appeals from decisions of the Health, Education and Social Care Chamber of the First-Tier Tribunal. The Upper Tribunal also considers judicial reviews (transferred from the High Court on 3 November 2008 (Direction of Lord Chief Justice of 29 October 2008) in two categories of cases (from which there is no appeal):

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<sup>65</sup> The Memorandum is available at the following web address:  
[http://www.opsi.gov.uk/si/si2008/em/uksiem\\_20082685\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20082685_en.pdf).

- Appeals against decisions on review under the Criminal Injuries Compensation Scheme
- Reviews of decisions of the First-Tier Tribunal under the Tribunal Procedure Rules where there is no right of appeal from the decisions of the First-Tier Tribunal.

High Court judges also received guidance from the President of the Queens Bench Division that other cases (subject to requirements set forth in Section 18 of the Courts, Tribunals and Enforcement Act 2007) can also be transferred for judicial review to the Upper Tribunal (<http://www.osscc.gov.uk/AboutUs/CasesWeHandle/judicialReviewUT.htm>).

The rules for appealing are provided in the Tribunal Procedure (Upper Tribunal) Rules 2008 ([http://www.opsi.gov.uk/si/si2008/uksi\\_20082698\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20082698_en_1)), and are briefly explained in explanatory notes published on the website of the Tribunals Service: <http://www.administrativeappeals.tribunals.gov.uk/FormsGuidance/howToAppeal.htm>.

#### ADR:

The Tribunal is required to bring to the parties' attention (if appropriate) availability of alternative dispute resolution procedures, and if parties wish to use these and it is compatible with the overriding objective – facilitate this (S. 3 of the Rules).

#### Directions and non-compliance:

The Tribunal has the power to regulate its own procedure, and especially give directions to parties (a list of typical directions is provided in S. 5(3) – such as deciding on the form of a hearing, or whether to adjourn or postpone a hearing, or requiring a party to submit evidence or documents). Non-compliance with the directions does not automatically result in voiding of the proceedings or particular procedural steps. However, a case or a part of it could be struck out if the direction actually provided that non-compliance would produce such a result. The Tribunal also may, after hearing the appellant, strike out the case or a part of it if a party failed to cooperate with the Tribunal to such an extent that it cannot deal with the case justly and fairly, or if there is no reasonable prospect of the case succeeding.

#### Permission to appeal:

Before an appeal can be made, a judge of the First-Tier Tribunal must be asked for permission. If the permission is refused, an appellant can still ask the Upper Tribunal for permission (S. 21).

#### Representatives:

A party to proceedings before the Tribunal may appoint a representative (not necessarily a legal representative) (S. 11).

#### Evidence:

The Tribunal gives directions to parties with regard to the type and subject of evidence which it requires them to submit, including documents and expert opinions, as well as summoning witnesses (S. 15).

Withdrawal of the case:

A party may withdraw a case at any time before or during the hearing by making a statement to this effect.

Costs:

Appeals are cost-free, although of course the Tribunal does not cover the cost of legal advice and representation (again, legal aid can be claimed here). Costs cannot be awarded to any party to appeal proceedings unless it is to the extent and in the circumstances that the Tribunal from the decision of which the appeal was brought had the power to make a costs order (S. 10). Travel costs are covered for appellants who are attending hearings (S. 20).

**FIRST-TIER TRIBUNAL:**

**Social Entitlement Chamber**

- Asylum Support;
- Social Security and Child Support; and
- Criminal Injuries Compensation

After consulting in accordance with paragraph 28(1) of Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007, the Tribunal Procedure Committee has made the **Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008** in exercise of the powers conferred by sections 20(2) and (3) of the Social Security Act 1998 and sections 9(3), 22 and 29(3) of, and Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007. The Lord Chancellor has allowed the Rules in accordance with paragraph 28(3) of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.<sup>66</sup>

The Rules came into force on 3 November 2008.

**Below is the analysis of the Rules of the Social Entitlement Chamber (2008):**

ADR:

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<sup>66</sup> 2008 No. 2685 (L. 13).

The Rules provide that the Tribunal should make it clear to the parties that there are alternative means for resolving disputes, and if the parties wish to use these, facilitate this process (S. 3).

Directions and non-compliance:

The Tribunal has the power to regulate its own procedure, and especially give directions to parties (a list of typical directions is provided in S. 5(3) – such as deciding on the form of a hearing, or whether to adjourn or postpone a hearing, or requiring a party to submit evidence or documents). Non-compliance with the directions does not automatically result in voiding of the proceedings or particular procedural steps. However, a case or a part of it could be struck out if the direction actually provided that non-compliance would produce such a result. The Tribunal also may, after hearing the appellant, strike out the case or a part of it if a party failed to cooperate with the Tribunal to such an extent that it cannot deal with the case justly and fairly, or if there is no reasonable prospect of the case succeeding.

Cost awards:

The Tribunal has no power to make costs awards (S. 10).

Representatives:

A party to proceedings before the Tribunal may appoint a representative (not necessarily a legal representative) (S. 11).

Evidence:

The Tribunal gives directions to parties with regard to the type and subject of evidence which it requires them to submit, including documents and expert opinions, as well as summoning witnesses (S. 15).

Withdrawal of the case:

A party may withdraw a case at any time before or during the hearing by making a statement to this effect.

Lead cases:

If a number of cases before the Tribunal give rise to common issues of fact or law, the Tribunal may select a lead case and stay proceedings in other cases (S. 18).

Assistance with costs:

In criminal injuries compensation cases the Tribunal may cover reasonably incurred costs of the appellants or other persons related to hearing attendance and the arrangements by the Tribunal to inspect the appellants' injuries. In social security and child support cases The Secretary of State may pay such travelling and other allowances (including compensation for loss of remunerative time) as the Secretary of State may determine to any person required to attend a hearing in proceedings under section 20 of the Child



Support Act 1991, section 12 of the Social Security Act 1998 or paragraph 6 of Schedule 7 to the Child Support, Pensions and Social Security Act 2000 (Sections 20 and 21).

Proceedings (Part 3 of the Rules):

4. Before the hearing:

In asylum support cases and in criminal injuries compensation cases the appeal is submitted to the Tribunal so that it is received: for asylum cases within 3 days from the date when the appellant received the contested decision, and in criminal injuries compensation cases within 90 days from the date of the contested decision. In social security and child support cases the notice of appeal must be sent to the decision-maker. More detailed time limits for bringing specific cases (such as appeals based on Vaccine Damage Payments Act 1979, where there is no time limit).

Section 22 contains very detailed requirements for the notice of appeal and all the necessary attachments.

The decision-maker responds to the appeal, which should be done within 3 days for asylum cases and as soon as practicable for other cases.

5. Hearing

A general rule is that a hearing ought to be held, unless both parties agree that it is not necessary, and if the Tribunal considers that it can conclude the case without holding a hearing. Both parties can attend the hearing, and should be given reasonable notice of the time and place. A general rule is for the hearings to be public, although in some cases they will be private. The Tribunal may also dispose of the case without a hearing if both parties and the Tribunal agree on a consent order, or if the Tribunal strikes down a case.

6. Decisions

Tribunal's decisions may be made orally or in writing, but in any case the parties must be sent copies, with the information (where appropriate) that they can ask for written reasons, and that they can appeal.

7. Appeals

Parties may ask for permission to appeal the Tribunal's decisions. The Tribunal can also review and change its own decision.

**Health, Education and Social Care Chamber**

- Care Standards;
- Mental Health; and
- Special Educational Needs & Disability

The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 specify a similar procedure as the Rules described above. Only the differences are highlighted below.

Here the Tribunal may make orders for costs in some cases:

S. 10 of the Rules specifies:

“(1) Subject to paragraph (2), the Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (wasted costs); or  
(b) if the Tribunal considers that a party or its representative has acted unreasonably in bringing, defending or conducting the proceedings.

(2) The Tribunal may not make an order under paragraph (1)(b) in mental health cases.

(3) The Tribunal may make an order in respect of costs on an application or on its own initiative.

(4) A person making an application for an order under this rule must—

(a) send or deliver a written application to the Tribunal and to the person against whom it is proposed that the order be made; and

(b) send or deliver a schedule of the costs claimed with the application.

(5) An application for an order under paragraph (1) may be made at any time during the proceedings but may not be made later than 14 days after the date on which the Tribunal sends the decision notice recording the decision which finally disposes of all issues in the proceedings.

(6) The Tribunal may not make an order under paragraph (1) against a person (the “paying person”) without first—

(a) giving that person an opportunity to make representations; and

(b) if the paying person is an individual, considering that person’s financial means.

(7) The amount of costs to be paid under an order under paragraph (1) may be ascertained by—

(a) summary assessment by the Tribunal;

(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (“the receiving person”); or

(c) assessment of the whole or a specified part of the costs incurred by the receiving person, if not agreed.

(8) Following an order for assessment under paragraph (7)(c), the paying person or the receiving person may apply to a county court for a detailed assessment of costs in accordance with the Civil Procedure Rules 1998 on the standard basis or, if specified in the order, on the indemnity basis.”

There are different rules as to representation in mental health cases:

According to S. 11:

“(7) In a mental health case, if the patient has not appointed a representative, the Tribunal may appoint a legal representative for the patient where—

(a) the patient has stated that they do not wish to conduct their own case or that they wish to be represented; or

(b) the patient lacks the capacity to appoint a representative but the Tribunal believes that it is in the patient's best interests for the patient to be represented.

(8) In a mental health case a party may not appoint as a representative, or be represented or assisted at a hearing by—

(a) a person liable to be detained or subject to guardianship or after-care under supervision, or who is a community patient, under the Mental Health Act 1983; or

(b) a person receiving treatment for mental disorder at the same hospital as the patient.”

There are no rules concerning selection of a lead case.

Part Three concerns cases other than mental health cases:

Time limits for bringing appeals are in the Schedule to the Rules.

### **War Pensions and Armed Forces Compensation Chamber**

- War Pensions and Armed Forces Compensation

Below is the analysis of the The Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008. In many instances they are similar to the rules of the above Chambers – only the differences are highlighted.

There are different arrangements for reimbursement of some expenses:

According to S. 20:

“The Tribunal must pay travelling expenses actually and reasonably incurred by, and a subsistence allowance at the prescribed rate to—

(a) an appellant attending a hearing or an examination under rule 24 (medical examinations);

(b) a relative or friend attending a hearing on behalf of an appellant who is unable to attend the hearing for reasons of health; or

(c) an appellant's attendant, if the appellant attending a hearing or an examination under rule 24 (medical examinations) requires for reasons of health to be accompanied by an attendant.

(2) The Tribunal may pay to a person mentioned in paragraph (1)(a) such allowance as the Tribunal considers reasonable for compensation for loss of time, if—

(a) the appeal was successful or there were reasonable grounds for the appeal; and

(b) the allowance does not exceed the prescribed maximum.

(3) The Tribunal may pay to an appellant such allowance as the Tribunal considers reasonable in respect of the expenses incurred in securing the attendance of a medical witness at a hearing or the provision of a medical report or certificate or other medical document for the case, if—

(a) the Tribunal considers that the attendance of such witness or provision of such document was reasonably necessary; and

(b) the allowance does not exceed the prescribed maximum.

(4) In this rule “prescribed” in relation to an amount or a rate means the amount or rate determined by the Lord Chancellor from time to time.”

Before the hearing:

S. 21: “An appellant must start proceedings by sending or delivering a notice of appeal to the decision maker so that it is received—

(a) in proceedings under section 5(1) of the Pensions Appeal Tribunals Act 1943, within 3 months after the date on which written notice of the decision being challenged was sent to the appellant; or

(b) in other cases under the Pensions Appeal Tribunals Act 1943, within 6 months after the date on which written notice of the decision being challenged was sent to the appellant.”

Further rules are similar to the Rules described above.

**Jurisdictions covered by the General Regulatory Chamber Rules**

(source: the Consultation Paper on Tribunal Procedures (First-tier Tribunal), General Regulatory Chamber Rules 2009)

Proposed implementation date: Sept 2009:

- The Charity Tribunal
- The Consumer Credit Appeals Tribunal
- Estate Agents Appeal Panel
- Transport Appeals Tribunal (appeals from the Driving Standards Agency (DSA)). *Please note, that decisions from the DSA will be transferred to the First-tier tribunal, and be dealt with by the General Regulatory Chamber from September 2009. Appeals from Traffic Commissioner decisions will be dealt with by the Administrative Appeals Chamber of the Upper Tribunal. This will be provided for through amendments to primary legislation)*

Proposed implementation date: Jan 2010

- The Information Tribunal
- Claims Management Services Tribunal
- Gambling Appeals Tribunal
- Immigration Services Tribunal
- Adjudication Panel for England (*This Tribunal is scheduled to move into the Tribunals Service for administrative purposes in April 2009. It's present rules will remain in force at that time and until the jurisdiction transfers into the General Regulatory Chamber*)

**Other Tribunals listed in Transforming Tribunals: Implementing Part 1 of the Tribunals Courts and Enforcement Act 2007 for transfer into General Regulatory Chamber**

- Sea Fish License Tribunal
- Aircraft & Shipping Tribunal
- Antarctic Act Tribunal
- NHS Medicines Appeal Tribunal

- Plant Varieties and Seeds Tribunal
- Insolvency Practitioners Tribunal
- Foreign Compensation Commission
- Chemical Weapons Licensing Appeal Tribunal
- Mines and Quarries Tribunal

(These are jurisdictions not yet in Tribunals Service and their transfer to General Regulatory Chamber will be confirmed when announcements of transfer are made.)

Regulatory Enforcement and Sanctions Act 2008

The General Regulatory Chamber will also deal with appeals to tribunals established in the Regulatory Enforcement and Sanctions Act 2008.

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## GOVERNMENT DISPUTE SETTLEMENT AND COMPENSATION SCHEMES

### Criminal Injuries Compensation

#### Criminal Injuries Compensation Authority

<https://www.cica.gov.uk/>

The Authority administers the Criminal Injuries Compensation Scheme in England, Scotland, and Wales.

#### Statutory basis (legal basis)

Criminal Injuries Compensation Act 1995  
[http://www.opsi.gov.uk/ACTS/acts1995/ukpga\\_19950053\\_en\\_1](http://www.opsi.gov.uk/ACTS/acts1995/ukpga_19950053_en_1) - Scheme established by Home Secretary and approved by Parliament.

The first scheme was set up in 1964 (oldest in the world).  
The tariff system for injuries was introduced in 1996 and changed in 2001.

The new Criminal Injuries Compensation Scheme came into force on 3 November 2008 (<http://www.cjonline.gov.uk/downloads/application/pdf/2008-06-18%20Draft%202008%20Scheme.pdf>). See <https://www.cica.gov.uk/Documents/Publications/Criminal%20Injuries%20Compensation%20Scheme%202008%20-%20A%20guide.pdf> for the Guide to the new scheme. All applications for compensation received by the Authority on or after 3 November 2008 will be covered by the new Scheme – although see paragraphs 66 – 70 of the new Scheme for more detailed transitional rules.

The analysis of the Scheme below refers to the new Scheme rules.

#### Links with government and finance

The Authority is a non-departmental Public Body, sponsored by the Ministry of Justice (Before 9 May 2007 sponsored by the Home Office; transferred under the Machinery of Government mechanisms). Also provides services for the Scottish Government.

#### Governance and structure:

The Authority has a Chief Executive and a Board of Directors (<https://www.cica.gov.uk/About-CICA/Our-board/>). The operation of the Scheme is supervised by the Secretary of State. The Accounting Officer for the Authority must submit a report to the Secretary of State and the Scottish Ministers after the end of each financial year.

### **Budget and expenditure:**

The largest scheme for criminal injuries compensation in the world (£200m of awards every year – source: “Guide to the 2001 Compensation Scheme” [https://www.cica.gov.uk/pls/portal/docs/PAGE/INFORMATION\\_PAGES/INFO\\_BOTTOMBOX\\_HWPC/GUIDE\\_TO\\_2001\\_SCHEME.PDF](https://www.cica.gov.uk/pls/portal/docs/PAGE/INFORMATION_PAGES/INFO_BOTTOMBOX_HWPC/GUIDE_TO_2001_SCHEME.PDF)).

### **Aims**

To compensate victims of crimes of violence, or their relatives. Since the reform of the Scheme in 2008, a greater emphasis has been placed on compensating victims of serious crimes (see below – History).

### **Procedure**

- **who can apply for compensation/refer claims:**

Persons who were victims of a crime of violence, or who were injured or suffered mentally as a result of a crime of violence, or dependants/relatives of victims of such crime who have since died (paragraph 38 of the Rules of the new Scheme).

The criteria for eligibility are as follows:

- The person must have been injured seriously enough to qualify for at least our minimum award (£1,000).
- The person must have been injured in an act of violence in England, Scotland or Wales. An offender does not necessarily have to have been convicted of, or even charged with that crime.
- The application was made within two years of the incident that caused the injury. (But applications outside this limit can be accepted if in the particular case it wasn't reasonable for an application form to have been submitted within two years of the incident and there would still be enough evidence for CICA to consider.) (<https://www.cica.gov.uk/Can-I-Apply/Am-I-eligible/>)

The injury qualifying for an award must have been a “criminal injury”. It is personal injury sustained in and directly attributable to a crime of violence (including arson, fire-raising or an act of poisoning), or an offence of trespass on a railway, or the apprehension or attempted apprehension of an offender or a suspected offender, the prevention or attempted prevention of an offence, or the giving of help to any constable who is engaged

in any such activity (paragraph 8 of the new Scheme Rules). Personal injuries which are covered are: physical injuries (including fatal injuries), mental injuries or diseases (if mental injury results from sexual offence or occurs with no physical injury, compensation is payable only in circumstances specified in paragraph 9 of the Scheme Rules).

Compensation can be payable even if the assailant was not actually convicted of a criminal offence in connection with the injury (paragraph 10).

NOTE: Persons who were **injured while abroad** (UK residents) can claim compensation through other means:

1. If injured within the EU:

If a UK resident was injured because of a criminal injury in another European Union (EU) country on or after 1 July 2005 he can be assisted by the CICA in applying for compensation **from that country**.

As provided on the website of CICA: “The EU Compensation Assistance Team (EUCAT) based in Glasgow can help with the following:

- Access to information about the system of compensation in the country where you were injured
- Application forms
- Help with any other documents you might have to provide
- Sending your completed form to the right place
- Advice if you are asked for further information

The leaflet [applying for criminal injuries compensation in other EU countries](#) provides further details on the level of service you can expect to receive and also includes a list of the countries currently in the European Union. The leaflet specifies: “We can help people apply for criminal injuries compensation from the EU country where the crime occurred. We can do this under European Union Council Directive 2004/80/EC. This says that member states have to set up compensation schemes that guarantee fair and appropriate compensation to victims of violent crime. The schemes of other member states are likely to be different from those of the United Kingdom. The Directive also says that each member state should appoint an ‘assisting authority’ to help people apply for compensation from other member states. CICA is the assisting authority for the whole of the United Kingdom.

We are not able to help you:

- if you were injured before 1 July 2005;
- if you were not a victim of a violent intentional crime — for example, you were the



victim of theft or robbery which did not involve actual or threatened violence that resulted in injury;

- by assessing your application or by paying compensation — these are the responsibility of the deciding authority in the country in which you were injured;
- to make a claim for damages through a court; or
- if you were injured in a country outside the EU.”

2. If injured outside the EU:

A person can apply directly to that country for compensation. See [list of countries which have a crime victim compensation scheme](#).

- **formal requirements and time limits:**

Application forms are available online: <https://www.cica.gov.uk/Apply-Now/>. Application can also be made by mail.

The following requirements must be met by those applying for compensation:

The person must be:

- “A victim of a crime of violence, or injured in some other way covered by the Scheme.
- Physically and/or mentally injured as a result.
- In England, Scotland or Wales at the time when the injury was sustained.
- Injured seriously enough to qualify for at least the minimum award available under the Scheme.
- A dependant or relative of a victim of a crime of violence who has since died.”  
(source- website)

Unless there are good reasons, the applicant should also have:

- Reported the incident personally to the police within 48 hours if possible after it happened.
- Sent their application so that the Authority receives it within two years from the date of the incident causing the injury. (Source – website)

Injuries must be verified by a specified medical authority.

Compensation will not be paid if:

- The crime took place outside England, Scotland or Wales.
- Only a single minor injury, such as a black eye, was suffered.
- The crime took place more than two years ago, unless there is a good reason why the person did not apply before.

- The applicant was a victim of a road traffic accident, unless a vehicle was used deliberately to injure him/her.
- The applicant has already applied for compensation in respect of the same criminal injury under this or any other scheme operating in Great Britain.
- The injury or sexual assault happened before 1 October 1979 and the applicant and the person who injured him/her were living together as members of the same family.
- The applicant was injured before 1 August 1964.” (Source – website)

Time limit – 2 years from when the crime took place.

- **proceedings:**

Application may be brought online or by sending a filled in form (available from the website) to the Authority. By making the application the applicant agrees for the authority to contact the police and the health professionals who treated the applicant for more information. The claims officer appointed to the case makes a decision including the amount of the award. Proceedings can take one year, but can also take longer if the case is complex or involves lost earnings or future medical expenses. Interim awards can be made.

The award can be refused or reduced taking into account:

- the applicant’s behaviour before, during or after the incident
- the applicant’s criminal record
- the applicant’s failure to co-operate with the police or with CICA
- the victim’s delay in informing the police or other organisation or person of the incident. (source: <https://www.cica.gov.uk/Can-I-Apply/Am-I-eligible/>).

In order to receive the award, the applicant must accept it in writing within 90 days of receiving written notification of the claims officer’s decision (there are exceptions to this time limit).

The claims officer’s decision may be reconsidered at any time before the payment of the final award (if there is new evidence or change in circumstances). Also, a case may be reopened by the officer after the decision has become final – if there has been such a material change in the victim’s medical condition that injustice would occur if the original assessment of compensation were to stand, or when a victim has since died in consequence of the injury (paragraph 56).

An applicant may seek a review of the officer’s decision (by writing to the Authority within 90 days of receiving the decision). These applications for review are heard by another claims officer.

An appeal from the decision taken on the review can be brought to the First-tier Tribunal (Social Entitlement Chamber) in accordance with the Tribunal Procedure Rules (see the **Criminal Injuries Appeals Panel**).

- **results – compensation, other:**

Compensation for injuries paid according to the tariff established by the Parliament before the reform were as follows:

(Tariffs in force since 2001): There were 25 levels of compensation – from £1.000 to £250.000. There was a tariff calculator online which distinguished between various body parts and set out the tariffs.

The Authority paid two types of compensation:

- a. a personal injury award (for own pain and suffering, including mental injury and possible separate payment for lost earnings and special expenses, or for injury to a close relative if a person was there when the injury happened), and
- b. a fatal injury award (for death of parent, child, husband, wife or partner – currently £11.000 if one person claiming, and £5.500 per person if more than one person claiming, additional compensation is payable if the claimant was dependant upon the deceased, and for funeral expenses).

An additional award of maximum \$250.000 could be made for lost earnings and/or special expenses.

The maximum award which the Authority could pay put in a single case is £500.000.

**Under the new Scheme** of 2008 the main principles have not been changed: the compensation is still awarded for injuries according to a tariff system (now revised), and an additional amount can be awarded for loss of earnings and other expenses (if the person was incapacitated for more than 28 weeks). The maximum cap remains at the same level. Paragraph 45 of the new Scheme Rules specifies that the additional award for loss of earnings or special expenses may be reduced to take account of social security benefits or insurance payments made by way of compensation for the same contingency (although this does not extend to the amounts paid from social security benefits of insurance for the first 28 weeks of incapacitation).

The following is an excerpt from the Practice Guidance CI-4 of the First-tier Tribunal (Criminal Injuries Compensation) “cap on loss of earnings” (paragraph 14(a) of the 1990 Scheme; paragraph 34 of the 1996, 2001 and 2008 Schemes): [http://www.cicap.gov.uk/Documents/Rules/FTT%20CI\\_4\\_PracticeGuidance\\_capOnLossOfEarnings.pdf](http://www.cicap.gov.uk/Documents/Rules/FTT%20CI_4_PracticeGuidance_capOnLossOfEarnings.pdf)

“The maximum amount that can be awarded for loss of earnings under the Schemes is currently £685.50 per week (£35,646 per annum). This follows publication on 7 November 2007 by the Office for National Statistics (ONS) of the 2007 Annual Survey of Hours and Earnings (ASHE) which

shows that the median weekly pay for full time employees is £457 per week. ASHE does not give details of gross average industrial earnings.

The limit of one and a half times the gross average industrial earnings is prescribed at paragraph 14(a) of the 1990 Scheme and paragraph 34 of the 1996, 2001 and 2008 Schemes.

As a rule of thumb, an applicant's gross income will have to be more than £52,000 per annum before the cap will be relevant."

### **Costs:**

No costs to the claimants.

The Consultation of 2005 specifies the following costs of the scheme: "On average cases cost £200 to reach their first decision (including a rejection); those which go to review cost £400 and those which go to appeal cost £1,600. The average cost to resolve a case is about £305." (p. 19).

### **History, including reforms:**

The Criminal Injuries Compensation Scheme was reformed recently – the new Scheme came into force on 3 November 2008. Below is a short history of the reform process.

The public consultation "Rebuilding Lives: supporting victims of crime" (<http://www.cjonline.gov.uk/downloads/application/pdf/Rebuilding%20Lives%20-%20supporting%20victims%20of%20crime.pdf>) of December 2005 suggested that while many victims of crime rather needed practical and emotional support than small compensation sums which come rather much later, in serious crime cases compensation is crucial. Here, as pointed out by the Parliamentary Under Secretary of State for Home Office Fiona MacTaggart MP, compensation has not been sufficient and its recovery was too slow. Fiona MacTaggart gave an example of victims of London bombings to prove the last point (p. 5). **The Consultation document noted that the UK currently spent more on compensating victims of crime than all other EU Member States together! (p. 6).** The data for Member States (as of 2000 and 1999), is as follows (Euros) (p. 18 of the Consultation):

Austria 1,400,000  
Belgium 6,307,000  
Denmark 5,456,000  
Finland 5,130,000  
France 147,550,000  
Germany\* 106,694,000  
Ireland 3,329,000  
Luxembourg 42,000  
Netherlands 4,706,000  
Portugal 972,000  
Spain 1,540,000  
Sweden 7,421,000  
United Kingdom 340,926,000

(Data from Mikaelsson and Wergens (2001) "Repairing the irreparable: State compensation to crime victims in the European Union". All estimates are from 2000 except for (\*) which are from 1999. This is the most

recent comparison undertaken and was used by the European Commission in its 2001 Green Paper on compensation to crime victims).

The suggested changes included simplifying the compensation process and focusing on most serious crimes – refocusing the Scheme around the notion of ‘seriousness’ (serious crimes) (p. 21).<sup>67</sup> Before the reform, compensation was payable in two ways: for pain and suffering, and for loss of earnings, pension contributions and special care needs (the loss or earnings and special needs were only payable if the person was incapacitated for more than 28 weeks – as the first 28 weeks are covered by the incapacity benefits). For the payments for pain and suffering, injuries were graded into 25 tariff bands according to their seriousness. These ranged from £1,000 for injuries such as fractured fingers and sprained ankles (tariff band 1) through to £250,000 for quadriplegia or severe brain damage (tariff band 25). The grading of the injuries and the tariff payments were broadly in line with the way that the civil courts assess injuries in claims for damages (Consultation, p. 18). Maximum total award was £500,000. Most awards which were in fact awarded were small: 57% were between £1000 and £2000.

The concerns highlighted in the Consultation were as follows:

- a. size of payments, particularly in comparison to civil damages, and the maximum award limit of £500,000 (the Consultation document pointed out that while victims of less serious crimes would benefit from other types of help and assistance and not from a small amount of money received a long time after the incident, the Scheme ought to refocus on seriousness of crimes – and here victims ought to receive compensation, possibly with the maximum cap increased. The Consultation document recommended less serious crime victims to be removed from the Scheme and devoting the savings to victims of more serious crimes. Complexity of calculating the size of loss of earnings and special expenses was said to be significant – so it was recommended that instead of these awards the tariff payments for injuries would be increased and the cap of £500,000 would be removed); **NOTE: these recommendations were not acted upon – the cap was not**

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<sup>67</sup> Also, it was emphasised that enforcement of Compensation Orders should be improved (Compensation Orders are awarded under the Powers of Criminal Courts (Sentencing) Act (‘PCCSA’) 2000, s.130(1). The damage must result from either the offence of which the defendant has been convicted or another offence taken into consideration by the court in determining sentence. A compensation order could not therefore be made where the only offence before the court did not cause, or contribute to, the injury or loss, for example failing to notify HSE of a reportable injury under RIDDOR, or failing to carry employers’ liability insurance. A court’s power to make compensation orders is more restricted if the injury, loss or damage was due to an accident “arising out of the presence of a motor vehicle on a road” – s.130(6)). While normally the maximum amount which can be awarded by magistrates is £5000, the Crown Court can order an unlimited sum. A Compensation Order may be imposed alongside a separate sentence or as a penalty in its own right. If both a fine and compensation are payable and the offender has no resources to cover both – compensation has priority. (<http://www.hse.gov.uk/enforce/enforcementguide/court/sentencing/penalties.htm#fn11>).

**removed, and compensation is still payable for loss of earnings and for special expenses.**

- b. speed of making payments (the Consultation document specifies that the “part of the time taken on a case is in receiving essential reports: a police report confirming that the incident took place and that the applicant was not to blame for the incident; and a medical report on the injuries so that the level of compensation can be determined. We will work with Chief Constables to accelerate and simplify the process for providing police reports to CICA (including whether there is scope for greater use of technology between the police and CICA), so as to meet the new target in the Code of Practice for Victims of Crime of 30 days for providing the initial police report” – at p. 23);
- c. taking account of the applicant’s criminal record in deciding whether to reduce or refuse compensation;
- d. the fact that the scheme does not apply overseas, either for terrorism or other violent crime; and
- e. the fact that the scheme covers some incidents that are not crimes of violence.

In 2007, the National Audit Office published a report “Compensating Victims of Violent Crime” into the operation of the Authority. Here is an excerpt from the press release accompanying the Report:

“The Criminal Injuries Compensation Authority (CICA) is the non-departmental public body which pays statutory financial compensation to victims of violent crime. Its performance has declined since the National Audit Office last reported on it in 2000 and it has not consistently met its targets over that period. In 2006, CICA initiated a major programme of reform and has been working to provide a faster, fairer and better service to applicants.

CICA received 61,000 applications for compensation in 2006-07 and paid out £192 million to victims. However, the average time to resolve a case has increased by over 40 per cent, from 364 days in 1998-99 to 515 days in 2006-07. Over the same period there was a fall of 23 per cent in the number of applications the Authority receives each year, in line with the fall in violent crime over the same period.

At October 2007, there were 81,600 unresolved cases at the Authority and 2,400 at the Criminal Injuries Compensation Appeals Panel, the independent body which considers appeals against the Authority’s decisions.

There has been a reduction in the number of cases resolved each year by CICA, from 74,900 in 1998-99 to 59,100 in 2006-07. During the same period there has been an increase in CICA’s annual administration costs of £4.2 million after allowing for inflation. This has led to an increase of 54 per cent in the average unit cost of processing a case to £400 in 2006-07.

CICA’s processes, which apply in 80 per cent of cases, are bureaucratic and repetitive. Around half of all applications are unsuccessful, the same rate as in 2000, despite work to reduce ineligible claims.

The NAO found that applications from those injured in the London bombings of July 2005 were dealt with more quickly but not to the detriment of other cases already in the system, as a specialist team dealt with these cases and it was easier for the Authority to gather the information it needed to make a decision.

The NAO has highlighted areas for improvement in how CICA communicates with potential applicants, and with those who have already applied for assistance. CICA should also provide guidance that identifies what information is essential in order to improve the quality and completeness of applications and reduce ineligible claims.

The Home Office appointed a new interim chief executive of CICA in August 2006 and initiated a major reform programme. Early indications are encouraging. A new permanent Chief Executive and Board are now in place to drive through these performance improvements.”

[http://www.nao.org.uk/whats\\_new/0708/0708100.aspx](http://www.nao.org.uk/whats_new/0708/0708100.aspx)

See also the Executive Summary of the Report on

[http://www.nao.org.uk/publications/0708/compensating\\_victims\\_of\\_violen.aspx](http://www.nao.org.uk/publications/0708/compensating_victims_of_violen.aspx).

On 18 June 2008 the Government proposed changes to the scheme, to complement the efficiency improvements made by the Criminal Injuries Compensation Authority. Changes aim to improve service provided to victims of violent crimes, and include improvements in administrative procedures, clearer rules, and updated tariffs for injuries. The current appeals panel will be part of the new scheme as well. As mentioned above, not all the recommendations and suggestions specified in the Consultation of 2005 were actually acted upon.

## **Statistics**

See the Annual Reports – the latest one on: <https://www.cica.gov.uk/About-CICA/Reports/>

The Criminal Injuries Compensation Authority received 66,360 applications in 2004-05 and the average time to settle a case was 39 weeks, “which is of course faster than many successful actions for damages in the civil courts. In comparison, the Hong Kong scheme, with 563 cases in 2004-05, generally takes no more than 3 months and New South Wales, with 5,098 cases in 2004-05 aims to finalise the majority of claims within 12 to 18 months.” (source – the Consultation of 2005, pp. 19, 20).

In 2007-08, CICA resolved over 65,000 cases (6,000 more than the previous year), and paid out £235 million in compensation. The number of cases outstanding has been reduced to the lowest figure for nearly 20 years (source: website of the CJS – Criminal Justice System - [http://www.cjsonline.gov.uk/the\\_cjs/whats\\_new/news-3683.html](http://www.cjsonline.gov.uk/the_cjs/whats_new/news-3683.html)).

## **Reported cases, problems, issues identified in academic writings**

The reduction of compensation award for rape victim who was drinking on the night she was attacked – see the Times!!!

See quite a critical review of the Authority: T.S. Duckett "Surviving Violent Crime and the Criminal Injuries Compensation Authority. A Guide for Progress and Living Well", 2003.

The following is an excerpt from the National Audit Office "Compensating Victims of Violent Crime": "In 2006-07, the Criminal Injuries Compensation Authority (the Authority), which covers England, Scotland and Wales, received 61,000 applications and paid some £192 million to victims. Awards are determined by a tariff, with fixed compensation for each type of injury. Dissatisfied applicants can apply to the Authority for a review of their case and, if they remain dissatisfied, can appeal to the Criminal Injuries Compensation Appeals Panel (the Panel), which received 2,136 appeals in 2006-07. In 2006-07, the Authority's administrative costs were £23.6 million, and the Panel's £4.9 million. This report examines whether the Authority and Panel provide a more cost effective and better quality of service than when last investigated in 2000. The report finds the Authority's service has declined, and it has not met its targets. The average time to resolve a tariff case has increased from 364 days in 1998-99 to 515 days in 2006-07. There were 81,600 unresolved cases at the Authority and 2,400 at the Panel in October 2007. Half of the applications are rejected as ineligible, and these need to be identified much earlier in the assessment process. The Authority has recently initiated a major reform programme, and has diagnosed problems with current ways of working - too bureaucratic and repetitive - and early signs are that the changes are bringing improvements. The NAO makes a number of recommendations for further improving the service to victims and on improving the efficiency of case processing and management of the caseload."

### **Office for Judicial Complaints**

[http://www.judicialcomplaints.gov.uk/complaints/complaints\\_mag.htm](http://www.judicialcomplaints.gov.uk/complaints/complaints_mag.htm)

The Office for Judicial Complaints (OJC) supports the Lord Chancellor and the Lord Chief Justice in their joint responsibility for the system of judicial complaints and discipline. OJC seeks to ensure that all judicial disciplinary issues are dealt with consistently, fairly and efficiently.

### **Statutory basis (legal basis)**

Constitutional Reform Act 2005.

### **The Judicial Discipline (Prescribed Procedures) (Amendment) Regulations 2008**

[http://www.opsi.gov.uk/si/si2008/plain/uksi\\_20082098\\_en](http://www.opsi.gov.uk/si/si2008/plain/uksi_20082098_en) came into effect on 28 August 2008 and should be read in conjunction with the Judicial Discipline Regulations (Prescribed Procedures) 2006 (<http://www.opsi.gov.uk/si/si2006/20060676.htm>).



**Judicial Complaints (Tribunals) Rules 2008** came into effect on 28 August 2008 and replace the existing rules.

**Complaints (Magistrates) Rules 2008** came into effect on 28 August 2008 and replace the existing rules.

All the applicable Rules and Leaflets are available on the website:  
<http://www.judicialcomplaints.gov.uk/publications.htm>.

### **Links with government and funding**

The OJC is an associated office of the Ministry of Justice (MoJ). They report to the Lord Chancellor and Lord Chief Justice jointly, under the arrangement established by the Constitutional Reform Act 2005.

### **Governance and structure**

Its status, governance and operational objectives are set out in a Memorandum of Understanding between the DCA, the Judicial Office for England and Wales and the OJC (source: <http://www.judicialcomplaints.gov.uk/about/about.htm>).

### **Budget and expenditure**

### **Aims**

The office investigates and considers complains against judicial office holders (complaints about their personal behaviour: for example racist or insulting language, not about their decision): judges, magistrates, Tribunal members, coroners, deputy or assistant deputy coroners, or members of coroners' staff.

### **Procedure:**

- **who can apply for compensation/refer claims**

Anyone who has a complaint about a judicial office holder.

- **formal requirements and time limits**

The complaint must be made in writing (Rule 11 of the Judicial Discipline Regulations 2006), and can be made on the official complaint form available on the website of the Office. It should be made as soon as possible, not later than 12 months after the incident which is the subject of the complaint (although if the case or appeal is still ongoing, the Office will not be able to consider the complaint until the case is closed – in such circumstances the complaint can be made at any time during the case or 12 months from

when it ends – Rule 4 of the Judicial Discipline Regulations 2006). This time limit may be extended in exceptional circumstances (Rule 5). The complaint must contain the necessary information about the complainant and the complaint, as well as the judge. The complaint will be dismissed (unless the Office, or the Lord Chancellor and the Lord Chief Justice consider that it should be investigated nevertheless) if (Rule 14.1):

- (a) it does not adequately particularise the matter complained of;
- (b) it is about a judicial decision or judicial case management, and raises no question of misconduct;
- (c) the action complained of was not done or caused to be done by a judicial office holder;
- (d) it is vexatious;
- (e) it is without substance or, even if substantiated, would not require any disciplinary action to be taken;
- (f) it is untrue, mistaken or misconceived;
- (g) it raises a matter which has already been dealt with, whether under these regulations or otherwise, and does not present any material new evidence;
- (h) it is about a person who no longer holds any judicial office;
- (i) it is about the private life of a judicial office holder and could not reasonably be considered to affect his suitability to hold judicial office;
- (j) it is about the professional conduct in a non-judicial capacity of a judicial office holder and could not reasonably be considered to affect his suitability to hold judicial office;
- (k) for any other reason it does not relate to misconduct by a judicial office holder.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

If the case is accepted by the Office, the Lord Chief Justice and the Lord Chancellor will decide what action to take (these cases normally take up to 3 months). Complex cases may be referred to a Senior Judge for a judicial investigation (such cases take longer).

There are separate procedures for judges, and for magistrates and Tribunal members. Complaints against magistrates and Tribunal Members first go to the local Advisory Committee (magistrates) or to the President of the Tribunal.

An impartial review of any disciplinary decision taken is provided by the Judicial Appointments and Conduct Ombudsman, who hears any complaints against the OJC itself, over its handling of misconduct complaints (the Ombudsman is analysed elsewhere in this Report). Appeals to the Ombudsman can be made by the complainants or by the judge.

- **results – compensation, other**

Disciplinary steps can be taken against a judge subject to complaint.

- **costs**

### **History (including any reforms, also ongoing reforms)**

The Office for Judicial Complaints was established in April 2006.

### **Statistics**

The annual report of the Office for Judicial Complaints for 2007-2008 states that a total of 1,437 complaints relating to members of the mainstream judiciary, coroners, tribunal office holders and magistrates were received, a slight reduction on the 1,674 received during the previous year.

Citation: (Office for Judicial Complaints, March 2009).

As specified in the 2007-2008 Annual Report:

“Out of the 49 judicial office holders subject to disciplinary action 1 was from the Mainstream Judiciary, none were coroners, 4 were Tribunals Judiciary and 44 were magistrates. This represents less than 0.5% of the 42, 000 judicial office holders. 21 of the 49 judicial office holders subject to disciplinary action were disciplined for not fulfilling their judicial duty. 12 were disciplined for inappropriate behaviour or comments, 7 for motoring offences, and 3 each for discrimination, criminal convictions and misuse of judicial status.” (OJC News Release, March 2009, [http://www.judicialcomplaints.gov.uk/docs/OJC\\_Annual\\_Report\\_2007-2008-News\\_release\\_0309.pdf](http://www.judicialcomplaints.gov.uk/docs/OJC_Annual_Report_2007-2008-News_release_0309.pdf)).

### **Reported cases, problems, issues identified in academic writings**

#### **Centres administered by Her MAJESTY’S COURT Service**

1. The Claim Production Centre (CPC) and the County Court Bulk Centre (CCBC) (<http://www.hmcourts-service.gov.uk/cms/cpc.htm>)

Set up by Her Majesty's Courts Service to deal with straightforward debt collection work that is undefended. “Working in partnership with local courts, the CPC and CCBC not only remove this mainly administrative and procedural work from local courts thus freeing staff time for other areas of work, they also provide users with a faster, guaranteed service. There are also discounts on the standard county court fees. There is no minimum

volume to qualify as a CPC or CCBC user. There is no charge for using either the CPC or the CCBC, other than the (reduced) court fees.

The CPC enables users to file requests for Part 7 specified amount claims in computer readable form (...) in the name of the court or courts of their choosing. So long as the data is received at the CPC by 10am, the claims will be issued today and, at the worst, will be posted to the defendant within 48 hours. There is currently a discount on the standard court issue fee. Where the debt is settled before it is processed, the claim can be cancelled.

CPC users have the opportunity to use the CCBC which provides further streamlining. Firstly claims are issued through the CPC in the name of Northampton County Court. Where a valid defence is filed, the CCBC will serve a copy on the claimant who then has 28 days to consider their position. The Allocation Questionnaire (and, where appropriate, request for the £80 fee), is only sent where the claimant confirms that he wishes to proceed with the claim. This practice has resulted in 50% of defences being resolved informally. Please note that, where the claimant wishes to continue and the defendant is an individual, the claim is transferred to the defendant's local county court. Where the defendant is a business, the claim will either be transferred to the claimant's solicitor's local court or, where the claimant is not represented, to the claimant's local court.

CCBC users request their judgments and warrant issue in computer readable form. As with the CPC, users are given guaranteed levels of service - judgment requests are processed today (and dated today) and printed and posted to the defendant within 48 hours. The CCBC offers a personalized judgment order which also contains a payment slip, should users wish. Warrant requests are processed automatically the same day and the details are sent electronically to the defendant's local court overnight. As well as a saving of £5 on each warrant issued, there is no warrant reissue fee for CCBC warrants. Where the claimant wishes to enforce through the High Court, the CCBC will deal with the request within a maximum of 2 days - this turnaround time applies to all correspondence.

Both the CPC and the CCBC are supported by [Practice Direction 7C of the Civil Procedure Rules](http://www.hmcourts-service.gov.uk/cms/cpc.htm)." (source - <http://www.hmcourts-service.gov.uk/cms/cpc.htm>).

## 2. Money Claim Online (MCOL)

The Money Claim Online was set up in 2001. "This online service allows county court claims to be issued for fixed sums up to £100,000 by individuals and organizations over the internet, anywhere, anytime. This pioneering work is the first example in this country of what has been called a 'Cyber-Court', and has drawn interest from governments around the world including Poland and the USA. MCOL is now issuing more claims than any local county court – 152,000 in 2007/08. MCOL enables a claimant to request a claim online, check the status of the claim and, where appropriate, request entry of judgment and enforcement by warrant of execution. Payment of the court fee is be either credit or debit

card. Defendants can also use MCOL to reply to and check the status of their claims online.” (source - <http://www.hmcourts-service.gov.uk/cms/mcol.htm>).

3. Traffic Enforcement Centre (TEC)
4. Centralized Attachment of Earnings Payment (CAPS).

### **The SMALL CLAIMS MEDIATION SERVICE run by the HMCS**

In operation since 2008, won an international award in October 2008. It beat 37 other applications from 15 European countries put forward to the secretariats of the European Commission for the Efficiency of Justice CEPEJ (Council of Europe).

“The award recognizes innovative practices contributing to the quality of civil justice in member states.

The other projects short listed for the prize were:

- The Barreau de Paris, France (mobile bus offering access to justice to the poor)
- Court of Milan, Italy (e-justice system)
- Ministry of Justice, Turkey (e-justice system)”

Additional information:

1. “The Crystal Scales of Justice is awarded every two years and is open to all 47 countries in Europe to submit entries.
2. The European Commission for the Efficiency of Justice was established in 2002. The aim of the CEPEJ is the improvement of the efficiency and functioning of justice in the member states, and the development of the implementation of the instruments adopted by the Council of Europe.
3. The mediation service has been in operation for just over a year and covers all HMCS areas in England and Wales. To date the service has conducted almost 7,000 mediations with a settlement rate of 68%. The very high customer satisfaction rate is also testament to its popularity and effectiveness.”

(Source – news release by the Ministry of Justice - <http://www.justice.gov.uk/news/newsrelease301008b.htm>)

It is a free, confidential service for court users already involved in a current defended small claims case (source of the information below – HMCS website: <http://www.hmcourts-service.gov.uk/cms/14156.htm>). See the Introductory Part for the

description of the small claims procedure and other procedural ‘tracks’ according to the CPR.

### **Statutory basis (legal basis)**

#### **Links with government and funding**

Run by Her Majesty’s Court Service.

#### **Governance and structure**

Mediations are arranged through local courts.

#### **Budget and expenditure**

No data

#### **Aims**

“The mediation appointment provides an opportunity for parties to discuss their issues in a less formal environment, resolve differences and agree a settlement.”

#### **Procedure:**

- **who can apply for compensation/refer claims**

The procedure is subject to the requirement of consent of both parties to an existing small claims dispute. “Anyone who participates in a mediation appointment will need to agree to enter mediation in good faith with the aim of achieving settlement and, if acting for an organization such as a company or partnership, that person must have the authority of that organization to act on its behalf.” (<http://www.hmcourts-service.gov.uk/cms/14156.htm>).

- **formal requirements and time limits**

See above.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

If the parties agree to use the Small Claims Mediation Service, the mediator contacts them, arranging an appointment. Normally the appointments take place with the use of

the telephone, although face-to-face appointments can also be arranged. There are no specific requirements as to the time, although the appointments generally last about an hour.

If settlement is not reached at the appointment, the case will be listed for a small claims hearing. The mediation process is entirely confidential – thus the judge will not be informed of the content of any discussions at mediation by the mediator.

- **results – compensation, other**

“Settlements reached through mediation can be more flexible than those available to a Judge. There have been a number of innovative settlements, including donations to charity, apologies, a courtesy car during repair work, and re-activation of business contracts.” (<http://www.hmcourts-service.gov.uk/cms/14156.htm>).

- **Costs**

Mediation takes place when the dispute is already in court – so court fees are the main costs involved. If a hearing date needs to be arranged for the judge to determine the case, the claimant (or a defendant with a counterclaim) will be asked by the court to pay a hearing fee. However, if the case is settled by mediation and the court receives notice in writing at least 7 days before the hearing date, the hearing fee will be refunded in full.

### **History (including any reforms, also ongoing reforms)**

#### **Statistics**

#### **Reported cases, problems, issues identified in academic writings**

The HMCS is gathering feedback of the users of the Service through the [online survey](#).

#### **National Mediation Helpline:**

Provided by the Ministry of Justice in conjunction with the Civil Mediation Council. See Advice Services – First part of the paper.

#### **Coal Health Compensation Schemes**

- [http://www.nao.org.uk/publications/nao\\_reports/06-07/0607608.pdf](http://www.nao.org.uk/publications/nao_reports/06-07/0607608.pdf)

- Review (November 2005) can be found at <http://www.berr.gov.uk/files/file16630.pdf> (also in file)
- See also Special report into the handling of Coal health Compensation Scheme complaints by the Legal Complaints Service and the Solicitors Regulation Authority (January 2008) [www.oslcc.gov.uk](http://www.oslcc.gov.uk)

#### Asbestos/ Mesothelioma

- May 16 2006 the Secretary of State for Work and Pensions (John Hutton) announced that this Dept and the Association of British Insurers (ABI), the Association of Personal Injury Lawyers (APIL), and the Department for Constitutional Affairs (DCA) had agreed to work together to identify ways to speed up the settlement of claims for those suffering from mesothelima.
- The Trades Union Congress (TUC) and the Financial Services Compensation Scheme (FSCS) are among others also consulted.
- Amendments have been made to the Compensation Bill 2006: [http://www.opsi.gov.uk/acts/acts2006/ukpga\\_20060029\\_en\\_1](http://www.opsi.gov.uk/acts/acts2006/ukpga_20060029_en_1) to reverse the effects of Barker vs Corus
- A Standard Claim Letter is being developed
- The Code of Practice for tracing Employers' Liability Compulsory Insurance (ELCI) policies will be reviewed.
- See also J Townsend Schemes of Arrangement and Asbestos Litigation: In Re Cape plc, The Modern Law Review Limited 2007 pp.837 – 847

#### Miners' Compensation: Pneucomconiosis

- The Pneumoconiosis etc. (workers' Compensation) (Prescribed Occupations) Order 2007: [www.opsi.gov.uk/si/si2007/20072000.htm](http://www.opsi.gov.uk/si/si2007/20072000.htm) (also in file)
- Ammended Regulations Order 2008 no.650 (in file)
- See also 1979 Pneumoconiosis etc. (Workers' Compensation) Act 1979 and 1988

#### No-fault Blood products (NHS -Scotland)

- The Macfarland Trust and No-fault compensation (September 2001)(in file)
- Report of the Expert Group on Financial and Other Support (March 2003) (in file)

### **Sectoral Public Regulated Schemes**

#### **Financial Standards Authority (FSA)**

Policy Statement: <http://www.fsa.gov.uk/pubs/additional/lcc.pdf>

Handbook/Key Rules: [http://www.fsa.gov.uk/pubs/handbook/keyrules\\_mhr.pdf](http://www.fsa.gov.uk/pubs/handbook/keyrules_mhr.pdf)



CP07/14: Dispute Resolution: the Complaints sourcebook:

[http://www.fsa.gov.uk/pubs/cp/cp07\\_14.pdf](http://www.fsa.gov.uk/pubs/cp/cp07_14.pdf)

With-profits funds - compensation and redress Consultation Paper (closes 3 Sept 2008):

[http://www.fsa.gov.uk/pubs/cp/cp08\\_11.pdf](http://www.fsa.gov.uk/pubs/cp/cp08_11.pdf)

### **Financial Services Compensation Scheme (FSCS)**

- [www.fscs.org.uk](http://www.fscs.org.uk)
- Guide to the different roles of FSA, FOS and FSCS:  
<http://www.fscs.org.uk/files/documents/pdfs/jkhsegwsvzuyope.pdf>
- Annual Report 07-08:  
<http://www.fscs.org.uk/files/documents/pdfs/ttrudqkhiczgndl.pdf>
- FSCS Consumer Guide:  
<http://www.fscs.org.uk/files/documents/pdfs/kzkxvrgmrzmpcyf.pdf>
- FSCS Claiming Compensation:  
<http://www.fscs.org.uk/files/documents/pdfs/vcrckxvpjmrzmku.pdf>

### **Solicitors' Compensation Fund**

According to S. 36 of the Solicitors Act 1974 (<http://www.statutelaw.gov.uk/content.aspx?LegType=All+Primary&PageNumber=47&NavFrom=2&parentActiveTextDocId=2188768&ActiveTextDocId=2189577&filesize=1999>) the Law Society is required to maintain and administer the Fund. The Solicitors' Compensation Fund is therefore a statutory sectoral grant-making fund. It was first established under the Solicitors Act 1941 to provide compensation of losses caused by a solicitor's dishonesty or by his failure to account for money. Section 36.8 provides that the "Council may make Rules about the Compensation Fund and the procedure for making grants from it". Following this Section, and also Section 9 of the Administration of Justice Act 1985 the Law Society established the rules governing the operation of the Compensation Fund: Solicitors' Compensation Fund Rules 1995 (version amended in July 2007: <http://www.sra.org.uk/documents/rules/Compensation-Fund-Rules.pdf>) explain the conditions for applying for awards. Also: <http://www.sra.org.uk/documents/rules/Compensation-Fund-Overseas-Rules.pdf> - rules concerning foreign solicitors.

### **Legal Complaints Service**

[www.legalcomplaints.org](http://www.legalcomplaints.org)

With the assistance of Chris Warner (Which?)

### **Statutory basis (legal basis)**

Schedule 1(A) Solicitors Act 1974 (as amended) – this gives the formal power to investigate service complaints and direct redress where service was not of the quality that it is reasonable to expect of a solicitor. LCS try to help as many customers and solicitors as possible to resolve their complaints informally – this process is called conciliation.

### **Links with government and funding**

The LCS is funded by the Law Society. The Law Society is a ‘charter body’ granted certain powers to regulate solicitors by statute (see the Law Society’s website for details: [www.lawsociety.org.uk](http://www.lawsociety.org.uk)).

### **Governance and structure**

Power to set policy on complaint-handling and to exercise the complaint-handling power of the Law Society of England and Wales has been delegated to the Board of the Legal Complaints Service by the General Regulations that govern the corporate structure of the Law Society.

The Board of the LCS (from January 2006) consists of 14 members. It has a lay majority: 8 Lay Members (one of whom is the Chair) and 6 solicitor members.

### **Budget and expenditure**

The organisation has about 400 staff, across two locations. The annual staff budget is approximately £18,000,000. The main office is in Leamington Spa, West Midlands.

### **Aims**

The organisation’s stated vision is to be ‘*An independent, Legal Complaints Service of the highest quality.*’ In 2007, they launched an Improvement Agenda for the 3 year period leading to the establishment of the new statutory Office of Legal Complaints (OLC) (see section G).

Extract from the Improvement Agenda 2007-2010:

#### **Strategic Objective 1:**

To improve our services and the way we respond to customers. We will:

- Get the right outcome for people who make a complaint about a solicitor.
- Improve the speed, quality and flexibility of our service.
- Prevent unreasonable delays when making decisions.
- Handle complaints effectively and improve productivity.

- Reduce the cost of handling each complaint.
- Work with solicitors to reduce the time we take to resolve a complaint.

### **Strategic Objective 2:**

To give consumers the best information available to select and work with a solicitor in the most productive way. We will:

- Publish a range of guides to help consumers choose and work with their solicitor.
- Work with consumer bodies to make sure the service we provide is relevant to the needs of our customers.
- Increase awareness of our services so that more people can use them.
- Improve the way we record information about complaints to better inform customers and solicitors.
- Make sure we apply our policies fairly and consistently.

### **Strategic Objective 3:**

To have a constructive relationship with solicitors. The aim is to help the profession to reduce the number of complaints they produce. We will:

- Work closely with the Solicitors Regulation Authority to share information on trends in complaints handling.
- Introduce a client care award.
- Work with solicitors to improve standards, reduce the number of complaints and reduce costs to the profession.
- Use straightforward procedures that show we are fair when dealing with solicitors.
- Promote and improve the ways that solicitors can access our service.

### **Procedure:**

#### **▪ Who can apply for compensation/refer claims**

The LCS deals with complaints about the service received by clients of solicitors that are referred to us by them (or occasionally by their current legal representatives or their MP). In limited circumstances LCS can also consider complaints from other consumers who are directly involved in the service (e.g. beneficiaries of estates where the solicitor is the executor). However, the statutory powers only allow LCS to provide redress to the client.

Complaints handling is separated between 'service' and 'conduct' issues. Another organisation, **the Solicitors Regulation Authority (SRA)**, has delegated power from the Law Society to consider issues of conduct. The SRA regulates more than 100,000 solicitors in England and Wales; its purpose is to protect the public by ensuring that solicitors meet high standards, and by acting when risks are identified. A complaint by a person about the conduct of *someone else's* solicitor would be investigated by the SRA. Where any issues of conduct relate to the person's *own* solicitor, LCS address the service complaints and consider whether there are conduct issues that require referral to the SRA.

- **Formal requirements and time limits**

The formal requirements are set out in the LCS complaints acceptance policy (copy attached)

- **Proceedings**

The LCS approach to complaint resolution is to encourage and help the parties to reach an agreed resolution. This may happen very early, without the LCS investigating the alleged poor service, or at any stage prior to the matter being referred (if appropriate) for formal decision ('adjudication') under the statutory jurisdiction. The LCS calls its form of alternative dispute resolution 'conciliation', and it is one of a number of possible outcomes; for example, it may be that a matter is closed because, on investigation, there is no evidence of poor service. The parties in a case of poor service are encouraged to consider what might be fair redress to the customer, assisted by the 'guidance on compensation' that LCS publishes on its website. If the matter is complex or the parties are unable to reach agreement, the matter will be referred for adjudication.

- **Results – compensation, other**

If the complaint is upheld on adjudication, the possible elements of redress are:

- reduction of the solicitor's bill
- payment of compensation for distress and inconvenience and financial effects (up to a maximum of £15,000)
- the solicitor acting to correct a mistake and pay any costs involved.

### **Costs**

The LCS service is free to complainants. On a finding of poor service (adjudication), the LCS may charge the solicitors a fee to cover the costs of the LCS investigation (up to a maximum of £1,080 in November 2008.)

## **History (including any reforms, also ongoing reforms)**

The LCS was formerly a directorate of the Law Society. The Board of the LCS took over corporate responsibility in January 2006.

As a result of the Legal Services Act 2007, the whole regulatory and complaint-handling regime is being changed for legal services by 2010-11. In particular:

- ☐ The Legal Complaints Service (LCS) will close in the near future, probably during 2010, when the Office for Legal Complaints (OLC) opens;
- ☐ The OLC is a new non-departmental government body that will handle unresolved service complaints against all types of lawyer (including solicitors, licensed conveyancers and barristers) from about the spring of 2010;
- ☐ The OLC is being created under the Legal Services Act 2007, which has also created the new Legal Services Board, to oversee the regulation of lawyers by the various legal regulatory bodies.

## **Statistics**

### **April 2006 to March 2007**

- The Legal Complaints Service achieved all of its timeliness targets for the year April 2006 to March 2007.
- By March 31 2007, there were 56 cases more than 15 months old, only three of which were held by the Legal Complaints Service. The remaining 53 were with the Solicitors Regulation Authority, being assessed in regard to conduct matters.
- At the end of the previous plan year there were a total of 486 cases over 15 months old – a difference of 430 cases.
- A total of 1,120 cases were closed during the year – 740 by the Legal Complaints Service and 380 by the Solicitors Regulation Authority.
- 57% of cases were closed within three months and 94% within 12 months. At the end of the previous plan year the organisation scored 55% and 92% respectively in relation to these two targets.

- The Legal Complaints Service met each of four performance targets during this plan year.
- In regard to five quality targets the Legal Complaints Service recorded success in two, a near miss of 1.5% in another with an agreed tolerance of 4%, and failure against two others.
- The Legal Complaints Service sees quality as achieving the right result in a customer-friendly way. Internally we measure technical quality. The Legal Complaints Commissioner is not equipped to make technical assessments and chose five customer-focused targets as her quality measures. This results in the measurement of process adherence and does not reflect the full customer experience of our service.

#### **April 2007 to March 2008**

- During the 2007/08 plan year the Legal Complaints Service was tasked with having no file open more than 12 months old.
- At the end of the year the Legal Complaints Service has just four files open older than 12 months, each with a justifiable reason. This meant that the organisation closed 99.85% of files within 12 months.
- The three month target, which called for 67% of files to be closed within this timeframe, was also met.
- Three years previously the Legal Complaints Service had around 1,200 cases more than 12 months old.
- Six quality targets produced the following results: Q1 acknowledgements 92.3% (65% 06/07), Q2a Substantive response 86.2% (78.5% 06/07), Q2b standard information 97.1% (40% 06/07), Q3 sufficient information 90.6% (81.7%), Q4 customer updates 79.9% (61.7% 06/07), Q5 special payments 84.4% (48% 06/07).

#### **Reported cases, problems, issues identified in academic writings**

The Legal Complaints Service remains active in trying to bring redress to miners who have had improper deductions made from compensation awards for Vibration White Finger (VWF) and Chronic Obstructive Pulmonary Disease (COPD).

At the end of September 2008 the Legal Complaints Service had received a total of 3,931 cases with 138 of these being received during September 2008. Of these 3,529 have been closed, leaving 402 cases active.

In monetary terms £980,995.03 has been returned to miners following conciliation, a further £424,903.70 has been returned following adjudicated decisions. This means the total returned to former miners following investigations by the Legal Complaints Service now stands at £1,405.898.73.

Complaints Acceptance Policy instated 1<sup>st</sup> May 2008:  
<http://www.legalcomplaints.org.uk/documents/Complaints%20Acceptance%20Policy.pdf>

'The most compensation we can award you is £15,000, but this would include any amount to cover the financial effects of the poor service. Such a high amount of compensation is rare. Compensation for distress and inconvenience is usually much lower, as you will see from the following examples. We do not have a set amount we award. We will assess your case on its own merits when deciding how much compensation your solicitor should pay you.' (<http://www.legalcomplaints.org.uk/guidance-on-compensation.page> 21.7.08)

Website demonstrates examples of how levels of compensation are decided:  
<http://www.legalcomplaints.org.uk/guidance-on-compensation/distress-and-inconvenience-examples.page>; <http://www.legalcomplaints.org.uk/guidance-on-compensation/financial-effects.page#howmuch>

### **The Office of Independent Adjudicator for Higher Education**

(<http://www.oiahe.org.uk/>)

The Higher Education Act 2004 provides for the appointment of a designated operator of a student complaints scheme in England and Wales. The OIA is the designated operator of the Scheme with effect from 1 January 2005. The first Independent Adjudicator for Higher Education was Baroness Deech. The current Independent Adjudicator and Chief Executive is Robert Behrens.

All qualifying Higher Education Institutions (HEIs) in England and Wales must comply with the Rules of the Scheme (<http://www.oiahe.org.uk/docs/OIA-RulesMay2008.pdf>). The new Rules are effective from 1 May 2008.

### **Statutory basis (legal basis)**

The Higher Education Act 2004.

## **Links with government and funding**

Independent scheme.

## **Governance and structure**

## **Budget and expenditure**

## **Aims**

The main purpose of the Scheme is the review of unresolved complaints by students about acts and omissions of HEIs and the making of recommendations.

## **Procedure:**

### **○ who can apply for compensation/refer claims**

Complaints can be made by students at one of the HEIs, but the following complaints are not covered by the scheme:

- concerning admission to an HEI;
- relating to a matter of academic judgment;
- if the matter complained about is the subject of court or tribunal proceedings and those proceedings have been concluded, or the matter is the subject of court or tribunal proceedings and those proceedings have not been stayed;
- concerning a student employment matter;
- if in the opinion of the Reviewer the matter complained about does not materially affect the complainant as a student;
- if the matter complained about is being dealt with (or has been dealt with) under these or any previous rules of the OIA, or
- if it is made by the personal representatives of a student and the OIA had not received a Scheme Application Form during the student's lifetime.

### **○ formal requirements and time limits**

The student must have first of all exhausted the internal complaints procedure within the HEI. The complaint to the scheme must be brought within 3 months from the time when this internal route was exhausted (a "Completion of Procedures Letter" is normally sent to the student to complete this internal route) (although the Adjudicator may also accept complaints which did not satisfy these requirements). The Adjudicator will normally not consider complaints concerning events which took place more than 3 years prior to the complaint being made.



- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

Complaints are made in writing on an official form. Reviewers do an initial examination and establish the scheme’s jurisdiction over the complaint. Complaints may be rejected at any time if the Reviewer considers them vexatious or frivolous. The review will normally consist of a review of documentation and other information and the Reviewer will not hold an oral hearing unless in all the circumstances he or she considers that it is necessary to do so. Before issuing a Formal Decision the Reviewer will (unless he considers it unnecessary to do so) issue a draft or preliminary decision (and any draft/preliminary Recommendations). The parties will be given the opportunity to make limited representations as to any material errors of fact they consider have been made and whether the draft Recommendations are practicable. The parties shall comply promptly with any reasonable and lawful request for information the Reviewer may make. The Reviewer may at any time seek to achieve a mutually acceptable settlement of a complaint (including, with the consent of the parties, through the appointment of a mediator) whenever he or she considers it appropriate (Rules – s. 6).

- **results – compensation, other**

According to the Rules:

“7.3 In deciding whether a complaint is justified the Reviewer may consider whether or not the HEI properly applied its regulations and followed its procedures and whether or not a decision made by the HEI was reasonable in all the circumstances.

7.4 The Reviewer may, where the complaint is justified in whole or in part, make Recommendation(s) that the HEI should do something or refrain from doing something. Those Recommendation(s) may include, but not be limited to, the following:

7.4.1 that the complaint should be referred back to the HEI for a fresh determination because its internal procedures

have not been properly followed in a material way;

7.4.2 that the complaint would be better considered in another forum;

7.4.3 that compensation should be paid to the complainant, including, at the Reviewer’s discretion, an amount for inconvenience and distress;

7.4.4 that the HEI should take a course of action that the Reviewer considers to be fair in the circumstances;

7.4.5 that the HEI should change the way it handles complaints;

7.4.6 that the HEI should change its internal procedures or regulations.

7.5 The OIA expects the HEI to comply with the Formal Decision and any accompanying Recommendations in full, and in a prompt manner.

7.6 Where Recommendations require the HEI to take a particular course of action it should do so within the time scale stipulated or, where no time scale is indicated, as soon

as is reasonably practicable. The HEI shall, if requested, report to the Reviewer on such compliance.

7.7 Any non-compliance by an HEI with a Recommendation will be reported to the Board and publicised in the Annual Report.”

- **costs**

The Scheme does not charge complainants. Each HEI is bound to pay a total annual subscription and/or case fee, based on a published scale, for participating in the Scheme, (determined by the Board).

### **History (including any reforms, also ongoing reforms)**

### **Statistics**

### **Reported cases, problems, issues identified in academic writings**

## **The Pension Protection Fund**

[http://www.pensionprotectionfund.org.uk/index/about\\_the\\_ppf.htm](http://www.pensionprotectionfund.org.uk/index/about_the_ppf.htm)

The main function of the Fund is to provide compensation to members of eligible defined benefit pension schemes, “when there is a qualifying insolvency event in relation to the employer, and where there are insufficient assets in the pension scheme to cover the Pension Protection Fund level of compensation.”

“The Pension Protection Fund is a statutory fund run by the Board of the Pension Protection Fund, a statutory corporation established under the provisions of the Pensions Act 2004. To help fund the Pension Protection Fund, compulsory annual levies are charged on all eligible schemes. Investing the assets of the Pension Protection Fund effectively is a further key function of the organisation. The Pension Protection Fund is also responsible for the Fraud Compensation Fund - a fund that will provide compensation to occupational pension schemes that suffer a loss that can be attributable to dishonesty” ([http://www.pensionprotectionfund.org.uk/index/about\\_the\\_ppf.htm](http://www.pensionprotectionfund.org.uk/index/about_the_ppf.htm)).

## **NHS COMPENSATION AND REDRESS SCHEMES**

### **Complaints about the NHS**

The complaints are to be directed first of all to the service or the primary care trust commissioning the service concerned. This internal complaints procedure is explained on the website of the NHS:

<http://www.nhs.uk/aboutNHSChoices/Pages/Howtocomplaincompliment.aspx>

Code of Practice for the Promotion of NHS-funded Services can be found on the following website:

[http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/DH\\_083556](http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/DH_083556)

Complaints should normally be made within 12 months of the date of the event complained about, or as soon as the matter first came to the attention of the complainant (although sometimes this time limit can be extended).

Until 31 March 2009 the Healthcare Commission was responsible for reviewing unresolved complaints. Since 1 April 2009 this is no longer the case: the government has introduced a **new, two-stage review process**:

- The first step is referred to as 'local resolution' - it normally involves raising the matter, orally or in writing, with the practitioner (nurse or doctor, or with their organisation), which will have a complaints manager.
- Matters unresolved in the first stage can be referred to the Parliamentary and Health Services Ombudsman (analysed elsewhere).

The NHS website provides information about organisations providing assistance to patients: these are: the Patient Advice and Liaison Services (PALS), located in each NHS trust (providing advice you on how to take a complaint forward or help to resolve it informally); and the Independent Complaints Advocacy Service (ICAS) - free, confidential and independent service which can help you make a formal complaint about NHS services (analysed elsewhere).

NHS bodies, primary care providers and independent providers are obliged to establish complaints procedures which follow a number of detailed requirements under the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 [http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20090309\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090309_en.pdf) for complaints arising on or after 1 April 2009.

**Here are the main provisions of the Regulations:**

**Requirements for complaints arrangements:**

Section 3 of the Regulations requires that:

“(2) The arrangements for dealing with complaints must be such as to ensure that—

- (a) complaints are dealt with efficiently;
- (b) complaints are properly investigated;
- (c) complainants are treated with respect and courtesy;
- (d) complainants receive, so far as is reasonably practical—
  - (i) assistance to enable them to understand the procedure in relation to complaints; or
  - (ii) advice on where they may obtain such assistance;
- (e) complainants receive a timely and appropriate response;
- (f) complainants are told the outcome of the investigation of their complaint; and
- (g) action is taken if necessary in the light of the outcome of a complaint.”

**Responsible persons and complaints managers:**

The responsible bodies must also designate a ‘responsible person’ and a ‘complaints manager’:

The ‘responsible person’s task would be to oversee that Regulations are complied with, and the decisions on complaints are acted upon.

The ‘complaints managers’ are to manage procedures for handling and considering complaints in accordance with the Regulations (Section 4).

**Persons who can make complaints:**

Those who received services from the responsible body, those who are affected by an action, omission or a decision of the responsible body, and those acting on behalf of persons who died, children, or others who are unable to make a complaint because of physical or mental incapacity.

**Scope of application:**

The following functions of the responsible bodies can be subject to complaints:

Local authorities: social services functions, functions discharged by them according to arrangements with an NHS body.

NHS bodies – any of their functions.

Primary healthcare providers: provision of services under arrangements with an NHS body.

Independent care providers: provision of services under arrangements with an NHS body.

The Primary Care Trust which received a complaint about one of the responsible bodies (NHS, primary and independent providers) may consider the complaint or may refer it (if the complainant agrees) to the provider.

A local authority which received a complaint concerning care standards, it can refer it to be considered by the care provider (if the complainant consents), and if it receives a complaint concerning social care providers – again it can refer the complaint to be considered by the provider.

Complaints which do not need to be considered according to the Regulations:

- complaints made orally and resolved to the complainant's satisfaction not later than the next working day after the day on which the complaint was made (here the emphasis on de-formalising complaints procedures is clear);
- a complaint the subject matter of which is the same as that of an oral complaint that has previously been made and resolved to the complainant's satisfaction as above;
- a complaint the subject matter of which has previously been investigated under previous Regulations or a complaint made before 1 April 2009 which has been investigated under a relevant complaints procedure;
- a complaint the subject matter of which is being or has been investigated by a Health Service Commissioner under the Health Service Commissioners Act 1993;
- a complaint arising out of the alleged failure by the responsible body to comply with a request for information under the Freedom of Information Act 2000.

**Time limits:**

12 months from the time when the matter complained about occurred or when it came to the knowledge of the complainant, but complaints may be made after this deadline if there was a good reason and if it is still possible to consider them effectively and fairly.

**Complaints:**

Can be made in writing or orally, and they have to be acknowledged by the responsible body within 3 days.

**Investigation:**

The responsible body must investigate the matter in a manner appropriate to resolve it speedily and efficiently (Section 14). After completing the investigation the responsible body must send a response to the complainant (this must be done within 6 months, otherwise the complainant must be informed of the reasons why this could not be done).

**The NHS Redress Act 2006 – proposed compensation scheme**

NHS Clinical Negligence Compensation:

[www.nhs.uk](http://www.nhs.uk)

NHS

Redress

Act

2006:

[http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga\\_20060044\\_en.pdf](http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060044_en.pdf)

### **Statutory basis (legal basis)**

The NHS Redress Act 2006. The proposed Scheme has not been implemented.

### **Aims**

The Act provides for the establishment of an NHS Redress Scheme to enable the settlement, without the need for court proceedings, of certain claims that arise in connection with hospital services provided to patients as part of the NHS in England and Wales<sup>68</sup>. Regulations enabling the scheme have not been laid.

### **History (including any reforms, also ongoing reforms)**

There were two origins of this scheme. The first lever was concern over the size, uncontrollability and increase in the amount of money spent and time devoted to dealing with medical negligence litigation claims. The second lever was a desire to change NHS culture so as to identify mistakes, record and learn from them, and so reduce the number of errors and the adverse consequences.

Government policy on reform of the NHS was set out in *The NHS Plan, A plan for investment, a plan for reform*, (2000), which committed the NHS to a 10 year process of reform. One of the commitments was to improve the system for handling and responding to clinical negligence claims. The previous system was perceived to be complex, unfair, slow, costly, having a negative effect on staff morale and public confidence, leading to patient dissatisfaction over the lack of explanations, apologies or reassurance on preventive action, and encouraging defensiveness and secrecy in the NHS, which stood in the way of learning and improvement. Proposals for reform were set out in 2003 in a Report by the Chief Medical Officer, Sir Liam Donaldson, *Making Amends: a consultation paper setting out proposals for reforming the approach to clinical negligence in the NHS* (Department of Health, 2003).

### **Statistics**

#### **Reported cases, problems, issues identified in academic writings**

A-M. Farrell and S. Devaney, 'Making amends or making things worse? Clinical negligence reform and patient redress in England' *Legal Studies* 27:4 (2007) 630.

Above is a proposed compensation scheme. At present, the NHS has a Litigation Authority which handles claims against the NHS brought to courts, and is also involved in ADR processes involving the NHS. Here is a short description of the Authority:

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<sup>68</sup> Section 17 of the Act gives a regulation-making power to the National Assembly for Wales.

## NHS Litigation Authority

Established in 1995, the NHSLA is a Special Health Authority (part of the National Health Service), which handles negligence claims against NHS bodies in England.

(In addition to dealing with claims, they also have an active risk management <http://www.nhsla.com/RiskManagement/> programme “to help raise standards of care in the NHS and hence reduce the number of incidents leading to claims”).

They also monitor human rights case-law on behalf of the NHS through the [Human Rights Act Information Service](#). Since April 2005 they have been responsible for handling [family health services appeals](#) and co-ordinating [equal pay claims](#) on behalf of the NHS.

The NHSLA manages five schemes: three relate to clinical negligence claims ([CNST](#), [ELS](#) and the [ex-RHAs scheme](#)), and the other two cover non-clinical risks, such as liability for injury to staff and visitors and property damage (LTPS and PES, known collectively as [RPST](#)). “While only NHS bodies are eligible for membership of these schemes, [Independent Sector Treatment Centres](#), treating NHS patients, may benefit from CNST cover via their referring Primary Care Trust” (<http://www.nhsla.com/home.htm>).

### **The CNST – Clinical Negligence Scheme for Trusts -**

<http://www.nhsla.com/Claims/Schemes/CNST/> is a voluntary membership scheme, to which all NHS trusts, Foundation trusts and Primary Care Trusts (PCTs) in England currently belong. It covers all clinical claims where the allegedly negligent incident took place on or after 1 April 1995. The costs of meeting these claims are met through members’ contributions on a “pay-as-you-go” basis.

### **Existing Liabilities Scheme –**

<http://www.nhsla.com/Claims/Schemes/ELS/>

Centrally funded by the Department of Health and covers clinical claims against NHS bodies when the incident took place before April 1995.

### **Ex-RHAs scheme –**

A scheme covering clinical claims made against the former Regional Health Authorities, abolished in 1996. Like the ELS it is centrally funded by the Department of Health. It differs from the Authority’s other schemes in that the Authority is the legal defendant in any action.

**Liabilities to Third Parties Scheme (LTPS) and Property Expenses Scheme (PES) - known collectively as the Risk Pooling Schemes for Trusts (RPST),**

<http://www.nhsla.com/Claims/Schemes/RPST/>

Two voluntary membership schemes covering non-clinical claims where the incident occurred on or after 1 April 1999. Costs are met through members’ contributions. Trusts

may join either of these. Both schemes date from 1 April 1999, and cover begins from that date (or from a later date when the NHS body joined the scheme).

LTPS covers employers' liability claims (straightforward slips and trips in the workplace to serious manual handling, bullying and stress). LTPS covers public and products liability claims, from personal injury sustained by visitors to NHS premises to claims arising from breaches of the *Human Rights Act*, the *Data Protection Act* and the *Defective Premises Act*. There is also cover for defamation, professional negligence by employees and liabilities of directors.

PES provides cover for "first party" losses such as theft or damage to property.

There are new reporting criteria for Members in respect of LTPS claims reported after 1<sup>st</sup> August 2006. These criteria will supplement the existing reporting guidelines. A [letter](#) announcing these changes and the '[NHSLA Disclosure List](#)' have been sent to Members.

LTPS/PES claims are subject to excesses, with member bodies responsible for handling and funding below-excess claims themselves. They can, however, ask the NHSLA to handle these claims for them for a handling fee.

Like CNST, LTPS/PES contributions are calculated on an annual basis using actuarial techniques. Discounts are available to those who meet the risk management standards.

#### **Participation in mediation:**

As a member of the Mediation Working Group set up by the Clinical Disputes Forum, the NHSLA participated in the creation of the Forum's [Guidance on mediation](#)

#### **According to the "NHS Indemnity", clinical negligence is defined as:**

1. "A breach of duty of care by members of the health care professions employed by NHS bodies or by others consequent on decisions or judgements made by members of those professions acting in their professional capacity in the course of employment, and which are admitted as negligent by the employer or are determined as such through the legal process.

2. In this definition "breach of duty of care" has its legal meaning. NHS bodies will need to take legal advice in individual cases, but the general position will be that the following must all apply before liability for negligence exists:

**2.1** There must have been a duty of care owed to the person treated by the relevant professional(s);

**2.2** The standard of care appropriate to such duty must not have been attained and therefore the duty breached, whether by action or inaction, advice given or failure to advise;

**2.3** Such a breach must be demonstrated to have caused the injury and therefore the resulting loss complained about by the patient;



**2.4** Any loss sustained as a result of the injury and complained about by the person treated must be of a kind that the courts recognize and for which they allow compensation; and

**2.5** The injury and resulting loss complained about by the person treated must have been reasonably foreseeable as a possible consequence of the breach.”

### **Statutory basis (legal basis)**

The NHS Litigation Authority was set up by the *National Health Service Act 1977* (as amended) and Regulations made under that Act. The statutory duties of the NHS Litigation Authority were set out in the *National Health Service Act 1977* (which was superseded by the 2006 Act) and refer to a requirement to remain within revenue and capital resource limits.

### **Links with government and funding**

The financial statements are prepared according to an Accounts Direction issued by the Secretary of State with the approval of HM Treasury.

### **Governance and structure**

“The Authority is led by a Board, consisting of executive (employees) and non-executive members, chaired since 1 April 2007 by Professor Dame Joan Higgins. The non-executive directors are appointed by the NHS Appointments Commission. All executive directors have been appointed through open competition and in accordance with the Authority’s recruitment and selection policies and Department of Health guidance. All current executive director posts are permanent appointments.” (Report and Accounts 2008, p. 32).

### **Budget and expenditure**

During the year (2008), the Authority’s net Operating Costs amounted to £2,642.36m, which represents a reported increase of £1,950.89m on the figure for the previous year (Annual Report 2008, p. 34). The Annual Report for 2008 indicates that the balance sheet as at 31 March 2008 shows net liabilities of £11.95billion. This includes an in year increase in excess of £1.5billion due to the impact of the judgement in a Court of Appeal hearing in *Thompstone*:

(as described on page 17 of the Report: - “*Thompstone v Tameside and Glossop Acute Services NHS Trust* - This case, together with three similar NHS claims, was heard by the Court of Appeal in November 2007. In its judgment in January 2008, the court upheld rulings by all four trial judges that future damages for these seriously injured claimants should be linked to a sub-set of the Annual Survey of Hours and Earnings (ASHE) rather

than to the Retail Prices Index (RPI), which had been standard practice until late 2006. Far from being an obscure legal or actuarial point, this decision is highly significant from the NHS perspective because historically, this ASHE measure has risen much faster than RPI. The consequence is that, should this pattern be repeated in future, damages payments will increase significantly and the bill to the NHS will be enormous.”)

## **Aims**

“The Authority is a Special Health Authority and its primary function is to manage, on behalf of member trusts, claims arising from clinical negligence incidents post 1 April 1995 (the Clinical Negligence Scheme for Trusts or CNST). In addition, the Authority is responsible for managing clinical negligence claims against the NHS for incidents pre 1 April 1995 (the Existing Liabilities Scheme or ELS), clinical negligence claims against the former Regional Health Authorities (the ex-RHA Scheme) and the non clinical risks of member trusts with the exception of motor vehicle claims. The Authority is also responsible for promoting high standards of risk management throughout the NHS and certain appellate functions on behalf of the Department of Health.” (Annual Report 2008, p. 34)

The remit when handling claims against NHS organisations, as set out in the *Framework Document*, is to “maximize the resources available for patient care, by defending unjustified actions robustly (and) settling justified actions efficiently”. NHSLA aims to “settle claims as promptly as possible and encourage NHS bodies to offer patients explanations and apologies. They seek to avoid formal litigation as far as possible and our historical data show that only about 4% of our cases go to court, including settlements made on behalf of minors, which must be approved by a court.” (The National Health Service Litigation Authority, Report and Accounts 2008 <http://www.nhsla.com/NR/ronlyres/3F5DFA84-2463-468B-890C-42C0FC16D4D6/0/NHSLAAnnualReport2008.pdf> , p. 10).

## **Statistics**

The Annual Reports are on the website of the Authority, see the latest report for 2008: <http://www.nhsla.com/NR/ronlyres/3F5DFA84-2463-468B-890C-42C0FC16D4D6/0/NHSLAAnnualReport2008.pdf>

## **Reported cases, problems, issues identified in academic writings**

### **NHS Pharmacy Complaints**

## NEW SCHEME APPLICABLE FROM APRIL 2009:

The website of the Pharmaceutical Services Negotiating Committee explains the changes in the complaints system:

“The Clinical Governance Network requires all pharmacy contractors to have in place arrangements which comply with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009, for the handling and consideration of any complaints made on or after 1st April 2009. The regulations introduced a number of changes to the way that Health and Social Care services are handled, in order to provide complaints procedures that are consistent across all providers and NHS bodies, and deal with complaints efficiently and effectively. There are some differences between these requirements and those that existed in pharmacy before they came into force. The text on this web page can be downloaded as a freestanding briefing on the complaints regulations.”

**The 2009 Regulations mentioned and analysed above are available online: [http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20090309\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090309_en.pdf). They apply to the following responsible bodies: local authorities, NHS bodies, primary care providers and independent providers.**

**The system adopted by the Pharmacies according to the Regulations is explained on the website: [http://www.psn.org.uk/pages/clinical\\_governance\\_complaints.html](http://www.psn.org.uk/pages/clinical_governance_complaints.html).**

**The following are the changes which the Regulations led to:**

- “Each pharmacy must appoint a ‘responsible person’;
- Oral complaints dealt with to the satisfaction of the complainant no later than the following day do not need to be handled under the new procedures;
- The time limit for making complaints increases from 6 to 12 months;
- The pharmacy must offer to discuss handling of the complaint and setting the time for a response, with the complainant;
- The maximum time for responding to a complaint increases to six months;
- An ‘annual report’ about complaints must be published, made available to anyone who requests it, and be sent to the PCT.”  
([http://www.psn.org.uk/pages/clinical\\_governance\\_complaints.html](http://www.psn.org.uk/pages/clinical_governance_complaints.html))

**SECTORAL REGULATORS (and independent ADR schemes approved by them, sometimes required by statute)**

## Office of Communications (Ofcom)

[www.ofcom.org.uk](http://www.ofcom.org.uk)

Ofcom was established as a body corporate by the Office of Communications Act 2002. Ofcom is the regulator for the UK communications industries, with responsibilities across television, radio, telecommunications and wireless communications services. Ofcom's duties are specified in the Communications Act 2003.

Ofcom is required by the Communications Act (Section 52) to ensure that the communications industry has in place effective and accessible machinery for the protection of domestic and small business customers, including procedures for dealing with complaints and disputes. Thus, under Section 54 of the Act, Ofcom requires companies to sign up to a complaints scheme (Section 54 requires that all telephone and internet service providers are members of an independent ADR scheme approved by Ofcom), and extends its probe into fixed-line mis-selling.<sup>69</sup> These approved schemes are Otelo and CISAS.

Ofcom's website contains a very comprehensive guide for consumers wishing to complain. Ofcom suggests that consumers contact them first.

### **CISAS (Communications and Internet Services Adjudication Scheme)**

(<http://www.cisas.org.uk/>)

Free, independent adjudication service to resolve disputes between consumers and telephone and internet service providers. It is administered independently of the providers by IDRS Ltd, a dispute resolution service owned by the Chartered Institute of Arbitrators (CI Arb). IDRS is a corporate associate member of the British and Irish Ombudsman Association. See the following for the list of member companies: <http://www.cisas.org.uk/members.asp>.

### **Statutory basis (legal basis)**

Based on Section 54 of Communications Act 2003.

### **Links with government and funding**

Approved by Ofcom, independent of the industry, funded by member companies.

### **Governance and structure**

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<sup>69</sup> [www.ofcom.org.uk/media/news/2008/03/nr\\_20080331b](http://www.ofcom.org.uk/media/news/2008/03/nr_20080331b)

## **Budget and expenditure**

The costs of operating the scheme are paid for by member companies.

## **Aims**

Independent dispute resolution service for communication providers and their customers.

## **Procedure:**

- **who can apply for compensation/refer claims**

Customers of companies who are members can refer claims after having attempted to resolve the complaint with the company (there is a 3-months time for the company to respond). This also includes small businesses. A small business is defined by Ofcom as a business with 10 or fewer employees. Businesses with more than ten employees, or consumers claiming more than £5,000 may be able to use the Communications Providers ADR service (<http://www.communications-adr.com/>).

After the 3-months' period, the customer can either complain to CISAS, or to the **Internet Service Providers' Association**.

- **formal requirements and time limits**

CISAS changed their rules in 2007 (<http://www.cisas.org.uk/Rules.asp>).

If the consumer complaint is not satisfactorily resolved internally within 3 months, or if the company agreed in writing to refer the dispute to CISAS earlier, the case can be referred to CISAS. The scheme can be used to settle disputes about bills or communication services.

The dispute cannot involve a claim for an amount of more than £5000 including VAT for any one customer. It must not involve a complicated issue of law and must not be the subject of existing or previous court action. If the dispute is about something that is not covered by the rules, the company can agree to use the scheme but does not have to.

- **Proceedings**

The customer referring the dispute to CISAS must submit all relevant documents. The company is then given 14 days to respond. If there is no response, the adjudicator will decide based only on the customer's submissions.

Also within 14 days, the company is given the opportunity to settle the dispute. If the settlement is approved by the customer, the case is concluded. The company then has 4 weeks to follow the arrangements of the settlement (unless the parties agree otherwise). If this is not done, the case will be reopened.

If no settlement is reached or if the company does not follow the terms of the settlement, CISAS appoints an adjudicator and sends the company's response to the customer who then has 7 days to respond (no new issues can be added at this point).

As part of the proceedings, the adjudicator may ask the customer or the company for further documents and explanations. The adjudicator may ask an opinion of an expert (costs to be covered by the company). His decision is to be based on the relevant law, codes of practice, and contractual arrangements between the parties to the dispute. The powers of the adjudicators are described in some detail in the rules (<http://www.cisas.org.uk/Rules.asp>).

If the company or the customer are dissatisfied with the adjudicator's decision, CISAS has a complaint procedure which they may follow.

- **results – compensation, other**

Unless the customer accepts a settlement offered by the company; or the company gives the customer all that he or she has claimed on the application form, the adjudicator will make a decision on the matter (usually within six weeks of the application being made). CISAS sends the customer and the company written details of the outcome of the adjudication procedure, including the reasons for that outcome. If the adjudicator makes a decision on the matter (rather than the customer accepting the company's offer or the company providing what the customer has asked for), the customer has six weeks to confirm whether or not they accept the adjudicator's decision. The adjudicator's decision is only binding if the customer accepts it within six weeks. The decision cannot be appealed against. It can only be accepted or rejected and only by the customer. The parties are given four weeks to execute the decision.

The possible outcomes are:

"If the adjudicator agrees with the customer's claim, he or she can tell the company to do any or all of the following.

- Give the customer an apology or explanation.
- Give the customer a product or service, or take some practical action that will benefit the customer.
- Pay the customer an amount up to the amount claimed on the application form, which must be no more than £5000 (including VAT)."

The adjudicator can also dismiss the claim and tell the customer to make a payment to the company or carry out any other action that is appropriate. The customer does not have to take the action suggested.

## **Costs**

The costs of the complaints are borne by the companies, although postage or photocopying must be paid for by the customer and is not refundable.

### **History (including any reforms, also ongoing reforms)**

Established in 2003, no significant reforms so far. There was, however, change in the rules: see above.

### **Statistics**

- See the Annual Report for 2007: <http://www.cisas.org.uk/documents/CISAS2007AnnualReportFINAL.pdf>;
- Statistical report Jan-April 2008: <http://www.cisas.org.uk/KPI/documents/Jan-April2008StatsReport.pdf>

The Report for January-April 2008 demonstrates that during this period CISAS received 2,325 unique consumer contacts, 1,240 applications per year. 730 cases were completed: 37% resulted in the adjudicator's decision, and 67% in a settlement.

See: <http://www.cisas.org.uk/KPI/documents/CISASKPIsforQ12008.pdf> for performance indicators (

### **Reported cases, problems, issues identified in academic writings**

No data.

### **OTELO (Office of the Telecommunications Ombudsman)**

Ombudsman service for public communications providers (PCPs) and their customers.

See the following link for the list of members: <http://www.otelo.org.uk/membercompanies.php>. In March 2009, the information provided on the website was: the members cover more than 96% of the fixed line telephone market, over 55% of the mobile telephone market and 33% of the internet service provider (ISP) market (over 250 companies).

### **Statutory basis (legal basis)**

Similarly with CISAS, Section 54 of the Communications Act 2003.

### **Links with government and funding**

Approved by Ofcom, funded by members.

### **Governance and structure**

## **Budget and expenditure**

See the Financial Report for 2007:  
<http://www.otelo.org.uk/downloads/TOSLfinancials2007.pdf>.

## **Aims**

To assist member PCPs and their customers in resolving disputes concerning: the way in which mobile and fixed phones, faxes and internet service are provided; also certain services like Short Messaging Services (SMS or texting), voice mail and call forwarding, services and products for people with disabilities, like text relay (an operator service that translates voice to text and text to voice) and free directory enquiries.

## **Procedure:**

### **who can apply for compensation/refer claims**

Domestic or small business customers may refer claims (provided they informed the PCP about the problem within 12 months, and that they attempted to resolve the problem internally with the company – giving the latter 3 months to react) concerning PCPs who are members of the scheme. A small business customer is a business spending £5000 or less with the provider, or a business employing 10 or less people. In fact, even potential customers can refer claims. If the Ombudsman considers that the dispute ought to be dealt with by a court, arbitration or other mechanism, the case will not be taken on ([http://www.otelo.org.uk/downloads/Two\\_sides\\_to\\_Every\\_Story\\_-\\_March\\_2006.pdf](http://www.otelo.org.uk/downloads/Two_sides_to_Every_Story_-_March_2006.pdf)).

### **formal requirements and time limits**

Complaint forms are available online (see the following link for an example of a complaint form: [http://www.otelo.org.uk/downloads/Sample\\_complaint\\_form\\_V2.pdf](http://www.otelo.org.uk/downloads/Sample_complaint_form_V2.pdf)), and they can also be obtained from Otelo by post. The 12 months and 3 months periods were mentioned above.

### **proceedings**

The following information is available on the website of Otelo (clearly not as detailed rules as those for CISAS).

“If we can accept your complaint, and you agree that we should do so, we'll ask the company you are complaining about for information about what's happened so far.

How long it takes us to come up with a solution depends on how complicated the complaint is, and how quickly we can get to the facts. To help us with this, you should send us copies of all the information about your case when you return the signed



complaint form. We cannot return any original documents you send us. During the investigation process you will only hear from us if we need more information.

When we have reached a decision, we will write to you with our initial findings and our reasons for making them. At this time, you can give us more information about your complaint but only if you feel that we have made a significant error in fact which would have a material effect on our decision, or you have important new evidence which will have a material effect on our decision. You should send this information to us in writing so the Ombudsman can consider it when making their final decision.

When we have finished this process, we will send you a copy of the Ombudsman's Final Decision."

"Sometimes, we'll try to find an informal solution that will bring the matter to a close. For example, if, when we ask for your file, your supplier tells us that they could do more to settle your complaint without us needing to investigate, we may agree to give them the opportunity to do this. We then check if you are happy with the solution offered.

#### **results – compensation, other**

"If an informal approach is not feasible, we will look at all the information on your case and decide whether your complaint is one that we can help with. We will also consider whether your service provider must take any action to put things right for you and will make a formal, independent decision on the case."

The Ombudsman's decision is final – no appeal is possible. However, if one of the parties have been treated rudely or unfairly, if satisfactory explanation was not provided, or if unnecessary delays occurred, it is possible to make a complaint, and then to refer the complaint to the Independent Assessor (<http://www.otelo.org.uk/pages/79servicestandards.php>).

#### **Costs**

The service is free to the customers.

#### **History (including any reforms, also ongoing reforms)**

##### **Statistics**

See the Ombudsman Service Limited website for the performance report of the Ombudsman: <http://www.tosl.org.uk/pages/76performance.php>.

Otelo annual report 2008: [http://www.otelo.org.uk/downloads/34841\\_Otelo\\_Annual.pdf](http://www.otelo.org.uk/downloads/34841_Otelo_Annual.pdf). The report contains statistical information about the number of complaints, typical complaints, customer satisfaction etc.

### **Reported cases, problems, issues identified in academic writings**

The following web address contains the list of completed cases:  
<http://www.otelo.org.uk/pages/34closedcases.php>.

**Ofcom research shows that consumer awareness of complaints handling procedures is low and is seeking to improve this. A consultation will run until 4 October 2008 with findings hoping to be published in early 2009. The consultation is published at [www.ofcom.org.uk/consult/condocs/alt\\_dis\\_res/summary/](http://www.ofcom.org.uk/consult/condocs/alt_dis_res/summary/)**

### **Postcomm – Postal Services Commission**

The Postcomm is an independent regulator of postal services. The Consumers, Estate Agents and Redress Act (19 July 2007), allows for the Secretary of State for Business, Enterprise and Regulatory Reform to require regulated postal operators to belong to a Postcomm approved redress scheme. The document published on the 30 April 2008 set out the criteria for such schemes: <http://www.psc.gov.uk/policy-and-consultations/consultations/redress-schemes-in-postal-services--approval-criteria.html>. The approved scheme is IDRS.

By virtue of the Postal Services (Consumer Complaints Handling Standards) Regulations 2008, Postcomm requires: “a licensed provider of postal services that provide licensed postal services to relevant consumers to have in place, publish and comply with a complaints handling procedure to handle consumer complaints from receipt through to completion. The complaints handling procedure must meet the requirements set out in regulation 3, which include a requirement that the procedure be transparent, simple and inexpensive, be in plain and intelligible language and must describe the process the licensed provider will follow to investigate and complete a complaint, and the likely timescale for that process.” (Explanatory Note to the Regulations: [http://www.psc.gov.uk/postcomm/live/policy-and-consultations/documents-by-date/2008/2008\\_09\\_complaint\\_regulations\\_v1.0.pdf](http://www.psc.gov.uk/postcomm/live/policy-and-consultations/documents-by-date/2008/2008_09_complaint_regulations_v1.0.pdf)).

The Regulations contain requirements that providers must record information about consumer complaints, publish annual reports on consumer complaints they receive, and that if a provider feels that it will be unable to complete a complaint it must inform the complainant of the right to complain to a qualifying redress scheme (Rule 5) (the redress scheme approved by Postcomm is IDRS). “The Regulations do not require complaints handling procedures to apply to senders of mail who have a contract with a licensed provider, where the complaint relates to mail items conveyed under that contract” (Explanatory Note).

## **Postal Redress Service (POSTRS)**

The approved scheme is the Postal Redress Service (POSTRS) - independent body whose role is to resolve disputes between licensed postal operators and their customers.

“Launched on 1st October 2008, POSTRS is currently the only approved scheme. It is designed to help settle disputes involving customers or businesses about the receipt of mail from a licensed postal operator, or the purchase or use of licensed products or services (except for those products or services for which the customer has a contract with the member company). Applying to POSTRS is free.”  
(<http://www.postrs.org.uk/?p=1&lang=e>)

The scheme rules are available on the following website:  
[http://www.postrs.org.uk/downloads/POSTRS\\_scheme\\_rules.pdf](http://www.postrs.org.uk/downloads/POSTRS_scheme_rules.pdf).

### **Statutory basis (legal basis)**

No statutory basis for POSTRS – see above.

### **Links with government and funding**

Independent, although approved by the Postcomm.

### **Governance and structure**

Scheme provided through IDRS Ltd . List of adjudicators:  
<http://www.postrs.org.uk/?p=10&lang=e>.

Member companies:

- DX Network Services Limited
- [Royal Mail Group](#)
- [TNT Post UK Limited](#)
- Intercity Communications Limited
- LDS Cambridge Limited
- Citipost AMP limited
- The Mailing House Group t/a Northern Mail
- Royale Research Limited t/a CMS
- Post 123

### **Budget and expenditure**

Costs of adjudication are paid for by member companies who are subjects of complaints.

## Aims

To consider complaints by customers of member companies.

### Procedure:

- **who can apply for compensation/refer claims**

Customers of member companies who have complaints about licensed mail they received, or licensed mail goods or services they bought.

- **formal requirements and time limits**

### Complainants may use the scheme if:

- they have not been able to settle a complaint with the company after putting it through their formal complaints procedure (the company must respond within the maximum time limit which it gave the customers – NOTE: here the rules are not very clear – they mention – any other longer period that the company agreed to...?);
- they believe that the company did not follow their complaints procedure when they dealt with the complaint;
- the company has earlier agreed, in writing, that the dispute should be settled through the scheme; or
- the complainants can show that they have not been able to complain to the company because they have not been able to contact them, despite trying a number of times to do so. (Scheme Rules, p. 1).

The time limit for complaints is 9 months from first making a formal complaint to the company (unless it can be shown that the company unreasonable delayed the complaint, or if both parties agree).

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

Proceedings start when the application form (available online) is sent to the Scheme. Company is advised of the complaint and has 14 days to respond (settlement is possible at this stage and indeed any other stage).

The use of the scheme is voluntary. If within four weeks from the decision the complainant accepts it in writing – the decision is binding on the postal services provider.

- **results – compensation, other**

As specified in the Rules:

e) If the adjudicator agrees with the claim, they can tell the company to do any or all of the following:

- Give the customer an apology or explanation.
- Give the customer a product or service, or take some practical action that will benefit him/her.
- Pay compensation claimed on the application form, up to the limits set in the terms and conditions of the product.
- Pay you an amount for any inconvenience suffered as a result of how the company handled the complaint, up to the amount claimed on the application form (which must be no more than £50).

f) “After considering the evidence, the adjudicator may decide that a claim made against one company came about as a result of something another member company did or failed to do. Having made this decision, the adjudicator can find the other company to be at fault and order that company to take appropriate action, provide a product or service, and pay you compensation (if relevant). Before publishing their decision, the adjudicator must give the other company an opportunity to respond and consider that response. If the adjudicator confirms that the second company is at fault, the adjudicator must, when publishing their decision, tell us to transfer the charge for the case fee to that company.

g) The adjudicator can dismiss the claim and tell you to make a payment to the company or carry out any other action that is appropriate. You do not have to take the action they suggest.” (Rules, p. 3).

- **costs**

Cost-free to complainants.

### **History (including any reforms, also ongoing reforms)**

As mentioned above – approved by Postcomm in 2008.

### **Statistics**

No statistical information available so far.

### **Reported cases, problems, issues identified in academic writings**

See above.

Postcomm also **regulates Royal Mail** [www.royalmail.com](http://www.royalmail.com).

Royal Mail has a Compensation scheme for Delay and Loss and Damage, which provides compensation:

[ftp://ftp.royalmail.com/Downloads/public/ctf/rm/KOP\\_Eng\\_REVISED\\_2.pdf](ftp://ftp.royalmail.com/Downloads/public/ctf/rm/KOP_Eng_REVISED_2.pdf)

The document “Delivering our promises” contains details of the compensation scheme, how to make complaints, and the amount of compensation available for lost or damaged items. Complaints forms are available on the Royal Mail website: [www.royalmail.com/customerservices](http://www.royalmail.com/customerservices)

It also regulates other postal operators, the list of which is on the Postcomm website: <http://www.psc.gov.uk/postal-licences-and-operators/how-to-complain.html>.

Annual Report 2007-08: [http://www.psc.gov.uk/postcomm/live/about-postcomm/annual-reports-and-plans/postcomm-annual-report-2007-08/Pcomm\\_AnnRep\\_0708\\_AW6.pdf](http://www.psc.gov.uk/postcomm/live/about-postcomm/annual-reports-and-plans/postcomm-annual-report-2007-08/Pcomm_AnnRep_0708_AW6.pdf)

See also Postal Services Act 2000 chapter 26: [http://www.opsi.gov.uk/acts/acts2000/ukpga\\_20000026\\_en\\_1](http://www.opsi.gov.uk/acts/acts2000/ukpga_20000026_en_1) nb subsequent amendments, see <http://www.psc.gov.uk/legal-framework/postal-legislation/postal-services-act-2000.html>

Postcomm response to BERR consultation on amendments to gas, electricity and postal redress schemes (October 2007) : [http://www.psc.gov.uk/postcomm/live/legal-framework/codes-and-policies/2007\\_09\\_25\\_PSC\\_response\\_to\\_BERR\\_consultation\\_v1.0.pdf](http://www.psc.gov.uk/postcomm/live/legal-framework/codes-and-policies/2007_09_25_PSC_response_to_BERR_consultation_v1.0.pdf)

### **Advertising Standards Authority (ASA)**

[www.asa.org.uk](http://www.asa.org.uk)

As explained on the ASA website:

“The Advertising Standards Authority works to keep advertising legal, decent, honest and truthful. The ASA judges advertisements, direct marketing and sales promotions against a set of Codes. We resolve thousands of complaints each year. The ASA's rulings are made independently of both government and the advertising industry.

You can complain to us if you:

- think there is something wrong with an advertisement you have seen or heard
- have difficulty getting goods or a refund for items bought by mail order or through television shopping channels
- want to stop direct mail from companies sent either by post, fax, text message or e-mail.”

The ASA investigates complaints concerning the following:

- “Magazine and newspaper advertisements
- Radio and TV commercials (not programmes or programme sponsorship)
- Television Shopping Channels
- Posters on legitimate poster sites (not flyposters)
- Leaflets and brochures

- Cinema commercials
  - Direct mail (advertising sent through the post and addressed to you personally)
  - Door drops and circulars (advertising posted through the letter box without your name on)
  - Advertisements on the Internet, include banner ads and pop-up ads (not claims on companies' own websites)
  - Commercial e-mail and SMS text message ads
  - Ads on CD ROMs, DVD and video, and faxes.”
- (<http://www.asa.org.uk/asa/about/Guided+Tours/Consumers/What+types+of+ads+and+promotions+does+the+ASA+look+into.htm>)

The complaints form is available online:

[http://www.asa.org.uk/asa/how\\_to\\_complain/complaints\\_form/](http://www.asa.org.uk/asa/how_to_complain/complaints_form/).

The procedure for handling COMPLAINTS IN NON-BROADCAST MEDIA is available at the following website: <http://www.asa.org.uk/NR/rdonlyres/3B1638C7-9433-4B0F-9087-CE762977CDA5/0/NonbroadcastComplaintHandlingProcedures25Jan08.pdf>. It was first published in 2007 and was revised in 2008.

#### **Here are the main elements:**

##### **Scope:**

“The Committee of Advertising Practice (CAP), an unincorporated association, is the self-regulatory body that creates, revises and enforces the non-broadcast British Code of Advertising, Sales Promotion and Direct Marketing (also known as the CAP (Non-broadcast) Code). The ASA adjudicates under the Code” (p. 1). It can also investigate possible breaches of the Code of its own initiative, not following a complaint.

##### **Applications:**

These are to be sent, with the attached marketing information complained about, to the ASA complaint reception team, which lodges the complaints and acknowledges their receipt to the complainants. They will not be processed if a legal action has also been commenced.

##### **Time limits:**

3 months from the time when the marketing communication appeared, although in exceptional circumstances ASA will accept complaints received later.

##### **Assessment of complaints:**

Initial assessment is done by the ASA complaints team.

### **Amendments or withdrawal of marketing information pending investigation:**

“In exceptional circumstances, for example where public harm is likely to result from the continued appearance of a marketing communication, the ASA will direct the marketer to amend or withdraw a marketing communication pending investigation and adjudication by the Non-broadcast Council (henceforth Council) at a later date. The ASA will make such a direction only when it believes there is prima facie evidence of a serious breach of the Code. The ASA Chairman (or in his absence the senior independent Council member), in consultation with the Director General (or senior manager), one independent and one industry Council member, must have agreed to such a direction.” (p. 2).

### **After receipt of a complaint:**

The Complaints Team may decide not to investigate if the case is frivolous (5 to 10 working days is the target to process these complaints). It can also decide that even if it is not serious it raises some issues (in which case the Council makes a decision on a further course of action – 25 days is a target). It can decide to pass the complaints to the Investigation Team: they can resolve the case informally (20 to 35 days – if breaches are minor – these are not identified as breaches on the website) or conduct a standard investigation (85 days for investigations and 140 days for complex cases, some cases may be decided faster – using ‘fast track’ procedure).

### **Investigation:**

The team sends the marketer the information about the complaint and the marketer must respond. After consideration of all the relevant information and the marketer’s response the team makes a draft recommendation. The marketer has the chance to respond, and both the recommendation and the response are presented to the Council which makes the final decision.

### **Decision:**

The Council’s decision is binding on the marketer. An independent reviewer of ASA Adjudications can consider applications for a review of the decisions.

For handling COMPLAINTS ABOUT ADVERTISING IN BROADCAST MEDIA: <http://www.asa.org.uk/NR/rdonlyres/1CC0407B-210C-488A-B5D1-71EB6A25AAC9/0/BroadcastComplaintHandlingProcedures25Jan08.pdf>. This procedure was first published in 2004 and amended in 2007. “It deals only with complaint handling up to the point where a statutory sanction might be appropriate, when the case would be referred to Ofcom (the communications regulator with ‘backstop’ powers). Ofcom publishes its own guidelines about statutory sanctions (Outline Procedures for Sanctions in Content Cases i.e. sanctions as prescribed under the Communications Act 2003 and the Broadcasting Acts 1990 and 1996 as amended)” (p. 1).

### **The main elements:**



## **Scope:**

**The Broadcast Advertising Codes on which ASA adjudicates and which bind all licensees are:** the CAP (Broadcast) Television Advertising Standards Code; the CAP (Broadcast) Rules on the Amount and Scheduling of TV Advertisements; the CAP (Broadcast) Code for TV Text Services; and the CAP (Broadcast) Radio Advertising Standards Code.

ASA shares the power to control advertising with Ofcom, and their powers are divided as follows: “The ASA is responsible for regulating all broadcast advertising carried by Ofcom licensed TV and radio services. That includes traditional spot advertising, teleshopping output and broadcast advertising made available on interactive TV and TV text services. The ASA also regulates the scheduling of TV and radio advertisements to ensure that audiences are adequately protected from harmful or offensive material. The ASA might, for example, require a TV advertisement to be scheduled after 9pm. Where relevant to the particular broadcast media, Ofcom remains responsible for the rules governing:

- the insertion of advertising breaks
- the amount of advertising permitted on TV
- sponsorship and
- political advertising on TV and radio.

A Memorandum of Understanding with Ofcom explains in more detail the breakdown of responsibility between the ASA and Ofcom (see [www.ofcom.org.uk](http://www.ofcom.org.uk) for further details).” (p. 2)

## **Applications:**

Ought to be sent to the ASA Complaints Reception team, and there is no cost to the complainant for making them. If ASA is satisfied that the matter should be investigated – such investigation will take place. The complaint is always acknowledged, and ASA aims at doing so within 5 days (p. 3). The complaints will not be processed if a legal action is taking place on the same matter.

## **Time limits:**

“Broadcasters are obliged under their licenses to keep recordings for specified periods. Those periods are: 42 days after the relevant radio transmission; 60 days after the relevant satellite and cable television transmission; and 90 days after the relevant terrestrial television transmission.” (p. 3) Complaints must be made within those periods of time.

The stages of the process of investigation and adjudication, as well as independent review, are the same as the stages in non-broadcasting media complaints cases (above).

## **Decisions:**

Decisions of the Council are binding on the licensed broadcasters. “If the ASA adjudicates that a breach has occurred but no referral to Ofcom is appropriate, the letter of notification to the advertising parties will inform them of the necessary remedial action (for example to change the commercial prior to future transmission, to restrict transmission as directed or to cease broadcasting the commercial altogether).” (p. 7) “If

the ASA concludes that a further sanction might be warranted it will inform the broadcaster, and where relevant Clearcast or the RACC, that it will refer the matter to Ofcom. Following referral, the procedures in Ofcom's Outline Procedures for Sanctions in Content Cases will apply. Ofcom can impose a number of sanctions if it feels the conditions of its broadcast licences, the advertising codes or the terms of ASA adjudications have been seriously, deliberately, repeatedly or recklessly breached. It can direct a broadcaster not to repeat material, direct a broadcaster to publish a correction or summary of a decision or adjudication, fine a broadcaster and, with the exception of Channel 4 and S4C, revoke a licence." (p. 8)

NOTE: The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and the Business Protection from Misleading Marketing Regulations 2008 (BPRs) came into force on 26 May 2008. The CAP Code has now been revised to take into account the new provisions in those Regulations. The vast majority of clauses in the BCAP TV and Radio Codes are already consistent with the Regulations but, to the extent that any rules are inconsistent with the Regulations, the provisions of the Regulations will take precedence.

For Advertising Codes, broadcast and non-broadcast among others:

<http://www.asa.org.uk/cap/codes/>

## Ofgem

Gas and Electricity Markets Authority [www.ofgem.gov.uk](http://www.ofgem.gov.uk)

"The Consumers, Estate Agents and Redress Act 2007 (the CEAR Act) enables the Secretary of State to make an Order which requires regulated electricity and gas suppliers, and operators of certain gas and electricity networks, to be a member of an approved redress scheme to investigate and determine complaints relating to the activities of those suppliers and network operators. The CEAR Act places a formal role on the Gas and Electricity Markets Authority (the Authority) to approve redress scheme(s) for the energy sector.

These arrangements complement other new measures introduced by Parliament under the CEAR Act - the creation of the new NCC, an enhanced role for Consumer Direct to advise on energy complaints and a requirement for the Authority to make regulations on complaint handling standards. These measures reinforce the strong incentives on energy providers to provide quality services and to treat consumers fairly in respect of complaints." (Approval criteria for redress schemes in the energy sector, March 2008: <http://www.ofgem.gov.uk/Markets/RetMkts/Compl/ConsRep/Documents1/Redress%20Scheme%20Decision.pdf>, p. 2).

(See also Consultation Document: Consumer Redress Schemes in Gas Electricity and Postal Services July 2007 (<http://www.berr.gov.uk/files/file40283.pdf>); and Government response to Consultation Document December 2007: <http://www.berr.gov.uk/files/file40283.pdf>; and Full Impact Assessment: <http://www.berr.gov.uk/files/file43215.pdf>).

In its Approval Criteria document Ofgem suggested that they would only approve one scheme – as this is the preferred option from the point of view of BERR and also simplifies consumer redress. This scheme is the Energy Ombudsman (<http://www.energy-ombudsman.org.uk/>) analysed elsewhere in this report.

Before making a complaint to the Ombudsman, consumers should first complain directly to the supplier. Under the new complaints arrangements suppliers are obliged to maintain complaints schemes which respect the requirements set out by Ofgem – for example it should not be required that consumers make a complaint in writing, and suppliers must keep records of complaints. Ofgem monitors these complaints mechanisms and can fine a supplier up to 10% of their turnover if they fail to fulfil their obligations (see Ofgem “Changes to consumer representation”: <http://www.ofgem.gov.uk/Media/FactSheets/Documents1/changestoconsumer.pdf>).

Annual Report 07-08:

<http://www.ofgem.gov.uk/About%20us/annlrprt/ar0708/Documents1/Ofgem%20annual%20report%202007-08.pdf>

### **Office of Rail Regulation (ORR)**

Proposed Changes to Economic Penalties Statement (October 2007)

<http://www.rail-reg.gov.uk/>

The ORR is an independent regulator for the rail industry, established in 2004.

It does not consider complaints or provide redress directly, but consumer complaints are an important part of its activity:

- For example with regards to complaints concerning safety – the Regulator may investigate safety issues.
- Overcrowding on trains - <http://www.rail-reg.gov.uk/server/show/nav.1338> - here the passengers should make complaints to the relevant train operating company, or refer them to London Travelwatch (for transport in the London area – they investigate suggestions and complaints from users who are dissatisfied with the response received from the service provider. They cover transport in and around London including the Underground, the National Rail network, London's bus network, Docklands Light Railway, Croydon Tramlink, taxis and other users of the Greater London road network.) or to Passenger Focus (for transport outside the London area - independent public body set up by the Government to protect the interests of users of the services and facilities

provided on Britain's rail network, apart from London. They pursue passenger complaints on issues, such as overcrowding, fares and punctuality.)

- Ticket prices or car parks – it can conduct formal competition law investigation according to the Competition Act 1998  
<http://www.berr.gov.uk/whatwedo/businesslaw/competition/law/competition-act/index.html>, see the guidelines on competition law powers and complaints:  
[http://www.rail-reg.gov.uk/upload/pdf/comp-cmplnts\\_rlfrs\\_cpk\\_chrgs.pdf](http://www.rail-reg.gov.uk/upload/pdf/comp-cmplnts_rlfrs_cpk_chrgs.pdf).

Annual report 07-08: <http://www.rail-reg.gov.uk/upload/pdf/371.pdf>

## **Pensions Regulator**

Sections 50, 50A and 50B of the Pensions Act 1995, as inserted by section 273 of the Pensions Act 2004 (as amended), and the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008 require establishment of dispute resolution arrangements in the pensions area. The Pensions Regulator adopted the Code of Practice (laid before Parliament March 2008): <http://www.thepensionsregulator.gov.uk/pdf/CoP11DisputeResolution.pdf> which sets out some requirements concerning those dispute resolution mechanisms – it provides that “trustees or managers of occupational and trust-based stakeholder pension schemes must ensure that they have a procedure in place to enable any person with an interest in the scheme to make an application to them for a decision on a matter in dispute.”

The requirements are not very detailed, but they do contain some important issues:

- Time limits for applications may be established, and apply to most complainants;
- Decisions should be taken in reasonable time (4 months) and the complainants should be notified them in reasonable time (15 working days. ;

## **Office of Fair Trading**

UK's consumer and competition authority, which pursues its goals by:

- “encouraging businesses to comply with competition and consumer law and to improve their trading practices through self-regulation
- acting decisively to stop hardcore or flagrant offenders
- studying markets and recommending action where required

- empowering consumers with the knowledge and skills to make informed choices and get the best value from markets, and helping them resolve problems with suppliers through Consumer Direct.” <http://www.offt.gov.uk/about/>

The OFT is a non-ministerial government department established by statute in 1973.

The website of the OFT provides information about the following legal powers of the Regulator (some of these also translate into complaints-solving and redress-providing functions):

#### Competition Act

The OFT has powers to investigate businesses suspected of breaching the Act and to fine them (also following complaints - [http://www.offt.gov.uk/advice\\_and\\_resources/resource\\_base/legal/competition-act-1998/complaints](http://www.offt.gov.uk/advice_and_resources/resource_base/legal/competition-act-1998/complaints)). [Competition Act](#).

#### Consumer Credit Act

The Consumer Credit Act 1974 requires most businesses that offer goods or services on credit or lend money to consumers to be licensed by the OFT. Trading without a licence is a criminal offence and can result in a fine and/or imprisonment.

The Act also requires certain credit and hire agreements to be set out in a particular way and to contain certain information. [Consumer Credit Act](#)

The OFT issued guidance for debt collectors on how to deal fairly with debtors. “It is aimed at all consumer credit licence holders and applicants, and applies to collection of debt once an account is in default.” [Debt collection guidance](#). Advisers or third party organisations who wish to complain to the OFT about the debt collection practices of creditors and/or their debt collection units, as well as external debt collection agencies, need to complete the [complaint form](#) and return it to the OFT by post or email.

#### Consumer Protection from Unfair Trading Regulations

The Consumer Protection from Unfair Trading Regulations implement the Unfair Commercial Practices Directive (UCPD) in the UK. [Consumer Protection from Unfair Trading Regulations](#)

#### Courts and Legal Services Act

The OFT is required to look at the rules of bodies seeking or holding rights of audience in the courts or the right to conduct litigation, and to advise the Lord Chancellor or the Secretary of State for Scotland as to the effect of such rules on competition. [Courts and Legal Services Act](#)

## Distance Selling Regulations

These laws are aimed at businesses that sell goods or services to consumers by: the internet; digital television; mail order, including catalogue shopping; phone or fax. These regulations are enforced by the Office of Fair Trading, local authority trading standards departments in England, Scotland and Wales and the Department of Trade, Enterprise and Investment in Northern Ireland. These bodies are under a duty to consider any complaint received and have powers to apply to the courts for an injunction against any person who is considered responsible for a breach of the regulations. Read more about [Distance Selling Regulations](#)

## Enterprise Act

The Enterprise Act 2002 made a number of reforms designed to eliminate abuses that harm customers and fair-trading businesses. It gives the OFT and other bodies responsible for consumer law enforcement stronger powers to seek court orders against businesses who breach certain consumer protection laws. [Enterprise Act](#)

Under Part 8 of the Enterprise Act, the OFT and other bodies responsible for enforcement of consumer law have greater powers to seek court orders against businesses violating consumer protection laws. Before taking court action (ie seeking an Enforcement Order), the OFT and these other bodies invites the trader to respond to the allegations against them: **they are able to give binding commitments (undertakings) instead of going to court** ([http://www.of.gov.uk/advice\\_and\\_resources/resource\\_base/legal/enterprise-act/part8/0](http://www.of.gov.uk/advice_and_resources/resource_base/legal/enterprise-act/part8/0)). See the following link to Guidance to Part 8: [http://www.of.gov.uk/shared\\_of/business\\_leaflets/enterprise\\_act/of512.pdf](http://www.of.gov.uk/shared_of/business_leaflets/enterprise_act/of512.pdf).

Another important power of the EFT and some other bodies under the Act relates to **Super-complaints**: “Secretary of State for Trade and Industry can designate certain bodies which represent consumers to make super-complaints. Super-complaints can be made to the OFT by a designated consumer body when it thinks that a feature, or combination of features, of a market is, or appears to be, significantly harming the interests of consumers. The OFT considers the evidence submitted and undertakes whatever work is necessary to establish the extent, if any, of the alleged problems. The OFT must then publish a response within 90 days from the day after which the super-complaint was received stating what action, if any, it proposes to take in response to the complaint and giving the reasons behind its decision. In some cases, it may be possible to resolve the concerns and propose remedies within the 90-day period but, in more complex cases, further work may be called for. This can be undertaken as part of a [market study](#) by the OFT, by referring the market to the Competition Commission for further investigation, or by any other action available to the OFT.” ([http://www.of.gov.uk/advice\\_and\\_resources/resource\\_base/super-complaints/](http://www.of.gov.uk/advice_and_resources/resource_base/super-complaints/))

## Estate Agents Act

The Estate Agents Act 1979 regulates the work of estate agents. Its purpose is to make sure that they act in the best interests of their clients, and that both buyers and sellers are treated honestly, fairly and promptly – the estate agents redress scheme is analysed elsewhere. See also [Estate Agents Act](#)

#### Financial Services and Markets Act 2000

The OFT is responsible under the Financial Services and Markets Act 2000, which regulates financial services and markets, for keeping under review the rules and practices of the Financial Services Authority (FSA), recognised investment exchanges and recognised clearing houses. [Financial Services and Markets Act 2000](#)

#### Transport Acts

Under these Acts, the OFT applies a competition test when local transport authorities form quality partnerships, make ticketing schemes, or offer services to tender. The test is whether one of the schemes or tenders would have a significantly adverse effect on competition. [Transport Acts](#)

#### Unfair Terms in Consumer Contracts Regulations

These regulations protect consumers against unfair standard terms in contracts they make with traders. The OFT, together with certain other bodies, can take legal action to prevent the use of such terms. [Unfair Terms in Consumer Contracts Regulations](#)

**The OFT also operates a Codes of Conduct Approval scheme:** [http://www.of.gov.uk/advice\\_and\\_resources/resource\\_base/approved-codes/codes-search/](http://www.of.gov.uk/advice_and_resources/resource_base/approved-codes/codes-search/). These are analysed elsewhere in this report.

Money Laundering Regulations 2007 (supervising estate agents and Consumer Credit Financial Institutions): [http://www.of.gov.uk/advice\\_and\\_resources/resource\\_base/legal/money-laundering/](http://www.of.gov.uk/advice_and_resources/resource_base/legal/money-laundering/).

### **Civil Aviation Authority**

**Air Transport Users Council:** Section 4(1)(b) of the Civil Aviation Act 1982 gives the Civil Aviation Authority (CAA) a duty to “further the reasonable interests of users of air transport services”.

The CAA has established the Air Transport Users Council (AUC) to complement and assist it in this duty. The functions and accountabilities of the AUC are set out in Terms of

Reference agreed between the CAA and the AUC.<sup>70</sup> The Council is largely an advocacy body, but it does provide an advisory service (they cannot oblige the airline to do anything). As explained in the Memorandum of Understanding of 2004 (published together with the Terms of Reference), the “AUC’s principal focus will be on matters that directly affect the interface between airlines/airports and air passengers. In general, these will cover aspects falling outside the CAA’s regulatory remit. The AUC will not be constrained from expressing an independent view on any issue that it judges to have a significant direct operational impact on customers of air services, or where its experience in the field of customer/operator relations enables it to make a distinctive contribution on matters subject to regulation, or in response to formal consultations” (p. 2). The functions of the AUC are:

- b. To investigate complaints against the suppliers of air transport services where the person or body aggrieved has not been able to obtain satisfaction from the supplier concerned and to seek a resolution where appropriate.
- c. To advise passengers, either directly or through the media, on how to make the best use of air transport services including, where appropriate, the publication and promotion of educational and statistical material.
- d. To formulate and promote policies furthering the reasonable interests of passengers and to represent them to regulatory authorities (both in general and in relation to specific proposals), service providers and the media.
- e. At the AUC’s discretion to co-operate with or be a member of any airport consultative committee.
- f. At the AUC’s discretion to co-operate with or be a member of any consumer group, national or international, which can further the reasonable interests of passengers.
- g. To carry out or commission research in support of the above objectives, if appropriate.

## **OTHER GOVERNMENT–APPROVED SCHEMES**

### **Motor Insurers Bureau**

<http://www.mib.org.uk/Home/en/default.htm>

MIB was established in 1946 to compensate the victims of negligent uninsured and untraced motorists (conditions for claiming, compensation payable and damages recoverable are different in each case – see below). It is a last resort fund and considers claims for personal injury and property damage if compensation cannot be obtained from other sources (insurance in particular).

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<sup>70</sup> See <http://www.auc.org.uk/docs/306/TermsOf.pdf> for the Terms of Reference.



“Every Insurer underwriting compulsory motor insurance is obliged, by virtue of the Road Traffic Act 1988, to be a member of MIB and to contribute to its funding. Uninsured drivers in fact are quite a significant problem – according to the insurance industry estimate, one in twenty drivers (1.2 million) regularly drive whilst uninsured, and the Annual Report and Accounts of the MIB for 2007 mention around 2 million drivers”.<sup>71</sup>

The powers and obligations of the MIB are specified in the Agreement of 13 August 1999 (on uninsured drivers) between the Secretary of State for the Environment, Transport and the Regions and the MIB (Supplemental to an Agreement made the 31st December 1945 between the Minister of War Transport and the insurers transacting compulsory motor insurance business in Great Britain by or on behalf of whom this Agreement was signed and in pursuance of paragraph 1 of which MIB was incorporated).<sup>72</sup> They are also specified in the Agreement on Untraced Drivers of 14 February 2003.<sup>73</sup>

The Motor Insurers' Bureau is a company limited by Guarantee registered in England and Wales. The Bureau also keeps a database of Motor Insurance – with currently 34 million vehicles insured vehicles on record.

The Motor Insurance Bureau is also the UK [Green Card](#) Bureau: it supports motorists making claims after an accident with a foreign vehicle in the UK. It is also the UK Compensation Body if a UK resident has an [accident abroad](#) with a foreign vehicle (Under the Fourth Insurance Directive: <http://www.mib.org.uk/Custom+Services/en/Accidents+Abroad/Fourth+Directive.htm>).

### **Statutory basis (legal basis)**

The Road Traffic Act 1988. The Agreements with the Secretary of State mentioned above (1999, 2003). Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2004 (S.I. 2003 No.37) and the Agreement between Compensation Bodies and Guarantee Funds, approved under Commission Decision 2004/20/EC.

Fourth Insurance Directive. In the UK, the Directive was implemented by the following Regulations:

S.I.2003 No.37 (Information Centre and the Compensation Body),

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<sup>71</sup> See Explanatory Memorandum to the Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) Regulations 2005. No. 1606, p. 1. Annual Report and Accounts for 2007 is available on: <http://www.mib.org.uk/NR/rdonlyres/2F36F8EB-D575-41CC-88D9-7186BF3F53CE/0/MIBAnnualReportAccounts2007090708lowres.pdf>.

<sup>72</sup> The Agreement is available on: <http://www.dft.gov.uk/pgr/roads/miud/uninsureddriversagreement?page=1#a1000>.

<sup>73</sup> <http://www.mib.org.uk/NR/rdonlyres/314CAA7C-82F4-43B9-95E0-2232F3615B56/0/UntracedEnglandScotlandWales2003.pdf>.

S.I 2002 No.2706 (penalties),  
S.I.2002 NO 2707 (representatives) and  
S.I.2002 No.3061 (direct right of action)

### **Links with government and funding**

Not-for-profit company set up by insurers. As specified above, the powers and obligations of the MIB are set out in the Agreement of 13 August 1999 (on uninsured drivers) between the Secretary of State for the Environment, Transport and the Regions and the MIB. While all insurers must be members of the MIB, they contribute the funds to the MIB budget.

### **Governance and structure**

On the details of the Board of Directors and the Corporate Governance see the Annual Report and Accounts 2007, p. 34.<sup>74</sup>

### **Budget and expenditure**

The Annual Report and Accounts 2007 mention income of £381,1million via the MIB levy on the industry (total income for 2007 was £547,652 million), and the Bureau did not make any profit during this year. The administrative cost of the Bureau was £19,992 million in 2007.

### **Aims**

The main aim of the Bureau is to decrease the number of uninsured drivers on the UK roads, and the main activities are:

- “1) In pursuance of agreements with the Secretary of State for Transport:
- a) To satisfy judgements in respect of any liability required to be covered by contracts of insurance or security under the Road Traffic Acts 1972 and 1988.
  - b) To make awards to persons injured or dependants/relatives of persons killed as a result of the use of a motor vehicle on a road, in cases where the owner or driver of the vehicle cannot be traced.
- 2) In accordance with the provisions of the Internal Regulations of the Council of Bureaux to act as
- a) A Paying Bureau to guarantee the payment of relevant liability claims arising from accidents in other countries caused by holders of International Certificates of Motor Insurance (Green Cards) issued under the authority of the Bureau, or by users of motor vehicles registered in the United Kingdom.

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<sup>74</sup> See also the Memorandum and Articles of Association - <http://www.mib.org.uk/NR/rdonlyres/3549DC4B-27F7-41D3-B854-CD2FFD276790/0/MIBArticles6July2006.pdf>.

b) A Handling Bureau to deal with Road Traffic Act liability claims arising from accidents caused by foreign motorists on a temporary visit to the United Kingdom, in possession of valid Green Cards and/or vehicles registered in a signatory country of Section III of the Internal Regulations.

3) As required by the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2004 (S.I. 2003 No.37) and the Agreement between Compensation Bodies and Guarantee Funds, approved under Commission Decision 2004/20/EC, to act as the Compensation Body to:

a) Handle claims made by UK resident victims arising from accidents abroad, where there are no foreign insurers' representatives, or where those representatives fail to act, or where an insurer cannot be identified.

b) Act as the UK Information Centre and reimburse peer Compensation Bodies who have paid foreign victims of accidents in the UK, in accordance with the equivalent legal provisions implementing the Fourth Directive 2000/26/EC.

c) Maintain the Motor Insurance Database (MID)."<sup>75</sup>

#### **Procedure:**

- **who can apply for compensation/refer claims**

With regard to uninsured drivers – victims of accidents or their dependants can apply for compensation of personal injury and property damage once they obtained in a court in Great Britain a judgement which has not been satisfied. There are some exceptions to the right to claim (S. 5 of the Agreement on Uninsured Drivers: for example if the claimant knew or ought to have known that the vehicle was driven with no insurance or that it was stolen).

With regard to untraced drivers – The Notes for the Guidance for Victims of Traffic Accidents, attached to the Agreement on Uninsured Drives provide that “where the owner or driver of a vehicle cannot be identified application may be made to MIB under the relevant Untraced Drivers Agreement. This provides, subject to specified conditions, for the payment of compensation for personal injury.” It also now (following the 2003 Agreement) provides for compensation in respect of damage to property. “11.2 In those cases where it is unclear whether the owner or driver of a vehicle has been correctly identified it is sensible for the claimant to register a claim under both this Agreement and the Untraced Drivers Agreement following which MIB will advise which Agreement will, in its view, apply in the circumstances of the particular case.”

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<sup>75</sup> Source – Annual Report and Accounts 2007 <http://www.mib.org.uk/NR/rdonlyres/2F36F8EB-D575-41CC-88D9-7186BF3F53CE/0/MIBAnnualReportAccounts2007090708lowres.pdf>, p. 11.

To make a claim under the Green Card system, if the claimant has the name of the insurer or a Green Card number, they must first check whether there is a UK agent for the foreign insurers. If there is an agent the claim should be made to them. If there is no agent identified the general claim form must be completed.

The following is the information about the claims under the Fourth Directive (website of the MIB:

<http://www.mib.org.uk/Customer+Services/en/Accidents+Abroad/Fourth+Directive.htm>): The Directive “applies when someone resident in the European Economic Area (EEA) is involved in an accident in another member State, where the responsible vehicle is registered and insured with an insurer established in a member State other than his own. It can also apply when the accident is in a non EEA green card signatory country when the offending vehicle is registered and insured in another EEA state.” To enable claims to be handled effectively, the Directive requires that all insurers appoint a representative in every other member State capable of responding to those claims and paying them where necessary. To ensure that insurers act appropriately, the member States impose “appropriate, effective and systematic financial or equivalent administrative penalties”. Further, there must be a direct right of legal action available against insurers.” In order to identify the insurer, the UK citizens can contact the MIB information centre: [information@mib.org.uk](mailto:information@mib.org.uk).

- **formal requirements and time limits**

Time limits and the required documents are specified in ss. 7 – 15 of the Agreement on Uninsured Drivers.

According to the Notes for the Guidance for Victims of Traffic Accidents, attached to the Agreement, “MIB’s basic obligation normally arises if a judgment is not satisfied within 7 days after the claimant has become entitled to enforce it (see clause 1). However, that judgment may in certain circumstances be set aside and with it MIB’s obligation to satisfy it. Sometimes MIB wishes to apply to set aside a judgment either wholly or partially. If MIB decides not to satisfy a judgment it will notify the claimant as soon as possible. Where a judgment is subsequently set aside, MIB will require the claimant to repay any sum previously paid by MIB to discharge its obligation under the Agreement (see clause 15(b)). 9.2 MIB is not obliged to satisfy a judgment unless the claimant has in return assigned the benefit to MIB or its nominee (see clause 15(a)).”

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

**With regard to uninsured drivers, untraced drivers and green card claims,** see the Online Booklet "Brief Guide" (<http://www.mib.org.uk/NR/rdonlyres/F9B19A3D-6371-4EDA-840F-1FCC6B63303F/546/MIBA5OnlineBookletJune07FInalassinglepapes.pdf>).

Here is the information about complaints, investigations and outcomes in the Booklet: Complaint is lodged by the claimant filling in a complaint form in writing or online, and signing a declaration (signing it means that the complainant agrees for the MIB to investigate the complaint). The investigation is normally commenced as soon as possible. The investigation may include:

- establishing the facts
- confirming the identity of those involved
- obtaining independent reports from motor engineers or witnesses
- obtaining a police report
- contacting other bodies such as the DVLA, your insurer or a foreign bureau.

In some cases, additional information, such as a sketch of the accident scene, can be requested from the complainant.

If a personal injury claim is made, MIB may need to obtain:

- copies of medical records of the complainant,
- an independent medical report.

"Compensation is only payable where some fault can be established on the part of the driver that you consider responsible. If the evidence confirms you were partly or wholly responsible, the compensation payment will be reduced or not paid at all. We will make every effort to decide on whether to make a compensation payment within three months. We will need a police report if liability is in dispute, conflicting evidence is presented or any person is seriously injured. It can take some time to obtain a police report, as the police can not release the report until criminal prosecutions are concluded.

If you are eligible for compensation, a decision on the appropriate amount will usually take longer than three months. (..) There are some common factors that have an effect on how long things take, such as injury claims for which we may need to get an independent medical report. If the medical experts do not agree on the effects of the injury, this will take time to resolve. We may have to obtain independent reports to establish the extent of some parts of your claim, such as loss of earnings or care needs." (p. 11).

**With regard to claims under the Fourth Insurance Directive:**

Once the complaint was lodged, the insurer's representative must provide a "reasoned reply" within three months. If this does not happen, the MIB which is appointed the "Compensation Body" for Great Britain, must intervene. If the agent corrects the omission it can continue to handle the claim. Otherwise the claim will be dealt with by the MIB. The claim will be dealt with in accordance with the law of the country where the accident occurred. Most agents will require the foreign insurer to transfer the money to them first. This may result in a short delay. If the claim is rejected, the claimant may have the right

to sue the foreign motorist and/or his insurer. The MIB as the Compensation Body can intervene, but it will depend on whether the agent has given a reasoned response. They will intervene if he has not, or if a promised payment does not arrive. (<http://www.mib.org.uk/Customer+Services/en/Accidents+Abroad/Fourth+Directive.htm>)

- **results – compensation, other**

MIB is restricted to paying compensation in respect of liability for property damage or injury arising from an accident that has occurred either on a road or a public place in accordance with the Road Traffic Act 1988 and subsequent regulations. Responsibility for the accident has to be agreed, decided by a Court in uninsured cases or an arbitrator if the responsible driver is untraced. The decision will be based on the evidence, and your claim may be reduced by a proportion, or possibly rejected if the evidence is that you were partly or wholly responsible.

Where MIB accepts a claim is one for payment, property damage claims (which includes claims for losses arising from the damage to property, as may be allowed by a court) will have an excess of £300 deducted. If the accident occurred before 1 October 1999, the excess applicable (under the previous Uninsured Drivers' Agreement) will be £175.

For accidents dealt with under the under the Uninsured Agreement, that occur on or after 07 November 2008, no excess will be deducted. For accidents dealt with under the Untraced Agreement, the £300 excess still applies.

There is no excess on green card claims.

Injury claims including loss of earnings, are subject to a legal obligation on MIB to refund to the Department for Work and Pensions certain benefits that you have been paid as a result of the accident, and to deduct that amount from your claim for loss of earnings. You are advised by the DWP as to the amount MIB has to pay and, if you disagree, you have a right of appeal to the DWP.

- **costs**

The Bureau does not cover the legal costs of the applications. Costs can be awarded to the successful party (although before 2003 the costs of applications for compensation for damages caused by untraced drivers could not be awarded).<sup>76</sup>

However, there is a Legal Expenses Insurance - Free legal expense cover is available only for claims under the Uninsured Drivers' Agreement, where the accident happened either in England, Wales or Scotland. The scheme was developed by FirstAssist specifically for the Bureau to address the growing problem of funding legal costs when claiming against an uninsured motorist. It is offered to solicitors and to victims of uninsured motorists. The MIB Legal Expenses Scheme is only applicable if the driver of the other car does not have motor insurance – and if the victim does not already have legal expenses cover through their own insurance policies.

### **History (including any reforms, also ongoing reforms)**

#### **Statistics**

**From the website of the Bureau:** “Our [claims](#) handling experts manage more than 30,000 claims every year for accidents involving uninsured vehicles and seek to settle the claims fairly and promptly.”

#### **Reported cases, problems, issues identified in academic writings**

See ‘The Fourth European Motor Insurance Directive – Use or Ornament?’ P. Mead (2007).

## **SCHEMES FOR RESOLVING TENANCY DEPOSIT DISPUTES**

(Source of some general data – ‘ADR now’):

On 6th April 2007 it became compulsory for all landlords and letting agents who take tenancy deposits to be a member of one of the three approved tenancy deposit protection schemes. The Housing Act 2004 established new obligations for Landlords in England and Wales who enter into an assured shorthold tenancy agreement or renew such a tenancy agreement (ASTs constitute 63% of all private sector tenancies – source: <https://www.depositprotection.com/Public/Events.aspx>, accessed on 17 February 2009) with a tenant on or after 6 April 2007 and take a deposit. Such deposits must be protected

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<sup>76</sup> See R. Merkin, J. Stuart-Smith and N. Hird, *The Law of Motor Insurance*, London: Sweet and Maxwell, 2004, p. 527.

in a government authorized tenancy deposit scheme. If a landlord has not placed a tenancy deposit in one of the schemes within 14 days of receiving it, the tenant may ask the Court to order the deposit to be repaid or to order the deposit to be paid into an authorized scheme. The Court must also order the Landlord to pay the tenant three times the deposit in compensation. This was upheld in a case in Birmingham County Court in November 2008. The landlord only paid the £500 tenancy deposit into a protection scheme after beginning possession proceedings. The judge held that the court had no discretion to ignore this penalty, and required the landlord to pay the tenant £1,500 (source – ‘ADR now’ [http://www.adrnow.org.uk/go/SubPage\\_88.html](http://www.adrnow.org.uk/go/SubPage_88.html)).

See the following Government website for more details: <http://www.communities.gov.uk/housing/rentingandletting/privaterenting/tenancydepositprotection/>. See also [http://www.direct.gov.uk/en/TenancyDeposit/DG\\_066397](http://www.direct.gov.uk/en/TenancyDeposit/DG_066397).

The following legal instruments set up the legal basis for Deposit Protection: the requirements are set out in the *Housing Act 2004* in *sections 212 - 215* and *Schedule 10* and came into effect on 6 April 2007. Tenancy Deposit Schemes are used to safeguard tenancy deposits paid in connection with shorthold tenancies. A shorthold tenancy is defined in *section 212 (8) of the Housing Act 2004* as being an assured shorthold tenancy within the meaning of *Chapter 2 of Part 1 of the Housing Act 1988*. The Housing (Tenancy Deposit Schemes) Order 2007 - No 796 ([www.opsi.gov.uk/si/si2007/pdf/uksi\\_20070796\\_en.pdf](http://www.opsi.gov.uk/si/si2007/pdf/uksi_20070796_en.pdf)). The instrument makes amendments to Schedule 10 of the Housing Act 2004. The Housing (Tenancy Deposit) (Prescribed Information) Order 2007 - No 797 ([www.opsi.gov.uk/si/si2007/pdf/uksi\\_20070797\\_en.pdf](http://www.opsi.gov.uk/si/si2007/pdf/uksi_20070797_en.pdf)).

A press release on the website entitled ‘£885m of tenants’ cash safeguarded’, of 2 April 2008, indicated that the level of disputes has been “encouragingly low with only 458 adjudications so far.” (<http://www.communities.gov.uk/news/housing/736767>).

The following will not need to be registered with a tenancy deposit protection scheme:

- resident landlords (those living in the property)
- landlords of properties with rent of over £25,000 a year
- company lets
- student accommodation let directly by universities or colleges.

The aim of the schemes is to ensure that tenants who pay a deposit have it returned at the end of the tenancy. This is especially important in the light of the following statistics available on the website of the Deposit Protection Service (one of the approved schemes - see below):



An estimated 85% of all private sector tenancies require payment of a deposit.

In 2005/6:

- 70% deposits were returned in full
- 19% deposits were returned in part
- 11% deposits were not returned at all

The reasons given by landlords for withholding some or all of a deposit were:

- damage to the property (28%)
- cleaning the property (34%)
- unpaid rent or bills (8%)
- other reasons (30%)

(source – 2005/6 Survey of English Housing).

Nearly one in five (17%) of tenants who had some or all of their deposit withheld felt that it had been withheld unjustifiably.

All of the schemes (although they differ slightly in operation) offer an independent ADR process for resolving disputes about deposits at the end of a tenancy. In each case, the ADR offered is a form of adjudication, where an independent adjudicator makes a decision about the case based on written evidence from each party.

For government publications about the schemes see:

<http://www.communities.gov.uk/housing/rentingandletting/privaterenting/tenancydepositprotection/publicationsabouttenancy/>.

### **There are three Schemes at present:**

#### **1. THE DEPOSIT PROTECTION SERVICE**

(<http://www.depositprotection.com/default.aspx?bhjs=1&fla=1>)

The adjudication service is provided by the Chartered Institute of Arbitrators (CIArb), though their [IDRS](#) dispute resolution service. This is the only custodial scheme - it requires full payment of the deposit into the scheme. The other two schemes are insurance-based.

#### **Statutory basis (legal basis)**

See above – Housing Act 2004

#### **Links with government and funding**

Has been government-approved. Funding comes from the interest on deposits paid into the scheme.

### **Governance and structure**

Managed by Computershare Investment Services Plc (private business organization specializing in deposit protection). Landlords and letting agents can establish accounts free of charge, and tenants receive their personal number. Adjudicators used by DPS are appointed through IDRS (see **Professional Providers of ADR Services**).

### **Budget and expenditure**

No details available on the DPS website.

### **Aims**

Deposit protection + offering an independent ADR scheme for resolving disputes concerning tenancy deposits.

**Procedure:** (terms and conditions are available at the following web address: <http://www.depositprotection.com/webcontent.ashx?docid=0888b030-0682-4ebb-b6d9-92428909bddb>) (accessed on 17 February 09). The adjudication process is governed by S. 23 – 35 of the terms and conditions.

- **who can apply for compensation/refer claims**

Tenants, Landlords and Letting Agencies who joined the DPS and conformed to the terms and conditions can use the ADR service. For instance: if the landlord has not attached all the necessary documents and evidence to the Landlord Evidence Form when this is being returned to the DPS (and there is no reasonable justification for this), the latter can decide not to allow the Adjudication to proceed.

- **formal requirements and time limits**

Both parties must first submit a notification (Joint Repayment Form, see below) to the DPS that there is a dispute concerning the deposit and that they will be bound by the decision taken by the Adjudicator. There is a Single Claim Process prescribed if one of the parties fails to cooperate in paying or returning the deposit. The dispute cannot be the subject of any present or previous court action. It is also inadmissible if any of the parties intimated that he/she were intending to bring a legal action. The Adjudicator also has discretion to reject a dispute if it is vexatious, frivolous, has been pursued in an unreasonable manner, or seeks to raise matters which were previously decided upon or which were previously decided in a similar dispute resolution process.

- **proceedings** (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)

Parties initiate the procedure by completing the Joint Repayment Form which also indicates that they agree to be bound by any decision of the Adjudicator. Then a Landlord Evidence Form is issued to the Landlord, who needs to duly complete and return it within 14 calendar days. If the Form is not returned, the DPS can decide to return the deposit according to the Tenant's instructions on the Joint Repayment Form. If the Form is returned, the DPS sends the Tenant the information on the Landlord's submissions and the Tenant Evidence Form, which must be duly completed and returned within 14 calendar days. If it is not returned, the DPS may return the deposit according to the Landlord's instructions on the Joint Repayment Form. If it is returned, the Landlord is given 7 days to respond to the Tenant's submissions (both parties have until the expiry of this period to submit any additional evidence if the latter is to be admissible).

The documents are then sent to the Adjudicator. He/she is to be unbiased and fair, and make decisions based on the evidence submitted by the parties. The Adjudicator can make further enquiries, contact the parties and ask for explanations and further evidence. The decision is to be made within 28 calendar days of the receipt of the documents, and the parties are to be notified of it within 2 business days.

- **results – compensation, other**

The decision of the Adjudicator is binding on the parties and cannot be appealed through the ADR procedure. The dispute cannot involve a higher amount than the deposit.

### **Costs**

This scheme is the only one which is free of charge to the parties. However, each party pays his/her own costs. The Adjudicator does not make any costs decisions.

### **History (including any reforms, also ongoing reforms)**

See above – general remarks.

### **Statistics**

Not yet available on the website of the DPS. See the general statistics ("in the first year of operation one million deposits have been protected, totalling nearly £900m at a rate of more than 2,500 deposits a day") on the website: <http://www.communities.gov.uk/housing/rentingandletting/privaterenting/tenancydepositprotection/>.

## **Reported cases, problems, issues identified in academic writings**

Case studies available on the website of the DPS: <https://www.depositprotection.com/Public/DocumentLibrary/CaseStudies.aspx> do not indicate any specific problems with the scheme. It is yet relatively early for any academic studies to emerge. None noted so far.

The 'ADR now' website ([http://www.adrnow.org.uk/go/SubPage\\_88.html](http://www.adrnow.org.uk/go/SubPage_88.html)) pointed to the following advantage of the scheme:

If the landlord refuses to lodge the disputed deposit with the scheme, then the tenant can't use the free ADR scheme, and will have to go to court to get an order. However, the scheme guarantees to pay the amount in the court order, and will take responsibility for recovering this amount from the landlord. This is the advantage over simply going to court – the scheme will ensure compliance with any court order.

## **2. TENANCY DEPOSIT SOLUTIONS (mydeposits)**

(<http://www.mydeposits.co.uk/>):

Partnership between the National Landlords Association and Hamilton Fraser Insurance. The adjudication service is provided by the Chartered Institute of Arbitrators (CI Arb), though their [IDRS](#) dispute resolution service (source – 'ADR now' - [http://www.adrnow.org.uk/go/SubPage\\_88.html](http://www.adrnow.org.uk/go/SubPage_88.html)). This is an insurance-based scheme – it allows the Landlord to hold the deposit, while at the same time securing its repayment.

### **Statutory basis (legal basis)**

See above – Housing Act 2004.

### **Links with government and funding**

Approved by government.

### **Governance and structure**

National Landlords Association and Hamilton Insurance jointly own the Tenancy Deposit Solutions.

### **Budget and expenditure**

The scheme is paid for by landlords and letting agents.

### **Aims**

To secure repayment of deposits and to provide a dispute resolution service.

**Procedure:**

- **who can apply for compensation/refer claims**

Tenants, landlords or agents who are members of the scheme can use the ADR scheme provided by Tenancy Deposit Solutions.

- **formal requirements and time limits**

The tenant can dispute the amount of returned deposit within 90 days of the deposit becoming unprotected.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

First of all the scheme will attempt to encourage the parties to agree. If agreement cannot be reached, a formal dispute is registered with the scheme. The tenant will request the Dispute Notification Claim Form from the Customer Service Centre, fill it in and attach any supporting evidence within 10 days. The landlord or agent is then notified of the claim and has 10 days to respond. In the same 10-day period, the landlord or agent will be asked to lodge the disputed amount with the scheme (which will hold this amount until the resolution has been agreed – through ADR or court procedure). If the landlord or agent refuse to lodge the amount with the scheme, the latter commences disciplinary procedure which leads to expulsion from the scheme. The entire procedure should not last longer than 60 days (source – the scheme website: [http://www.mydeposits.co.uk/tenants/tenant-how\\_it\\_works3-dispute.htm](http://www.mydeposits.co.uk/tenants/tenant-how_it_works3-dispute.htm)).

- **results – compensation, other**

The typical result is an agreement on the fair distribution of the deposit.

- **costs**

Free to the tenants.

**History (including any reforms, also ongoing reforms)**

No reforms so far – see legal basis.

**Statistics**

Lack of data.

### **Reported cases, problems, issues identified in academic writings**

Lack of data.

#### **Tenancy Deposit Scheme run by the Dispute Service Ltd.**

<http://www.thedisputeservice.co.uk/>

The Dispute Service (TDS) runs a Tenancy Deposit Scheme and is required to supply summarised details of all tenancies to the Department of Communities and Local Government (CLG). The Dispute Service is an independent, not-for-profit company established in 2003 to resolve complaints and disputes arising in the private rented sector speedily, cost-effectively and fairly.

As well as running the Tenancy Deposit Scheme, the company deals with complaints against members of The Association of Residential Letting Agents (ARLA) (voluntary scheme established in 2003 – see below).

According to 'ADRNow' website, "decisions are overseen by the scheme's own Independent Complaints Examiner (ICE). He has a team of adjudicators who deal with the disputes. If there is a dispute about the deposit at the end of the tenancy, the landlord or agent has ten working days to try to resolve it. If this is not possible, then the tenant, the landlord or the agent can refer the dispute to the TDS. The landlord or the agent, whichever is holding the deposit, will transfer it to the TDS, and the TDS will take responsibility for paying it out, as decided by the ICE. If the deposit is not transferred, then the TDS will pay the tenant whatever is decided, and pursue the landlord or agent for the money.

To start with, the TDS staff will attempt to negotiate an agreement between the two sides. If this isn't possible, an adjudicator will look at all the written evidence, which can include photos and videos. The adjudicator will not investigate the case further, so you need to make sure that you send in all the evidence needed to make your case. A decision should be made, and the money paid out, within 40 working days from when you first contact the TDS" ([http://www.adrnow.org.uk/go/SubPage\\_88.html](http://www.adrnow.org.uk/go/SubPage_88.html)).

See the website for the organizational structure:

<http://www.thedisputeservice.co.uk/index.php?p=15>. The website also includes the list of members.

The website contains information about the exact procedure which needs to be followed in case of a dispute. However, this information is only available to members.

There is a form to fill in online which notifies the Tenancy Deposit Scheme of a dispute:  
<http://www.thedisputeservice.co.uk/resources/files/TDS2.pdf>.

## Letting Agents

Dispute Service Ltd deals with complaints against members of The Association of Residential Letting Agents (ARLA) (voluntary scheme established in 2003).

The ARLA Code of Conduct is available online: [http://www.arla.co.uk/uploads/arla\\_code\\_of\\_practice.pdf](http://www.arla.co.uk/uploads/arla_code_of_practice.pdf). As specified in the Code: "Where a formal written complaint is made against a Member Firm, any such complaint will be considered against the guidance contained within this Code of Practice combined with the Association's Byelaws, plus any relevant statutory approved codes, applicable legislation and taking account of lawful obligations and/or responsibilities set out in the pertinent Terms of Business or the Tenancy Agreement. A Member Firm following these practices, complying with the Byelaws, the law and fulfilling contractual obligations etc is therefore unlikely to be found to have acted without reasonable competence. Although it is for each practitioner to decide on the appropriate procedure to be followed in any particular circumstance. Where a Member Firm has not complied with this Code of Practice or statutory or contractual obligations mentioned above, it would be expected to justify such departures in the light of any complaint." (p. 2).

The Code of Conduct governs various aspects of letting and property management, including market appraisal, instructions, fees, charges, marketing, advertising, viewings and access to property, termination of instructions, references, rent collection, termination of tenancy, clients money, tenancy disputes, etc. It also regulates complaints handling. There are two stages to complaints:

### 1. Internal stage:

"As set out in the Association's Byelaws, a Member Firm must have an in-house complaints procedure (appropriate to its size and structure) and any person wishing to make a formal written complaint about the standards of service received must be made aware (in writing) of those procedures upon request. Following the conclusion of the Member Firm's in-house complaint process, where an impasse has been reached or a complainant remains unsatisfied; the complainant must be informed of the contact details for ARLA should they wish to pursue their complaint." (p. 18) See the Byelaws of ARLA – Appendix C – Example/Template for a Member Firm's internal Complaint Scheme/Process: <http://www.arla.co.uk/uploads/member/appendixC.pdf>).

### 2. ARLA stage:

Having been satisfied that the internal complaint mechanism has been exhausted and that there are no legal proceedings taking place which involve the complaint, ARLA will

take on the complaint and investigate it. ARLA may appoint an adjudicator, expert or arbitrator. The Member Firms must comply with the appointee's requests and decisions. The outcome of the investigation may include, if a breach of the Code has been confirmed:

- a) To recommend that the Member Firm apologise, in writing, to the appropriate person for the relevant conduct, action(s) or omission(s).
- b) To caution the Member Firm against repeating the conduct, action(s) or omission(s).
- c) To recommend to the Member Firm that they refund all or some part of fees or charges previously made, in recognition of the conduct, action(s) or omission(s).
- d) To impose a financial penalty or fine (which may be suspended) upon the Member Firm for the contravention, breach or infringement, according to a scale decided upon from time to time by the Association (See scales of financial penalties: <http://www.arla.co.uk/uploads/member/appendix%20f.pdf>).
- e) To recommend that the Member Firm change its procedures or documentation arising from the facts disclosed by a complaint, breach or infringement, which has been upheld.
- f) To recommend that the Member Firm undertake such action as the Association considers appropriate to rectify or redress the conduct, action(s) or omission(s).
- g) To recommend to the parties other, more appropriate, ways of resolving the complaint or dispute including mediation or arbitration.
- h) To reprimand or severely reprimand the Member Firm for the conduct, action(s) or omission(s).
- i) To suspend the Member Firm from membership of the Association.
- j) To initiate the processing of a claim under the Associations Client Money Protection Bonding Scheme.
- k) Where there would seem to be sufficient prima facie evidence of misappropriation of clients funds, of fraud or corruption; to draw the circumstances of the complaint or infringement to the attention of the relevant statutory regulators or other enforcement bodies or authorities.
- l) To expel the Member Firm from membership of the Association.
- m) Any combination of the above or any other reasonable action, which the Association feels appropriate in order to support high standards within the industry and amongst its membership." (the Code, p. 19, see also Byelaws of ARLA, Appendix E (Scope of Outputs on Adjudication and Sanctions available: <http://www.arla.co.uk/uploads/member/appendix%20e%20-%20scope%20of%20outputs%20on%20adjudication.pdf>).

Any sanctions: fines or penalties are payable within a maximum of 14 working days from the receipt of the written notification of the sanction (Byelaw 7 – Policy on Sanctions – Procedures on Appeals: <http://www.arla.co.uk/uploads/member/Bye-law%207%20-%20Policy%20on%20sanctions%20and%20appeals.pdf>).



The fining and other sanctions must be adopted with due regard to the principles of good regulation (Proportionality, Accountability, Consistency, Transparency, and Targeting). Thus, as specified in Byelaw 7, the criteria to be taken into account when considering the imposition and level or degree of sanction or penalty include:

- The nature and seriousness of the breach;
- The firm's compliance record;
- The time during which the infringement occurred, and whether systemic failings took place;
- The number of infringements in each case;
- The attitude of the Firm (steps taken);
- Action already taken, or any offer to compensate already made;
- The degree of cooperation with ARLA, including cooperation with appointed adjudicators during investigation;
- Sanctions previously imposed by the Association in similar cases;
- The need to deter future non-compliance of the Firm and other Firms;
- The need to demonstrate to the public and to authorities that the Association takes action to promote and sustain regulatory compliance and good practice.

The Member Firms have the opportunity to appeal against sanctions imposed upon them. Appeals to ARLA must be brought within 8 days from the receipt of the sanction notice. Also, the Firm must first pay to ARLA the sum equivalent to any financial sanction already imposed (but not yet paid) plus £375 towards costs. The Appeal Panel will make an order for refund, either in part or whole, of this amount if it considers it appropriate following its findings upon appeal.

ARLA will not consider appeals if they are "frivolous or vexatious, contrary to natural justice or disproportionate to the sanction imposed" (Byelaw 7, section 7.6). Upon accepting the appeal, ARLA appoints an appeal panel consisting of 3 – 7 persons (normally experienced letting and management agents, or qualified mediators or arbitrators). After the Panel has been established, the Firm has 5 days to produce its written submission. The Panel will convene within 30 working days from its creation.

The appeal is normally a documents-based procedure (hearings are held only in very exceptional circumstances).

The byelaws specify that "the test the Appeal Panel will apply to each appeal will be based upon the following: - Taking account of the information provided to, and thus available to, the Association at the time of the decision to invoke the sanction: -

1. Did the Association act consistently within the terms of its policy, and/or,
2. Consider any exceptional, extenuating or mitigating circumstances." (Byelaw 7, section 7.16).

Decisions are taken by a majority vote, and they may entail the following results:

- “To dismiss the appeal,
- To ratify the original sanction(s),
- To amend or modify (increase/decrease) the original sanction(s) as they think fit,
- To strike the original sanction(s) from the Association’s records,
- To make any award as to costs as they think fit, limited only to the total amount previously lodged by the Member Firm.” (Byelaw 7, section 7.18).

## ESTATE AGENTS

(source – BERR - <http://www.berr.gov.uk/whatwedo/consumers/business/estate-agents/index.html>)

“The conduct of estate agents, in the course of estate agency work, is regulated by the Estate Agents Act 1979 and the Property Misdescriptions Act 1991.

The Estate Agents Act, and subsequent Orders, lay down the duties agents owe to clients and to third parties, and gives the Office of Fair Trading (OFT) the power to issue warning or prohibition notices against those persons it considers unfit to carry on estate agency work.

The Property Misdescriptions Act makes it an offence to make false or misleading statements about property offered for sale (see link).

Both Acts are enforced by local Trading Standards departments and the Office of Fair Trading. For further information see our Quick Facts pages.

### **Consumers, Estate Agents and Redress Act**

The Consumers, Estate Agents and Redress Act (CEARA 07) takes forward measures in the Government response to the OFT report on the estate agency market in England and Wales and amends the Estate Agents Act 1979.

From 1 October 2008 all estate agents in the UK who engage in residential estate agency work are required to belong to an approved redress scheme dealing with complaints about the buying and selling of residential property.

Other measures in CEARA 07 to improve the regulation of estate agents also came into force on 1 October 2008.

These measures will increase the grounds under which the OFT can issue warning and prohibition orders to estate agents and provide enforcers with increased powers to enter estate agents premises and inspect documents.”

### **“Regulation and Redress in the UK Housing Market: A report for BERR and CLG**

This report was prepared for BERR and CLG by Professor Colin Jones at the School of the Built Environment, Heriot-Watt University.

The review was announced by the former Consumer Minister Ian McCartney during the passage of the Consumers, Estate Agents and Redress (CEAR) Bill in 2007. The aim of the review was to consider aspects of the housing market, such as letting, that were discussed in Parliament, but were not included in the Bill's provisions.

The review's specific objectives were to:

(i) Assess the current regulatory frameworks in the following sectors with the aim of considering whether there is scope for simplification or better regulation:

- Estate agents – taking into account the implementation of the Consumers, Estate Agents and Redress Act 2007 (CEARA 07);
- Lettings agents;
- Home Information Packs - in particular HIP providers and private search companies;
- Site owners acting as estate agents for park homes.

Analysis of the above sectors relates to their application to the UK, except HIPs and lettings which relate to England and Wales.

(ii) Identify gaps in the frameworks and establish an evidence base on the level of consumer detriment;

(iii) Identify any areas without redress provision, areas that have voluntary redress provision and which have statutory provision, and any differences between standards or criteria used by redress schemes across the property sector.

(iv) Assess the scope for encouraging simplification and strengthening of existing redress provision by non-legislative means, and explore the feasibility of a means by which consumers may be able to have one contact point for all their property related complaints.

(v) Examine how consumers' awareness of their rights under existing schemes can be improved and to avoid consumer confusion.

(vi) Provide recommendations on how best to address issues emerging from (i) – (v) by applying the principles of Better Regulation.

The main conclusion of the report is that there are inconsistencies and gaps in the structure and basis of regulation and redress schemes, and that there is scope for reform, extension and rationalisation.

The Government welcomed Professor Jones's report, which usefully maps the regulatory framework in different sectors of the property market, and identifies regulatory gaps and areas lacking adequate redress provision. It is an important contribution to the ongoing debate concerning improving service standards among property professionals, for the benefit of consumers. BERR and CLG are reflecting on the report's findings and

recommendations together with other reports affecting the property sector (eg Carsberg and Rugg). The recently-announced OFT study will also be taken into account

In addition, BERR has begun a project to look at the future of estate agent legislation. We will consider the scope for consolidation in the light of recent developments including this report, the Consumer Law Simplification review, the EU's proposal for a new Consumer Protection Regulation, FSA controls and various developments at home. The project will look at the prospects and options for revising the definition of estate agency and the evidence for change, taking into account latest developments in CEARA 07. The project will assess the pros and cons of different ways of regulating estate agents that will be robust in different economic conditions. The project aims to report in January 2011."

### **Latest news - 11 September 2008**

[http://www.offt.gov.uk/advice\\_and\\_resources/resource\\_base/EARS](http://www.offt.gov.uk/advice_and_resources/resource_base/EARS))

"The OFT has reminded residential estate agents that, from October, they must be members of an approved redress scheme. "

### **Background**

The Secretary of State for Business Enterprise and Regulatory Reform made an Order under The Estate Agents Act 1979 (as amended by The Consumers, Estate Agents and Redress (CEAR) Act 2007) on 1 July 2008. This requires those engaging in estate agency work in respect of residential property to join an approved estate agents redress scheme by the time the Order comes into force on 1 October 2008. It is available on the UK Statute Law Database.

The OFT is able to approve a redress scheme if it considers the provisions of the scheme and its proposed operation are satisfactory. Indeed, **on 15 August 2008 the OFT has approved the Ombudsman Service Limited's application to operate an estate agents redress scheme, under the Consumer Estate Agents and Redress Act 2007.** "The company will operate the Surveyors Ombudsman Service (SOS) as an approved estate agents redress scheme, and is the second to receive OFT approval ahead of 1 October 2008, when it becomes compulsory for all estate agents dealing with residential property in the UK to join such a scheme. Buyers and sellers of residential property will, from October, be able to refer complaints concerning members of the scheme to an ombudsman, which will have the power to make a range of awards, including requiring a member to pay compensation. The ombudsman's decision is binding on the estate agent, although a complainant can choose to reject the decision and pursue their complaint through the courts. The SOS approved redress scheme will be a free service to complainants. Jonathan May, OFT Executive Director, said: 'The SOS scheme has successfully met the criteria applied by the OFT. Buying or selling a home is a significant and complex transaction so it is good news that, from October, there will be access to

free, easily accessible and speedy redress schemes that will ensure fairness and transparency.” (source: <http://www.oft.gov.uk/news/press/2008/96-08>). **The Ombudsman is analysed elsewhere in this report.**

#### HOME INFORMATION PACKS REDRESS SCHEME

See also Home Information Packs Redress Scheme Order 2007 no.560 (came into force 1 June 2007): [http://www.opsi.gov.uk/si/si2007/uksi\\_20070560\\_en\\_1](http://www.opsi.gov.uk/si/si2007/uksi_20070560_en_1) and related Regulatory Impact Assessment: <http://www.berr.gov.uk/files/file37999.pdf>

See the **Surveyors Ombudsman Service**.

## Business Schemes

### ASSOCIATION OF BRITISH TRAVEL AGENTS (ABTA)

[www.abta.com](http://www.abta.com)

Code of Conduct of 28 Feb 2008:

<http://www.abta.com/filegrab/?ref=84&f=codeofconduct280208>

Guidance on Application of the code of Conduct:

<http://www.abta.com/filegrab/?ref=42&f=1codeguidance220208.pdf>

ABTA has an internal complaint handling mechanism – the Consumer Affairs Department. If an amicable settlement cannot be reached before the Department, the Arbitration Scheme for the Travel Industry (ASTI) can be used. Arbitration under ASTI is administered by IDRS (Independent Dispute Resolution Service) Ltd on behalf of the Chartered Institute of Arbitrators. ASTI's rules are provided on the website of IDRS: <http://www.idrs.ltd.uk/ABTA/Rules.asp>.

ASTI applies to claims for compensation sought in respect of disputes between members of the Association of British Travel Agents (“ABTA”) and their customers. Where a contract exists claims may be made by or on behalf of any person named in the booking form or other contractual documents.

ABTA Members follow its Code of Conduct (requiring high standard of service, fair terms of trading, and clear and accurate information on issues such as passports and visas, health requirements, and details of any alterations to holiday). The Code of Conduct ensures that Members respond to any complaints within strict time limits.

There are a number of stages in the complaints process:

3. Sending a complaint to the ABTA member directly - a full response should be sent back by the company within 28 days.
4. Another attempt to resolve the complaint with the company – which again has 28 days for reply.
5. Sending a complaint to ABTA (including travel documentation if the holiday already took place (time limit – 9 months from when the complainant returned from the holiday). Complaints can be made by clicking on [Make a Complaint](#) on the ABTA website. ABTA will attempt to assist in resolving the dispute.
6. MEDIATION OR ARBITRATION:

If ABTA cannot settle the dispute, they offer an [independent arbitration](#) scheme administered by IDRS Ltd.

For personal injury and illness claims, there's a [mediation](#) scheme.

These alternative schemes are not available if the complainant already commenced legal proceedings in court on the matter.

**Arbitration** ([http://www.abta.com/consumer-services/travel\\_problems/arbitration](http://www.abta.com/consumer-services/travel_problems/arbitration)):

Used for claims for general compensation arising from breach of contract and/or negligence. If such a general compensation claim includes an element of minor illness or personal injury then this can also be considered by the arbitrator, although for this specific element the arbitrator can't award more than £1,000 per person. The scheme can't be used for disputes concerning serious personal injury, serious illness, nervous shock, death or the consequences of any of these." (source – website above)

A separate scheme (see mediation below) is available for this kind of dispute.

The following are the key elements of the arbitration process available on the ABTA website: [http://www.abta.com/consumer-services/travel\\_problems/arbitration](http://www.abta.com/consumer-services/travel_problems/arbitration):

- The arbitration application form must be received by IDRS within nine months of the date on which the problem arose, or of the date of return from holiday, whichever the later.
- Within this period arbitration is compulsory, so the ABTA company has to agree. After nine months it can still be used, but subject to the company's consent.
- Provided that companies are ABTA members, claims can be made against a number of them (for instance - against both the travel agent and the tour operator).
- The application can be made by post, online, or a combination.
- The claim will be dealt with "on the basis of the documents, including any photographic evidence." There is no need to attend a hearing or present any evidence in person. This could mean that some matters are not suited for this format – for example, serious illness or injury claims.
- The arbitrator's award is issued in writing and gives a summary of the facts, the conclusions, and their reasons for reaching them. The arbitrator's decision is legally binding on both parties and is enforceable directly through the courts.
- Fees for arbitration are as follows:

Amount claimed	Fee payable (inc. VAT)
£1 - £3,000	£71.30
£3,001 - £5,000	£96.60
£5,001 - £10,000	£126.50
£10,001 - £25,000	£161.00

- Any party can ask for a review of the arbitrator's decision, although there are limited grounds on which this can be challenged. An application to IDRS must be made within 21 days of the date of the award being dispatched. It must be accompanied by a copy of the arbitrator's award together with a statement setting out the reasons why the award is one that no reasonable arbitrator should have reached on the basis of the documents presented.
- The review fee is £350.00. Regardless of the outcome, the fee will not be reimbursed.

**Mediation:** [http://www.abta.com/consumer-services/travel\\_problems/mediation](http://www.abta.com/consumer-services/travel_problems/mediation)

Designed for those claims that aren't dealt with by the ABTA Arbitration Scheme, such as personal injury, serious illness, nervous shock, death or the consequences of any of these. The mediation procedure has been designed by **IDRS Ltd** in association with ABTA. The following are the main elements of the process (on the ABTA website):

- Mediation doesn't apply to disputes where one or other of the parties has already initiated legal action, unless it has been suspended or discontinued by agreement.
- Mediation takes the form of a meeting attended by the decision-maker for each of the parties. Costs of representation are the responsibility of the parties, unless agreed otherwise in any settlement agreement.
- The rules governing the mediation process will be set out by the mediator in advance of the mediation day. It will take place at a venue to be arranged and agreed by all parties and at their cost.
- If the dispute is resolved during mediation, the mediator will record in writing the agreement reached by the parties. The signed agreement will be a binding contract and, as such, can be enforced by the Court.

The details of the mediation process (including the fees for mediation) are available on the website of ABTA: [http://www.abta.com/consumer-services/travel\\_problems/mediation](http://www.abta.com/consumer-services/travel_problems/mediation).

It is **Cost-Controlled Procedure for the Mediation of Personal Injury & Illness in the Travel Industry, First Edition, 2003:**

Tour operators applying for mediation pay a Registration Fee of £250 plus VAT. The parties are jointly and severally liable for all costs incurred during mediation (registration fees, mediator's remuneration, accommodation costs etc.).

Applications can be made by either of the parties. They are sent to the Chartered Institute of Arbitrators who appoints a mediator. "Once appointed the Mediator will agree arrangements with the Parties for the future conduct of the mediation, including his / her fees, meetings and submissions." "If the dispute is resolved during mediation, the Mediator will record in writing the agreement reached by the Parties. The signed agreement will be a binding contract and, as such, capable of being enforced by the Court." (Procedure Rules referred to above, pp. 3, 4).

The Mediator's fees are also set out in the document, and depend on the amount in dispute: they range from £100 per hour (capped at £1000 plus reasonable travel and expenses) to £280 per hour (capped at £2800 plus reasonable travel and expenses).



The following are organisations/bodies which can assist consumers in making complaints using ABTA schemes:

- [Citizens Advice Bureaux](#) in England and Wales, Scotland or Northern Ireland
- [Trading Standards](#).

## **Motor Industry**

### **Retail Motor Industry Federation**

<http://www.rmif.co.uk/consumers.aspx?id=0>

The Federation provides conciliation and arbitration services to customers who have disputes with their members (provided that the customer first attempted to resolve the dispute internally). Disputes cannot concern new cars where the manufacturers' warranty applies (here The Society of Motor Manufacturers and Traders, New Car Code Conciliation Service can be used).

The conciliation service is provided through the National Conciliation Service. It is free to use. Claims can be made up to 12 months from the date when the contract giving rise to a complaint was made. Applications can be made after an unsuccessful attempt to resolve the complaint internally with the member of the Federation. Conciliation is very informal, and the decisions are not binding on any of the parties.

The arbitration service needs to be paid for, but it is more formal, and the decisions reached are binding on the parties.

The Motor Industry has two Codes of Practice:

1. The Motor Industry Code of Practice. Service and Repair
2. The Motor Industry Code of Practice. New Cars

## **SERVICE AND REPAIRS**

<http://service.motorindustrycodes.co.uk/consumers/the-code.html>)

As specified on the website: "the Code is voluntary - any garage can sign up to it, providing they meet its requirements. Subscribers are required to comply with the requirements of

the Code on a daily basis". "The Code was developed by the motor industry in response to a National Consumer Council paper, which alleged that the service and repair sector caused 'consumer detriment' (ie customers being ripped off) valued at a staggering £4 billion a year." Any UK garage can sign up to the Code, which is currently progressing through the Office of Fair Trading (OFT) Consumer Codes Approval Scheme (CCAS) – it is working towards a full OFT approval.

The Code, which can be found at the following website: [http://service.motorindustrycodes.co.uk/images/stories/documents/code\\_document\\_web.pdf](http://service.motorindustrycodes.co.uk/images/stories/documents/code_document_web.pdf), concerns various aspects of repairs and service: advertising, booking, work, billing, handling complaints and dispute resolution. It was launched by Motor Codes limited in August 2008. It allows consumers access to free consumer phone line, free conciliation and low-cost legally binding arbitration, and "more rights than required by law" (BERR website: <http://nds.coi.gov.uk/environment/fullDetail.asp?ReleaseID=402171&NewsAreaID=2&NavigatedFromDepartment=True>).

Recently, the Consumer Affairs Minister Gareth Thomas wrote an open letter to the independent car servicing businesses calling on them to subscribe to the Motor Industry Code of Practice for Service and Repair. The letter indicated that not enough independent garages joined the Code so far (letter of 27 May 2009): <http://www.berr.gov.uk/files/file51542.pdf>).

The Complaints procedure under the Code starts with an internal complaint, and has the following stages:

1. Customers are asked to first refer their complaints to the subscribing company's customer relations representative orally. Complaints may be resolved there and then, and in any case the company must respond within 72 hours. If the customer wrote a letter of complaint, the initial response from the company must be received by him within 10 days, and the complaint should be resolved within 15 days.
2. The Consumer Advice Line handles unresolved complaints: these can be resolved through fast track (if the vehicle is still with the company, or if the Consumer Advice Line considers that the complaint could be resolved through fast track), or will be referred to the Code Advisory and Conciliation Service.
3. Conciliation is the next step: the Advisory and Conciliation Service investigates the possible breaches of the Code, keeping the complainant informed throughout the process.

4. If the complaint cannot be satisfactorily resolved through conciliation, it can be referred to low cost arbitration – it is provided by IDRS Ltd, independent of the Code Advisory and Conciliation Service and of the companies. Hearings are normally documents-based, to keep the costs to the minimum – parties are not present. The Arbitrator’s decision is binding on the parties.

### **The Society of Motor Manufacturers and Traders, New Car Code Conciliation Service**

[http://www.smmt.co.uk/consumeraffairs/ca\\_howtocomplain.cfm?sid=136&tsid=0&catid=1612&maincatid=913&fid=&fid1=&fid2](http://www.smmt.co.uk/consumeraffairs/ca_howtocomplain.cfm?sid=136&tsid=0&catid=1612&maincatid=913&fid=&fid1=&fid2)

The Code was launched as the SMMT New Car Code on 7th December 2004, and in April 2009 it was renamed the Motor Industry Code of Practice for New Cars (the Code covers 99% of all new car sales in the UK) (source: <http://newcars.motorindustrycodes.co.uk.zn.strategiesuk.net/>). It provides the consumers with a free Advice Line, free conciliation and low cost arbitration. By subscribing to the Code, companies commit themselves to provide reliable warranties, spare parts, and straightforward complaints procedures. The Code concerns advertising, manufacturers’ new car warranties, replacement parts and accessories, and complaints.

The complaints procedure under the Code: (<http://newcars.motorindustrycodes.co.uk.zn.strategiesuk.net/docs/code.pdf>) is similar to the one under the Service and Repairs Code, except that the internal complaints stage is divided into two steps: 1. A complaint to the dealer, and subsequently 2. A complaint to the manufacturer (the manufacturer has the obligation to inform the complainant that if the complaint has not been satisfactorily resolved, it can be referred to the Advice and Conciliation Service of the Code).

NOTE: Both the Service and Repairs and the New Car Codes contain a disciplinary procedure for subscribers who breach the Codes. This is a different procedure than individual complaints, although individual complaints may lead to it.

The procedure is conducted by the Independent Compliance Assessment Panel (ICAP) -an independent panel which monitors the operation of the Code and subscriber compliance. ICAP also reviews cases of persistent or serious breaches of the Code.

“It is the responsibility of Motor Industry Codes to acknowledge when a subscriber has breached the Code in a manner that requires further intervention beyond opening a conciliation or arbitration case. ICAP has the authority to instigate an independent investigation, with which the subscriber is required to assist fully. Depending on the outcome of any investigation, the Panel can impose a varied selection of sanctions upon

a subscriber, ranging from education and monitoring, through to financial penalties and ultimately expulsion from the Code regime. If a financial penalty is imposed on a subscriber, the penalty sum is donated to the motor industry charity.” (New Cars Code, p. 17).

## MECHANICAL BREAKDOWN INSURANCE

The Regulation and Compliance Unit offers a conciliation service in relation to the Code of Practice for Mechanical Breakdown Insurance Schemes (MBI or extended warranties <http://www.smmt.co.uk/consumeraffairs/mbicode.cfm?sid=263&catid=3764&tsid=135&maincatid=913&fid=20&fid1=&fid2>). The MBI Code covers Mechanical Breakdown Insurance Schemes, also known as extended warranties.

The Regulation and Compliance Unit assesses conciliation cases impartially on the information provided by the consumer and member and advises accordingly to reach a satisfactory and fair outcome for all parties involved. In the event that this is not possible consumer may refer their complaint to the insurer or to the Financial Ombudsman Service (source:

<http://www.smmt.co.uk/consumeraffairs/mbicode.cfm?sid=263&catid=3764&tsid=135&maincatid=913&fid=20&fid1=&fid2>).

If an enquiry is in relation to the code, (a problem concerns a new car covered under an extended/MBI warranty), it can be submitted via e-mail or by writing to the Regulation and Compliance Unit. If they are unable to assist, they will advise the complainant of this and endeavour to suggest an alternative course of action. If they can assist with the enquiry, the complainant will receive an acknowledgement letter. At the same time the relevant SMMT member will be sent a referral letter. At this point the member has 21 working days to reply. If they are satisfied that a member has explained and qualified their actions and has acted within the Code of Practice we will not take the matter any further.

### **Robert Bosch Ltd (Car repair and servicing) Code of Practice**

<http://www.boschcarservice.co.uk/pdf/OFT%20BCS%20Code%20of%20Conduct%20A5.pdf>

Bosch Car Service Garage Network (<http://www.boschcarservice.co.uk>) is an association of independent small garages, normally family-run. It has been in operation for over 100 years. The Code of Practice has been approved by the OFT. The Code covers aspects of the service business, including standard servicing, general mechanical repairs, fault finding and fault diagnosis service, MOT testing or vehicle recovery. The Code establishes best working practices concerning customer care, costs and charges, completion time,

invoicing, warranties and after-sales service, and workmanship, as well as cancellation rights, advertising and promotions. Complaints against Code members are also regulated in the Code.

Similarly with other Codes approved by the OFT, Code members are required to have operational effective complaints procedures. The procedure in the Code consists of the following stages:

1. Internal complaints – customers are encouraged to first of all raise the complaint with the garage (either personally or using an intermediary such as Trading Standards or Citizens Advice). The garage must acknowledge the complaint within 5 days and should aim to resolve it within 21 working days.
2. Free of charge Conciliation: as specified in the Code: “To use this service the customer is invited to contact Bosch directly on 01895 878087 or email [bcsqueries@uk.bosch.com](mailto:bcsqueries@uk.bosch.com). Alternatively, if a customer wishes to write to Bosch directly then the address details of Bosch may be found at the back of the Code. In the case of customer telephone calls, Bosch will acknowledge the customer’s call and record details of the complaint immediately. Bosch will also discuss the nature and content of the complaint at that time or contact the customer within the next 5 working days to discuss the complaint. In the case of written complaints, Bosch will confirm in writing to the customer that the complaint has been received within 5 working days of its arrival at Bosch. Should Bosch require a written account of the complaint and/or need other information to investigate the complaint then Bosch will ask the customer to provide it. Bosch will endeavour to resolve the customer’s complaint within 21 working days of its receipt. The recommendations made by Bosch to resolve the complaint will be binding on the BCS garage, however the customer remains free to reject the proposal made by Bosch” (the Code, p. 6).
1. Adjudication: “The recommendation of the Adjudicator is binding on the BCS garage; however the customer remains free to reject this proposal.” “Following on from the Bosch conciliation service, Bosch will advise the customer in writing of its final conclusion regarding his or her complaint. This letter will also contain the contact details of an independent panel responsible for monitoring how Bosch operates this code of practice. Should the complaint remain unresolved, and providing no more than six months have elapsed since the receipt of the final conclusion letter, the customer may elect to use the independent adjudication service. Here the customer is required to notify Bosch that the complaint is unresolved and request the matter be forwarded for adjudication. Subsequently, Bosch will refer the complaint to an independent Adjudicator who will investigate the complaint, obtain evidence from the customer, the BCS garage and Bosch and make a written adjudication as quickly as possible - generally within 28 days.” (the Code, p. 7).

## British Waterways

<http://www.britishwaterways.co.uk/home/index.html>

See the following website for the complaints mechanism:

<http://www.britishwaterways.co.uk/listening-to-you/if-you-have-a-complaint>.

See the customer service standards: <http://www.britishwaterways.co.uk/listening-to-you/customer-service-standards>

There are two levels of the mechanism:

### 1<sup>st</sup> Level – Local Level

This is the first official complaint level if the visitor's expectations were not met or if he/she wishes to make a complaint relating to services and facilities provided on one of the waterways.

The visitors are encouraged to write in the first instance to the general manager or director for that area of the waterway network (or call 01923 201120, or email [enquiries.hq@britishwaterways.co.uk](mailto:enquiries.hq@britishwaterways.co.uk)) (apart from complaints which do not relate to a local waterway but to one of British Waterways' central department services: in these cases the visitors are encouraged to write in the first instance to Caroline Killeavy, Head of Customer Relations, British Waterways, 64 Clarendon Road, Watford, WD17 1DA or email [enquiries.hq@britishwaterways.co.uk](mailto:enquiries.hq@britishwaterways.co.uk)). All the relevant details: location(s), date(s), people contacted and the other circumstances should be provided. Once the complaint is received, the general manager, director another Waterways employee will acknowledge receipt of your letter in writing. Normally a full written response can be expected within 15 working days of this acknowledgement.

### 2<sup>nd</sup> Level – Corporate Level

If, after receiving the response at the Local Level, the visitor's concerns have not been fully addressed, he/she can ask for your complaint to be referred to the Corporate Level of the Complaints Procedure. Address: Caroline Killeavy, Head of Customer Relations, British Waterways, 64 Clarendon Road, Watford, WD17 1DA, or email [enquiries.hq@britishwaterways.co.uk](mailto:enquiries.hq@britishwaterways.co.uk). She will acknowledge the request and pass the visitor's correspondence, with any other supporting evidence, to a British Waterways executive director who does not have direct line management responsibility for the area of the specific complaint. Normally a full written response to the complaint can be

expected within 15 working days of the acknowledgement of the complaint reaching the Corporate Level.

The website of the Waterways explains: "It may be necessary for an executive director without day-to-day knowledge of the area of your complaint to request further information from local employees or from parties with an external relationship to BW. When this is necessary, and we feel it may not be possible to respond to your complaint within 15 working days, we will contact you again. We will explain our reasons for asking for a time extension and seek your approval. You may refuse this request. NB - at the Local and Corporate Levels of the Complaints Procedure you can expect a written response within 15 working days of our acknowledgement of your complaint. You can request that the complaint be moved to the next level of the complaints process should British Waterways fail to meet this commitment."

<http://www.britishwaterways.co.uk/listening-to-you/if-you-have-a-complaint>

Annual Report and Accounts 2007-8:

[http://www.britishwaterways.co.uk/media/documents/Annual\\_Report\\_and\\_Accounts\\_2007-08.pdf](http://www.britishwaterways.co.uk/media/documents/Annual_Report_and_Accounts_2007-08.pdf)

Information from the Annual Report:

"During the year we received 521 complaints at the first level of BW's complaints process, a reduction of 30% on the previous year (762 in 2006/07). Almost all were responded to within the specified period of fifteen working days. Of these, 68 complaints were elevated to a second level where they are considered by a director. This represents 13% of all complaints received (11% in 2006/07).

The independent Waterways Ombudsman considers complaints at a third and final stage. During the year she received 121 enquiries 30% of which did not relate to BW and 46% of which were premature, ie the complainant had yet to complain to BW. 29 complaints (26 in 2006/07) were accepted for consideration. The Waterways Ombudsman completed 39 cases during the year (26 in 2006/07). In two cases she found wholly against BW and in a further 14 cases partially against BW. Information about the Ombudsman scheme and its independent committee are available at [www.waterways-ombudsman.org](http://www.waterways-ombudsman.org)." (at p. 9).

See the Waterways Code:

[http://www.britishwaterways.co.uk/media/documents/Waterways\\_Code\\_Leaflet.pdf](http://www.britishwaterways.co.uk/media/documents/Waterways_Code_Leaflet.pdf)

See also Waterways Ombudsman: <http://www.waterways-ombudsman.org/> (analysed elsewhere in this report).

## **Prescription Medicines Code of Practice Authority (PMCPA)**

<http://www.pmcpa.org.uk/>

As specified on the Authority's website: "The Authority (PMCPA) is responsible for administering The Association of the British Pharmaceutical Industry's (ABPI) Code of Practice for the Pharmaceutical Industry at arm's length from the ABPI.

The Code covers:

- the promotion of medicines for prescribing to health professionals
- the provision of information to the public about prescription only medicines in the UK."

The Association of the British Pharmaceutical Industry (ABPI) is the trade association for more than 75 companies in the UK producing prescription medicines.

See the Code of Practice for the Pharmaceutical Industry 2008:  
[http://www.pmcpa.org.uk/files/sitecontent/ABPI\\_Code\\_of\\_Practice\\_2008.pdf](http://www.pmcpa.org.uk/files/sitecontent/ABPI_Code_of_Practice_2008.pdf).

The Code covers various aspects of the business, such as:

Advertising, information, comparisons, high standards, reprints, sponsorship, disguised promotions, non-interventional studies of marketed medicines, certification, representatives, training, provision of medicines and samples, gifts, inducements, promotions, the use of consultants, scientific services, relations with the public, media, and patients organisations, internet, compliance with undertakings.

### **Statutory basis (legal basis)**

No statutory basis – Code of Practice (see above).

See also Prescription of Medicines Code of Practice Authority Constitution and Procedure (attached to the Code of Practice).

### **Links with government and funding**

Independent of government. Funded by members.

### **Governance and structure**



Complaints made under the Code about promotional material or the promotional activities of companies are considered by the Code of Practice Panel and, where required, by the Code of Practice Appeal Board.

“The Authority is appointed by and reports to the Board of Management of The Association of the British Pharmaceutical Industry (ABPI) and consists of the Director, Secretary and Deputy Secretary. The Director reports to the Appeal Board for guidance on the interpretation of the Code and the operation of the complaints procedure and to the President of the ABPI for administrative purposes. In the absence of the Director, the Secretary is authorised to act on his behalf.” (Constitution and Procedure, p. 41).

“The Appeal Board and its Chairman are appointed by the Board of Management of the ABPI. The appointment of independent members to the Appeal Board, including the Chairman, is made following consultation with the Medicines and Healthcare products Regulatory Agency.” (see details on the membership of the Appeal Board: the Constitution and Procedure, p. 42).

## **Budget and expenditure**

### **Aims**

To administer the Code: provide guidance, advice and training, and handling complaints.

### **Procedure:**

- **who can apply for compensation/refer claims**

Anyone can make a complaint concerning promotion of medicines under the Code (including health professionals, especially those with prescribing responsibilities, who are in fact encouraged to report their concerns: <http://www.pmcpa.org.uk/?q=howtomakeacomplaint>). Even media articles and programmes can be treated as complaints. In such cases, authors are formally treated as complainants.

- **formal requirements and time limits**

There are no stringent formal requirements, and even anonymous complaints are accepted. Complaints about the promotion of medicines should be submitted to the Director of the Prescription Medicines Code of Practice Authority, 12 Whitehall, London SW1A 2DY, telephone 020-7747 8880, facsimile 020-7747 8881, email [complaints@pmcpa.org.uk](mailto:complaints@pmcpa.org.uk)

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

As specified in the Authority's Constitution and Procedure: "The Authority is not an investigatory body as such. It asks the respondent company for a complete response and may ask the parties to a case for further information in order to clarify the issues. It is essentially an adversarial process in which the evidence to be taken into account comes from the complainant and the respondent company. A complainant has the burden of proving their complaint on the balance of probabilities. Anonymous complaints are accepted and like all complaints are judged on the evidence provided by the parties. The weight to be attached to any evidence may be adversely affected if the source is anonymous and thus in some instances it will not be possible for such a complaint to proceed." (p. 41).

#### COMPLAINTS:

Complaints are made to the Director of the Authority, who examines them initially and decides whether to take them on (he may decide to refuse to consider a complaint if it concerns a matter closely similar to that which was subject to adjudication before, or if he considered that there was no breach of the Code). The Director's decisions during this preliminary stage may be appealed to the Appeal Board (decisions of the Chairman of the Appeal Board are final). If the complainant is another pharmaceutical company, the Director will not accept a complaint unless an inter-company dialogue was attempted and failed. Conciliation is also available to the parties at this stage.

Respondent companies are obliged to respond to the complaint providing all the relevant information which the Director requires within 10 days. After having received the response, the Director refers the case to the Panel.

Complaints are investigated and decided upon by a Panel: "Two members of the Authority form a quorum for a meeting of the Panel. Decisions are made by majority voting. The Director or, in his absence, the Secretary, acts as Chairman of the Panel and has both an original and a casting vote. Rulings are made on the basis that a complainant has the burden of proving their complaint on the balance of probabilities." (ibid., p. 41). Experts may be consulted during the proceedings, but they have no voting rights in the Panel.

The Panel may decide that marketing practices or materials breach the Code, and/or are likely to prejudice public health or patient safety – in such cases the use of the material may be suspended even though the respondent company lodges an appeal with the Appeal Board.

#### APPEALS:

The Panel can report companies to the Appeal Board. Also, complainants or respondents dissatisfied with the Panel's decision can appeal to the Appeal Board.

The Panel can report a company if its "conduct in relation to the Code, or in relation to a particular case before it, or because it repeatedly breaches the Code such that it raises concerns about the company's procedures, warrants consideration by the Appeal Board. Such a report to the Appeal Board may be made notwithstanding the fact that a company has provided an undertaking requested by the Panel." (Constitution and Procedure, p. 46).

Appeals by the parties can be made within 10 days from receiving the Panel's decisions.

As specified in the Constitution and Procedure: "The Chairman and seven members of the Appeal Board constitute a quorum. Two of those present must be independent members, at least one of whom must be a registered medical practitioner, and there must also be present two members from pharmaceutical companies, at least one of whom must be a registered medical practitioner." (p. 42). The Board holds a hearing, where both parties must be heard. It may use expert evidence and call witnesses. Decisions are made by majority vote, and similarly with the Panel the complainant must prove the complaint on the balance of probabilities.

#### REPORTING TO THE BOARD OF MANAGEMENT:

The Appeal Board can also report companies to the ABPI's Board of Management, if it considers that the conduct of a company in relation to the Code or a particular case before it warrants such action. The Board of Management of the ABPI considers whether further sanctions should be applied against that company.

- **results – compensation, other**

The Panel and the Appeal Board may decide:

- "to reprimand the company and publish details of that reprimand
- to require an audit of the company's procedures in relation to the Code to be carried out by the Prescription Medicines Code of Practice Authority and, following that audit, decide whether to impose requirements on the company concerned to improve its procedures in relation to the Code; these could include a further audit and/or a requirement that promotional material be submitted to the Authority for pre-vetting for a specified period; the Authority must arrange for material submitted for pre-vetting to be examined for compliance with the Code but the Authority cannot approve such material
- to require the company to issue a corrective statement; details of the proposed content and mode and timing of dissemination of the corrective statement must be provided to the Appeal Board for approval prior to use
- to require the company to take steps to recover items given in connection with the promotion of a medicine or non-promotional items provided to health

professionals and members of the public and the like; details of the action taken must be provided in writing to the Appeal Board.” (Constitution and Procedure, p. 47).

The Board of Management may decide: to reprimand the company and publish this reprimand, to order an audit of the company’s procedures with relation to the Code, to require the company to issue a corrective statement, to suspend the company from the ABPI membership, or if the company is not a member but has decided to follow the Code – to remove the company from the list of non-members.

- **costs**

As specified in the Constitution and Procedure, “An annual Code of Practice levy is paid by members of the ABPI. The levy together with the administrative charges payable for complaints and the charges for audits are determined by the Board of Management of the ABPI subject to approval at a General Meeting of the ABPI by a simple majority of those present and voting.” “Administrative charges are payable only by pharmaceutical companies and companies are liable for such charges whether they are members of the ABPI or not. There are two levels of administrative charge. The lower level is payable by a company which accepts either a ruling of the Code of Practice Panel that it was in breach of the Code or a rejection by the Panel of its allegation against another company. The lower level is also payable by a complainant company if a ruling of the Panel that there was a breach of the Code is subsequently overturned by the Code of Practice Appeal Board and by a respondent company if a ruling of the Panel that there was no breach of the Code is subsequently overturned by the Appeal Board. The higher level is paid by a company which unsuccessfully appeals a decision of the Panel. Where two or more companies are ruled in breach of the Code in relation to a matter involving co-promotion, each company shall be separately liable to pay.” (p. 49)

### **History (including any reforms, also ongoing reforms)**

The Prescription Medicines Code of Practice Authority was established by The Association of the British Pharmaceutical Industry in 1993 to operate the Code of Practice for the Pharmaceutical Industry independently of the Association. The Code itself, however, has celebrated its fifty years in 2008 (established in 1958).

### **Statistics**

#### **Reported cases, problems, issues identified in academic writings**

Reports on cases are published by the Authority and are available on request and on the Authority’s website [www.pmcpa.org.uk](http://www.pmcpa.org.uk).

## Codes of Association of British Healthcare Industries (ABHI)

The Association of British Healthcare Industries (ABHI) is the largest industry association for the medical technology sector in the UK. They represent companies whose output makes up for around eighty percent of the industry's total. <http://www.abhi.org.uk/> ABHI has adopted the [Eucomed](http://www.eucomed.be/abouteucomed/~media/pdf/tl/2008/portal/abouteucomed/thics/eucomedcodeofbusinesspractice.ashx) Code of Business Practice (available at: <http://www.eucomed.be/abouteucomed/~media/pdf/tl/2008/portal/abouteucomed/thics/eucomedcodeofbusinesspractice.ashx>) (Eucomed is the European medical technology association of which ABHI is the UK trade association member).

The Code of Business Practice is intended to provide guidance as to the minimum standards which should apply to its members business practices in the UK, Europe and, generally, elsewhere. It is not intended to supplant or supersede national laws or regulations or other professional or other business codes (including company codes) which may apply.

Apart from the ABHI Code of Business Practice, **ABHI also has a Procedure for Resolution of Complaints Received under the ABHI Codes of Business Conduct:** [http://www.abhi.org.uk/multimedia/code\\_of\\_practice/documents/abhi\\_complaints\\_procedure.pdf](http://www.abhi.org.uk/multimedia/code_of_practice/documents/abhi_complaints_procedure.pdf) The Code can be subscribed to by ABHI members as well as non-members.

### **Statutory basis (legal basis)**

No statutory basis – Code of Conduct.

### **Links with government and funding**

Independent of the government.

### **Governance and structure**

The Association of British Healthcare Industries is a voluntary association for the British healthcare companies. It is paid for by its members. The following is the structure of the Association as presented on its website:

- [Chief Executive Officer](#)
- [Technical & Regulatory](#)
- [UK Market Affairs](#)
- [External Relations](#)
- [Research & Innovation](#)
- [Finance & Administration](#)

## Budget and expenditure

Not available to the public. For other details on the Association's activities see the Annual Report to members 2007: <http://www.abhi.org.uk/multimedia/downloads/2007/AR07.pdf>.

## Aims

**As specified in the Annual Report 2007:** the "members are able to access expert advice and assistance, to collaborate on shaping the Association's policies and strategy, and to take advantage of the networking opportunities offered by our meetings, conferences and other events. The work we do with the help of our members is essential for creating a healthy UK market environment in which British companies can prosper and maintain this country's international reputation as an inventor, manufacturer and supplier of world class healthcare products.

### Procedure:

- **who can apply for compensation/refer claims**

Companies which subscribe to the Code can make complaints about other companies. Members of ABHI are obliged to comply with the Code.

- **formal requirements and time limits**

Complaints about non-compliance with the Code are made to the Chairman of the Code of Practice Complaints Panel. The Chairman may also raise complaints of his own motion. A member company pays an administrative fee on lodging a complaint.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

Companies are first of all encouraged to resolve their dispute between themselves. However, when a complaint is made, it will be considered by the Code of Practice Complaints Panel. The Panel comprises healthcare professionals, lay (non-healthcare or non-industry individuals) and the Director General of ABHI or his nominee as an observer. There is a Chairman and Vice-Chairman of the Panel, appointed by ABHI in General Meeting.

When a complaint is received, the Chairman or Vice-Chairman invites the CEO of the respondent company to comment on the complaint within ten working days.

Within two working days of the end of the response period, the Chairman decides “whether there is a *prima facie* case to answer under the Code, taking into account any response received from the respondent. The Chairman shall forthwith notify the complainant and the respondent of the decision, stating brief reasons.” “If a *prima facie* case has been determined, the Chairman shall convene a suitable group of three members from the Panel, who shall form the Committee that shall determine the case. The Chairman may take advice from the Director-General of ABHI on the suitability of any member of the Panel to sit on any individual case. All Committee members shall be fully independent from the companies involved in any matter. Any party may submit further evidence within 10 working days of notification of the Chairman’s decision, which shall be provided to the other party who shall be given 5 working days to respond.” “The Panel may request assistance from independent experts on any appropriate matter.” (source: ABHI Procedure, [http://www.abhi.org.uk/multimedia/code\\_of\\_practice/documents/abhi\\_complaints\\_procedure.pdf](http://www.abhi.org.uk/multimedia/code_of_practice/documents/abhi_complaints_procedure.pdf)).

- **results – compensation, other**

**The potential sanctions which the Panel may impose include:** “reprimand; imposition of a requirement that the offender take steps to conform with the Code: such steps may be specified in whole or in part, and may be subject to time limits; inspection and audit by a third party, at the offender’s expense, of the offender’s systems for compliance and of the extent of compliance; requiring companies to recover items given in connection with the promotion of products and/or to issue a customer communication regarding future corrective practice; requiring companies to publish or otherwise disseminate corrective or explanatory information or statements; withdrawal of any ‘compliance’ logo or equivalent industry accreditation or certification scheme; publication of any decisions or sanctions imposed in such manner or media as may be specified; suspension of a company from membership of the Association for such time period as may be specified, and readmission on such terms as may be specified; expulsion of a member from membership of the Association.” (The Procedure, p. 2).

- **costs**

The company which was held to have breached the Code pays the costs of the Panel (remuneration and expenses).

### **History (including any reforms, also ongoing reforms)**

### **Statistics**

### **Reported cases, problems, issues identified in academic writings**

The Procedure mentions that an Annual Report ought to be published which would contain information on the numbers and types of complaints. No such information has been found so far.

### **British Healthcare Trades Association (BHTA)**

The Code of Practice for the healthcare and assistive technology products and services industry, updated in 2008, can be found at:

<http://www.bhta.net/Portals/BHTA/Code%20of%20Practice%20October%202008.pdf>

The companies who are members of the Association are involved in supplying the following types of business:

Supply of assistive technologies, particularly those for elderly and/or disabled consumers

Supply of externally applied medical devices, and/or services relating to the fitting of those devices

Supply of equipment and related services necessary for medical and health professionals to carry out their various specialist functions

Training in the use of assistive technologies

Training relating to health and safety, such as first aid at work, and manual handling.

The Code concerns various aspects of the business, and includes a complaints procedure which has the following stages:

1. Customers are first of all encouraged to complain directly to the company – either by phone or by fax or letter. Member companies are obliged to set up speedy, responsive and user-friendly procedures for resolution of complaints. Customers must be informed about who to contact if they do have a complaint and what the stages of the procedure are. Normally a complaint made by phone ought to be acknowledged within 2 days; and by fax, letter or email – within 5 days. Normally all complaints are supposed to be resolved within 1 calendar month. Customers must be advised that if their complaint is not resolved satisfactorily they may refer them to the Code Administrator – BHTA - for Conciliation and later also Arbitration.
2. Conciliation: BHTA, upon receiving a complaint, will consider whether the company: “has not complied with the Code, has infringed the customer’s legal rights, or has been guilty of maladministration (including inefficiency or undue delay) in a way that has resulted in the customer losing money or suffering inconvenience. It may request to see all the customer’s documentation, and will ask the company to report within 7 working days,



giving as much evidence as possible. It will attempt to settle the dispute by agreement between the two parties. At every stage in this process BHTA will endeavour to respond/act within seven working days. There is no charge to the customer at any stage in the complaints conciliation or the arbitration process described below.” (the Code, p. 18).

3. Arbitration: if the complaint cannot be resolved at the stage of conciliation, the complainant may refer it to court or refer it to an Independent Arbitrator. BHTA needs to pass all the information and documents to the Arbitrator within 5 working days. As specified in the Code: “The Arbitrator’s initial reaction will be notified to the parties concerned within seven working days and normally, a conclusion should be reached within fifteen working days. (If further evidence is presented by either party, this may prolong proceedings.) The Arbitrator’s findings (which may, for example, be that the company is not at fault, or that the customer has a valid complaint) will be issued in writing and will give a summary of the facts, the conclusions and reasons for reaching them. The Arbitrator’s decision is binding on both parties. Where a Code member is found to be in breach of this Code, the Independent Arbitrator may require them to do one or more of the following, depending on the circumstances:

- repay all money paid by the complainant
- replace or repair the product without charge
- pay any costs incurred by the Code Administrator and/or the Independent Arbitrator for technical advice or testing
- take all reasonable steps, including any specified actions, to prevent a recurrence of the breach
- pay compensation to the complainant (the amount to be decided by the Arbitrator based on the evidence and circumstances of the breach).

Each of the above should occur within 30 days, with the exception of specified actions to prevent a recurrence. For these, time limits will be determined on a case by case basis.” (the Code, p. 18).

The Code Administrator may also set up a **Disciplinary Committee** which can make decisions concerning breaches of the Code by members. The Committee can decide that:

- “no further action be taken
- the Code member be required to undertake a specified course of remedial action (such as re-training of a particular salesperson)
- the Code member be issued with a formal warning
- a fine be issued, relating to the amount of work incurred by BHTA and the Independent Arbitrator regarding the complaint, the cost of the Disciplinary hearing, and/or the nature of the offence
- suspension, for a stated period, of the Code member from the register of companies signed up to the Code (and hence from BHTA)

- expulsion of the Code member from the register of companies signed up to the Code (and hence from BHTA).” (the Code, p. 19).

## **Other independent complaints and dispute resolution schemes**

### Press Complaints Commission

<http://www.pcc.org.uk/>

The Press Complaints Commission is an independent body which deals with complaints from members of the public about the editorial content of newspapers and magazines. Their service is free, and they aim to deal with most complaints within 35 working days.

#### **Statutory basis (legal basis)**

Not based on statute. The Code of Practice which is enforced by the Commission is the Editors’ Code of Practice: [http://www.pcc.org.uk/assets/111/Code\\_Aug\\_2007.pdf](http://www.pcc.org.uk/assets/111/Code_Aug_2007.pdf). The Code has been established by the newspapers and periodicals industry and approved by the Commission in 2007. The Code concerns the following issues: accuracy, privacy, intrusion into grief or shock, treatment of children, treatment of people in hospitals, harassment, reporting of crimes, the use of material obtained by hidden devices, treatment of victims of sexual assault, discrimination, financial journalism, confidential sources, witness payments in criminal trials, payments to criminals. It is based on the need to provide a balance between privacy of an individual and the public interest in obtaining information about important issues.

#### **Links with government and funding**

Independent of the government.

#### **Governance and structure**

Members of the Commission are appointed by the

#### **Budget and expenditure**

#### **Aims**

To quickly and effectively resolve complaints against newspapers and periodicals concerning breaches of the Editors’ Code of Practice.

## Procedure:

- **who can apply for compensation/refer claims**

Anyone with a complaint against a newspaper or a periodical.

- **formal requirements and time limits**

The complainants are advised to write to the editor about the complaint as soon as possible, asking for a correction or apology for an inaccuracy or intrusion. If the editor hasn't replied within a week - or if his or her response is unsatisfactory – the Commission will consider the complaint.

Time limits are: two months from publication, or if the complaint was taken up with the editor – two months from when it ceased (or as soon as possible if the editor has not responded). The Commission may also accept later complaints if there was a valid reason for the delay.

Normally the person complaining must have been directly concerned, unless the matter raises some issue of general public interest.

- **proceedings (the main stages, any complex procedural steps which can be identified, the length of the proceedings, whether there is a final hearing, the binding (or not) nature of the final decisions, appeals)**

The following is an excerpt from the “How to Complain” Leaflet:

“If we think a full investigation is not required, your complaint will be presented to the Commission for a ruling under the Code. Commissioners will see your objections as well as a copy of the article under complaint. If they decide there has been no breach of the Code we will write to you with full reasons for this decision. (...)

3. When we are unable to pursue the matter, we will nonetheless send a copy of your letter to the editor so that he or she is aware of your concerns.

4. If we think that an investigation is required because your complaint may raise a breach of the Code, we will send a copy of your complaint and your supporting documents to the editor, and ask for your comments on the editor's reply. As the investigation continues, you may be asked for more information and comments. You will be sent copies of all relevant documents.

5. Our aim will be to deal with your complaint as quickly and effectively as possible” (p. 5).

- **results – compensation, other**

No compensation is available using the Commission. The PCC also cannot stop publication before it appears.

As explained in the “How to Complain” Leaflet:

The complaint may result, “for instance, (in) obtaining an explanation from the editor, or by the publication of a correction, an apology, a letter from you or by a further article or private letter from the editor.

6. If we can't resolve the complaint to your satisfaction, the Commission will review all the circumstances - including any offers to resolve the complaint made by the editor - and take a decision as to whether there remain any issues under the Code requiring a decision. If the Commission upholds your complaint, the publication concerned will be obliged to publish an adjudication with due prominence. A copy of the ruling will be contained in our regular Bi-annual report, and also placed on our website. (...)

7. Following investigation, the Commission may also conclude that there has been no breach of the Code, or that it cannot take the matter further for some reason. Or it may decide that the remedial action taken or offered by the newspaper (such as a correction) has been a sufficient response to your complaint. In that case, it will conclude that no further action is necessary. However, if you reject an offer by the newspaper that the Commission regards as adequate, you may lose the right to take it up subsequently.” (p. 5).

- **costs**

The proceedings are free to complainants.

### **History (including any reforms, also ongoing reforms)**

#### **Statistics**

The website of the Commission provides comprehensive statistical information on the numbers of cases and their outcomes.

#### **Reported cases, problems, issues identified in academic writings**

The PCC received 4,698 complaints in 2008. Of the complaints that were specified under the terms of the [Code of Practice](#) approximately two in three were about accuracy in reporting and approximately one in five related to intrusion into privacy of some sort. All complaints are investigated under the editors' Code of Practice, which binds all national and regional newspapers and magazines. [The Code](#) - drawn up by editors themselves - covers the way in which news is gathered and reported. It also provides special protection to particularly vulnerable groups of people such as children, hospital patients and those at risk of discrimination.

## **Other codes of practice approved under the OFT's Consumer Codes Approval Scheme**

Application procedure for redress scheme operators

[http://www.offt.gov.uk/advice\\_and\\_resources/resource\\_base/EARS/app-procedure](http://www.offt.gov.uk/advice_and_resources/resource_base/EARS/app-procedure)

### **Direct Selling Association (DSA) Code of Practice**

[http://www.dsa.org.uk/code\\_consumer.htm](http://www.dsa.org.uk/code_consumer.htm)

As specified by the DSA's website: "The Direct Selling Association launched its consumer code of practice to the public on 1st March 2005 and is only the third association to secure OFT approval under the Consumer Codes Approval Scheme (CCAS).

It gives consumers confidence that they will be treated reliably and fairly when they shop with DSA members. If problems do arise, they will be dealt with swiftly and in line with the DSA code procedures.

The OFT only approves codes that are proven to safeguard and promote consumers' interests beyond the basic requirements of the law. The main benefits to consumers dealing with the DSA members with the Approved code are:

- A 14 day cooling-off period during which consumers can cancel the contract
- A consumer guide to shopping at home
- Trained direct sellers committed to act with integrity and not use misleading, deceptive or unfair practices
- A free independent arbitration scheme
- On-going monitoring of customers' satisfaction."

The Code is available online at:

[http://www.dsa.org.uk/documents/10078\\_DSA\\_Consumer\\_code.pdf](http://www.dsa.org.uk/documents/10078_DSA_Consumer_code.pdf).

The Association was founded in 1965 to "promote the highest standards of consumer protection in direct sales. Direct selling continues to offer a convenient way of shopping at home and, today, £2 billion of goods and services are purchased in the home, every year, from over 470,000 full time and part time direct sellers. DSA member companies account for almost 70% of this business." (the Code, p. 2)

The Association set out requirements concerning member companies: these relate to various aspects of the direct selling business, including forms of selling, staff training,

advertising, identification, order forms, guarantees, after-sales service, refunds and cancellations, and pre-payments.

The Code sets out the procedure for dealing with complaints:

1. Internal complaints handling – member companies are required to have effective complaints handling procedures and should aim at resolving complaints within 10 working days.
2. Complainants may, however, also complain directly to the Director of the Association. If the complainant is dissatisfied with any solution proposed by the member, or it is referred initially to the Director, the following procedure will be used:

(i) The complainant will be asked to set out details of the complaint in writing;  
(ii) The Director will send a copy of the written complaint to the member requesting prompt remedial action; the complainant will be kept informed at all times;  
(iii) If the Director is not notified within 21 days that the matter has been resolved, he shall refer it to the Code Administrator and may notify the Council of the Association;  
If the complainant is dissatisfied with the recommended action, or if the member fails to act as required by the Director, the Director shall refer the complaint to the Code Administrator.

3. Adjudication: “The Code Administrator will investigate any complaint referred to him, obtain evidence from the complainant, from the member and any other relevant person and make a written adjudication as quickly as possible. The adjudication is binding on the member and any direct seller; the complainant is not bound by the adjudication.”

“Where a member is found to be in breach of the Consumer Code (including the Annex), the Code Administrator may require the member:

- (a) to repay all money paid by the complainant;
- (b) to replace or repair any product without charge;
- (c) to pay any costs incurred by the Code Administrator for technical advice or testing;
- (d) to take all reasonable steps, including any specified steps, to prevent a recurrence of the breach;
- (e) to pay compensation (not exceeding £5000) to the complainant.”

The Code Administrator may recommend that the member appear before the Disciplinary Committee and may make recommendations as to the action it should take.

## Carpet Foundation Code of Practice

<http://www.comebacktocarpet.com/cfcode.pdf>

Here are the key elements of the Code as specified on the website of the Foundation:

- It applies to all carpets (not rugs) sold by a Registered Specialist;
- It covers conditions of sales, payments, deposits, and extended guarantees;
- There is a complaints resolution procedure with a specified timetable;
- The Foundation provides a free conciliation service and low-cost arbitration.

The Code specifies the following complaints procedure

1. Internal resolution: the Registered specialists must follow the timescale provided: initial inspection of the carpet – within 7 days of complaint, 7 days from the visit for the official response back to the consumer; if the manufacturer’s visit is relevant, it must take place within 10 days from the initial report to the consumer, and then the manufacturer has 28 days for a response. The final report from the Registered specialist is due within 7 days of the manufacturer’s report. The process requires commitment from the Registered Specialist to carry out an investigation as soon as possible. In addition, if a manufacturing fault is suspected a visit from a local representative is required as quickly as possible. If the complaint timetable cannot be met on reasonable grounds it is important that the consumer is informed as soon as possible.
2. Conciliation: the Code specifies that “In circumstances where consumers cannot obtain a satisfactory outcome to their complaint they have the right to claim further as follows:

- i. To the small claims court (legal redress)
- ii. To the Carpet Foundation conciliation service

The Carpet Foundation conciliation service is provided **free of charge** exclusively to Registered Specialists to help resolve disputes with consumers. It is essentially a ‘peace brokering’ service aimed at giving a ‘no frills’ face value analysis of a complaint between a consumer and a Registered Specialist. It **does not** include product testing or site visits. Consumers who have a complaint may ask for a Conciliation Application Form which needs to be completed and countersigned by the Registered Specialist. Completed forms, together with supporting documentation, should be sent to the Carpet Foundation Technical Director within 7 days of the consumer’s application. The investigation by the Carpet Foundation is aimed at suggesting a resolution to the dispute to both parties within 15 days of receipt of the application form.”

3. Arbitration: the Code specifies that “In cases where the Registered Specialist’s attempt to resolve a problem fails and conciliation cannot bring the parties together, the consumer has a number of courses of action:
  - i. Drop the complaint
  - ii. Pursue the complaint through the courts
  - iii. Refer the complaint to Arbitration

The Carpet Foundation has set up a special Arbitration Service with the British Carpet Technical Centre (the BCTC) to provide ‘low cost’ arbitration services **exclusively** to Registered Specialists. Registered Specialists are required to use this facility and refer **all** their arbitration cases to BCTC. The special rate negotiated with BCTC is £110 per case (plus VAT), shared equally between the consumer and retailer. Details of the submission made by both parties for conciliation will be passed on to the arbiters to assist with the resolution of the case. The decision of the arbiter is **legally binding** on both parties.”

### **The British Association of Removers (BAR) Code of Practice**

For over 100 years the BAR (<http://www.bar.co.uk/>) has been the recognised voice of the professional moving and storage industry in the United Kingdom. Currently, it has over 650 members in the UK and 250 abroad. Its members carry out over 400,000 moves within the UK each year. BAR members range in size from small family businesses to multinational companies, but involvement in the industry alone does not qualify a company for membership. BAR inspects and investigates all potential members and matches them against criteria for membership that cover premises, vehicles, staff, operational procedures and insurance arrangements. BAR also has a programme of ongoing inspection during membership to ensure standards are maintained.” (Code of Practice, p. 1:

[http://www.bar.co.uk/Data/Global/File/BAR\\_CODE\\_OF\\_PRACTICE.pdf](http://www.bar.co.uk/Data/Global/File/BAR_CODE_OF_PRACTICE.pdf))

The Code is binding on BAR members, and it applies to furniture removal activities for private individuals in the UK. The Code regulates various aspects of the business, and sets up a complaints process, consisting of the following stages:

1. Internal complaints: member companies must set up a speedy, responsive, accessible and user-friendly procedures for handling complaints. Upon receiving a complaint, the company must respond within 5 days and should aim at resolving all complaints 1 month. Member companies must maintain record of all complaints.
2. Conciliation – this service is mandatory for member companies if the complainant decides to use it.
3. If the dispute cannot be resolved through Conciliation, the complainant (or the company if the customer agrees) may refer it to Arbitration. This



service is provided by The Chartered Institute of Arbitrators under the terms of the Arbitration Act, 1996.

The Code Administrator also can commence disciplinary proceedings against one of the member companies. This procedure is specified in the Code – it has three possible stages: decisions are first of all made by the Secretariat, then they can be appealed to the Disciplinary Committee, and then to the Appeal Board. It can result in fines and exclusions.