



Land, Valuation and Housing Tribunals

The Future

EXECUTIVE SUMMARY

Law Commission
Law Com No 281 (Summary)

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EXECUTIVE SUMMARY

1. This report makes recommendations for reform of land, valuation and housing tribunals. The project arose from a recommendation of the Leggatt report of the Review of Tribunals.¹ The tribunals within our terms of reference were the Adjudicator to HM Land Registry, the Agricultural Land Tribunal, the Commons Commissioners, the Lands Tribunal, the Leasehold Valuation Tribunal, the Rent Assessment Committee, the Rent Tribunal and the Valuation Tribunal (referred to collectively as the “project tribunals”). The Leasehold Valuation Tribunal, Rent Assessment Committee and Rent Tribunal are collectively under the umbrella of the Residential Property Tribunal Service, and are referred to as the “RPTS tribunals”.
2. The Leggatt report emphasised the importance of coherence, independence and user-friendliness throughout the tribunal system. The report noted that in the context of land, property and housing tribunals “there are confusing overlaps of jurisdiction between courts and tribunals, as well as between tribunals”, and recommended that the Law Commission should be asked to work out “a comprehensive solution”, with a view in particular to removing any jurisdictional overlaps and any scope for forum shopping.
3. On 11 March 2003, the Government announced its plans for the reform of tribunals in the shape of a unified Tribunals Service, initially to be based on the ten largest tribunals. The Lord Chancellor’s Department (now the Department for Constitutional Affairs) confirmed that our project was to proceed according to its original terms of reference, notwithstanding anything in the Government’s announcement.

STRUCTURAL REFORM

A unified tribunal structure

4. Our report seeks to apply the Leggatt principles of independence, coherence and user-friendliness to reform of the project tribunals. We seek to build on the strengths of the project tribunals while constructing a rational structure for the future.
5. We recommend a unified structure which differs from the options discussed in our consultation paper.² The more far-reaching of our earlier models consisted broadly of an amalgamated or unified tribunal to deal with the majority of first instance

¹ Report of the Review of Tribunals by Sir Andrew Leggatt: Tribunals for Users – One System, One Service (August 2001).

² Land, Valuation and Housing Tribunals, Consultation Paper No 170.

cases, and a mainly appellate Lands Tribunal. Our provisional view was that the Lands Tribunal might have jurisdiction for first instance cases only when they were complex cases, with the question of complexity being determined on a case by case basis rather than according to the subject matter of the jurisdiction. It became clear during the consultation process that this would not sufficiently take account of the specialist expertise of the Lands Tribunal in exercising its current first instance jurisdictions.

6. We therefore recommend a unified structure for the project tribunals which takes greater account of this factor. Our proposed model comprises two elements:
 - (1) a generic Property and Valuation Tribunal (the PVT) to hear the majority of first instance cases;
 - (2) a reformed Lands Tribunal to hear cases falling within the Lands Tribunal's current first instance jurisdictions, together with all appeals from the PVT. This tribunal would also hear cases currently within the jurisdiction of the Commons Commissioners and the Adjudicator.
7. We recommend that ministerial responsibility for the PVT and the reformed Lands Tribunal should rest with the Lord Chancellor.
8. Our terms of reference relate to England only. Our recommendations for a unified tribunal structure therefore cannot extend to Wales. We recommend that the National Assembly for Wales should consider adopting or joining in a unified tribunal structure.
9. We believe that our proposed system would be sufficiently flexible and adaptable to be able to deal with cases fairly, efficiently and economically. It should bring an enhanced consistency of approach to the resolution of land, valuation and housing disputes, and the development of the law in these areas. As well as providing a new framework for dealing with existing cases, our proposed structure is intended to be robust enough to enable new jurisdictions to be added to it, as circumstances dictate rather than, as too often happens at present, new tribunals being created to deal with new issues. A unified structure would also provide the opportunity for greater administrative efficiency and economy.

The PVT

10. The PVT would be responsible for hearing at first instance cases which are currently within the jurisdiction of
 - (1) the RPTS tribunals,
 - (2) the Valuation Tribunals, and
 - (3) the Agricultural Land Tribunals.
11. We note that there are some differences between the RPTS and the Agricultural Land Tribunal on the one hand and the Valuation Tribunals on the other. These are: the Valuation Tribunals' wholly lay membership, the comparatively large number of cases heard by the Valuation Tribunals, and the fact that the Valuation Tribunals hear disputes between citizens and the state rather than disputes between private parties. We argue, however, that the Valuation Tribunals are

sufficiently similar to the other project tribunals to be included in a unified system, and that the users of the Valuation Tribunals would also benefit from a more coherent and clearly independent system.

The reformed Lands Tribunal

12. The reformed Lands Tribunal would be based on the current jurisdictions of the Lands Tribunal. It would be responsible for hearing cases within the first instance jurisdiction of the Lands Tribunal and appeals from all cases within the jurisdiction of the PVT. Appeals from Valuation Tribunal council tax cases, Rent Assessment Committee and Rent Tribunal cases and Agricultural Land Tribunal cases would therefore be heard by the Lands Tribunal rather than by the High Court.
13. The small and specialist jurisdictions of the Adjudicator and the Commons Commissioners would also be transferred to the reformed Lands Tribunal. We suggest that the posts of Adjudicator and Chief Commons Commissioner should be preserved as distinct roles within the Lands Tribunal.

Appeals and judicial review

14. Appeals from the PVT would be to the reformed Lands Tribunal, with a permission filter in all cases. Permission could be granted by either the PVT or by the Lands Tribunal.
15. Appeals from the PVT to the Lands Tribunal would not be restricted to appeals on a point of law. If appeals were restricted to points of law, the Lands Tribunal would not be able to exercise its key role in deciding and developing valuation principle. The Lands Tribunal would in our proposed scheme be able to hear appellate cases either by way of review or rehearing.
16. In appeals from the PVT the reformed Lands Tribunal would have the same powers on appeal as those in the civil courts, that is the power to affirm, set aside or vary the orders or to remit the case back to the lower division.
17. Appeals from decisions of the Lands Tribunal would, as now, be to the Court of Appeal on a point of law only. This would mean that appeals from the Commons Commissioners and the Adjudicator, which are currently heard in the High Court, would instead be heard in the Court of Appeal. The indications are that this would not substantially increase the workload of the Court of Appeal.
18. Our proposals create a coherent and comprehensive route of appeal from the PVT to the reformed Lands Tribunal, and from the reformed Lands Tribunal to the Court of Appeal. To avoid the possibility of forum shopping, we recommend that judicial review of the PVT should be excluded by statute where other remedies have not been exhausted. We recommend that judicial review of the reformed Lands Tribunal should be barred by statute altogether.

Referrals to the courts

19. We consider that, in an expert tribunal system, there should not need to be referrals to the High Court for decisions on points of law. We therefore recommend that section 6 of the Agriculture (Miscellaneous Provisions) Act 1954 should be repealed. Although section 110 of the Land Registration Act 2002 allows for referrals to the courts, this power can also be used in cases of

jurisdictional overlap. We consider this a useful power in the context of our proposed reformed Lands Tribunal and PVT.

Regional structure

20. The PVT would have a regional structure. This should reflect the regional structure that we understand is intended for the Government's unified Tribunals Service. The reformed Lands Tribunal would continue to operate mainly from the tribunal's courts in London.

Membership and staff of the tribunals

21. Both the PVT and the reformed Lands Tribunal would be headed by a President. The PVT would also have Regional Chairs. The qualification requirements for the President of the reformed Lands Tribunal and the President and Regional Chairs of the PVT would be the same as those which now apply to the President of the Lands Tribunal.
22. The membership of each tribunal would initially comprise the existing members of the current tribunals. Tribunal members could be either full-time or part-time members as appropriate. There could also be the possibility of bringing in additional expertise from outside the regular membership of the tribunals, for example, High Court or circuit judges, or PVT members sitting as deputies in the reformed Lands Tribunal where appropriate.
23. The PVT and the reformed Lands Tribunal would each have panels of different types of member. In the PVT, there would be three panels: legal members, professional members and lay members. In the reformed Lands Tribunal, there would be two panels: legal members and professional members. Professional members would include surveyors, valuers and the expert wing members of the Agricultural Land Tribunal. Lay members would be the current lay members of the RPTS tribunals and the Valuation Tribunals.
24. There would be a system of member "specialisms", based on members' existing areas of expertise. For example, a member of our proposed PVT might have a specialism in agricultural land disputes or in local government finance disputes. If they chose to do so, members could acquire additional specialisms through sitting in different types of cases and training. The panels and the member specialisms would be used by the tribunals to allocate cases to the right members – see paragraph 28 below.
25. The PVT and the reformed Lands Tribunal would each have a registrar, with a similar role to that of the current Lands Tribunal registrar. The registrar should be legally qualified. The clerks who currently work in the Valuation Tribunals would become deputy registrars.
26. The PVT and the reformed Lands Tribunal would have a common administration, with a regional distribution of administrative support.

Procedures

27. We think there could be a common set of procedures in each tribunal, with variants for different jurisdictions where necessary. We recommend that there should be a Rules Committee to assist in the making of procedural rules for the

reformed tribunals. If a Rules Committee is set up for the unified Tribunals Service, then no doubt this Committee would be appropriate.

28. The reformed tribunals would have a flexible case allocation system which would ensure that cases were heard by tribunal members who had the necessary skills and expertise to hear them. The tribunals would allocate cases from the three membership panels to members with the appropriate specialisms. For example, in local government finance cases, three members of the lay panel would be selected to hear a case. Each of three lay members would have a specialism in local government finance adjudication.
29. There would be case transfer mechanisms to enable cases to be transferred from the PVT to the reformed Lands Tribunal and vice versa where appropriate. For example, obviously straightforward compensation cases, possibly involving more modest sums, might be transferred to the PVT, or obviously substantial service charge disputes might be transferred to the Lands Tribunal.
30. The procedural rules of the PVT and the reformed Lands Tribunal would provide that alternative dispute resolution (ADR) is to be encouraged in cases before the tribunal where appropriate. The application of ADR would have to depend on the circumstances of individual cases. The rationalisation of the current tribunals might provide an opportunity for the rational development of ADR services.
31. One consequence of a rationalisation of the current project tribunals would be that there would be inconsistencies in the fees charged for different cases due to the tribunals' present fee structures. The appropriate level of fees must be a matter of policy rather than law reform, and thus did not form part of the Law Commission project. We recommend that, if our proposals are adopted, there should be a departmental review of the fees currently charged in the project tribunals.
32. We also recommend that the Government should look at issues relating to the enforcement powers of tribunals.

JURISDICTIONAL ISSUES

33. Consultees noted some jurisdictional overlaps between the project tribunals and the courts, but did not note any of these to be particularly problematic in practice. We note in the report the main issues that were raised by consultees, as follows:
 - (1) service charge jurisdiction in the Leasehold Valuation Tribunal and the county court;
 - (2) enfranchisement and new leasehold jurisdictions in the Leasehold Valuation Tribunal and the county court;
 - (3) the new right to manage jurisdiction under the Commonhold and Leasehold Reform Act 2002 in the Leasehold Valuation Tribunal and the county court;
 - (4) overlap between the Rent Assessment Committee and the county court;
 - (5) overlap between some compensation cases in the Lands Tribunal and damages claims in the High Court;

- (6) overlap between the Lands Tribunal and the General and Special Commissioners of Income Tax;
 - (7) use of the Lands Tribunal's arbitration jurisdiction in Valuation Tribunal cases;
 - (8) overlaps between the Adjudicator and the High Court;
 - (9) a difficulty in agricultural dispute resolution mechanisms relating to section 28 of the Agricultural Holdings Act 1986; and
 - (10) overlaps resulting from the division of jurisdiction for the resolution of local government finance disputes between the Valuation Tribunals and the magistrates' courts.
34. Because these overlaps do not appear to cause real problems in practice, we do not recommend that jurisdictions be transferred from the courts to the tribunals or vice versa. We think that any occasional difficulties of jurisdictional overlap can be resolved with good case management powers. We recommend that our proposed PVT and reformed Lands Tribunal should have a full set of case management powers. In particular, there should be a power for the courts to refer matters to the tribunals where necessary and vice versa.
35. We make two specific recommendations in relation to jurisdictional overlaps. We repeat the recommendation made in Law Commission Consultation Paper No 165 that the Lands Tribunal should have jurisdiction to determine any claim, whether common law or statutory, relating to damage to land or the use of land, where it arises out of substantially the same facts as a compensation claim which has been referred to the Lands Tribunal. We recommend that the Government should consider reviewing the way in which the local government tax system is adjudicated, including the roles of the Valuation Tribunal and the magistrates' courts.
36. We also note a generally close relationship between the county court's jurisdiction over housing disputes and the jurisdiction of the Leasehold Valuation Tribunal. This can result in difficulties when housing disputes involve more than one distinct issue. We note that in the long term a wider enquiry may be needed into the possibility of allocating most or all of this type of dispute to one adjudicative body.

A LEGISLATIVE SCHEME

37. Although we have not been asked to produce a draft Bill and we do not make any recommendations in the report about how our proposed scheme should be set out in legislation, we make some suggestions about how the structure of our scheme could be divided between primary and secondary legislation. We broadly use the legislation which set up the Appeals Service as a model, and take into account guidelines by the Council on Tribunals and the current legislative structure of the project tribunals.

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3 September 2003