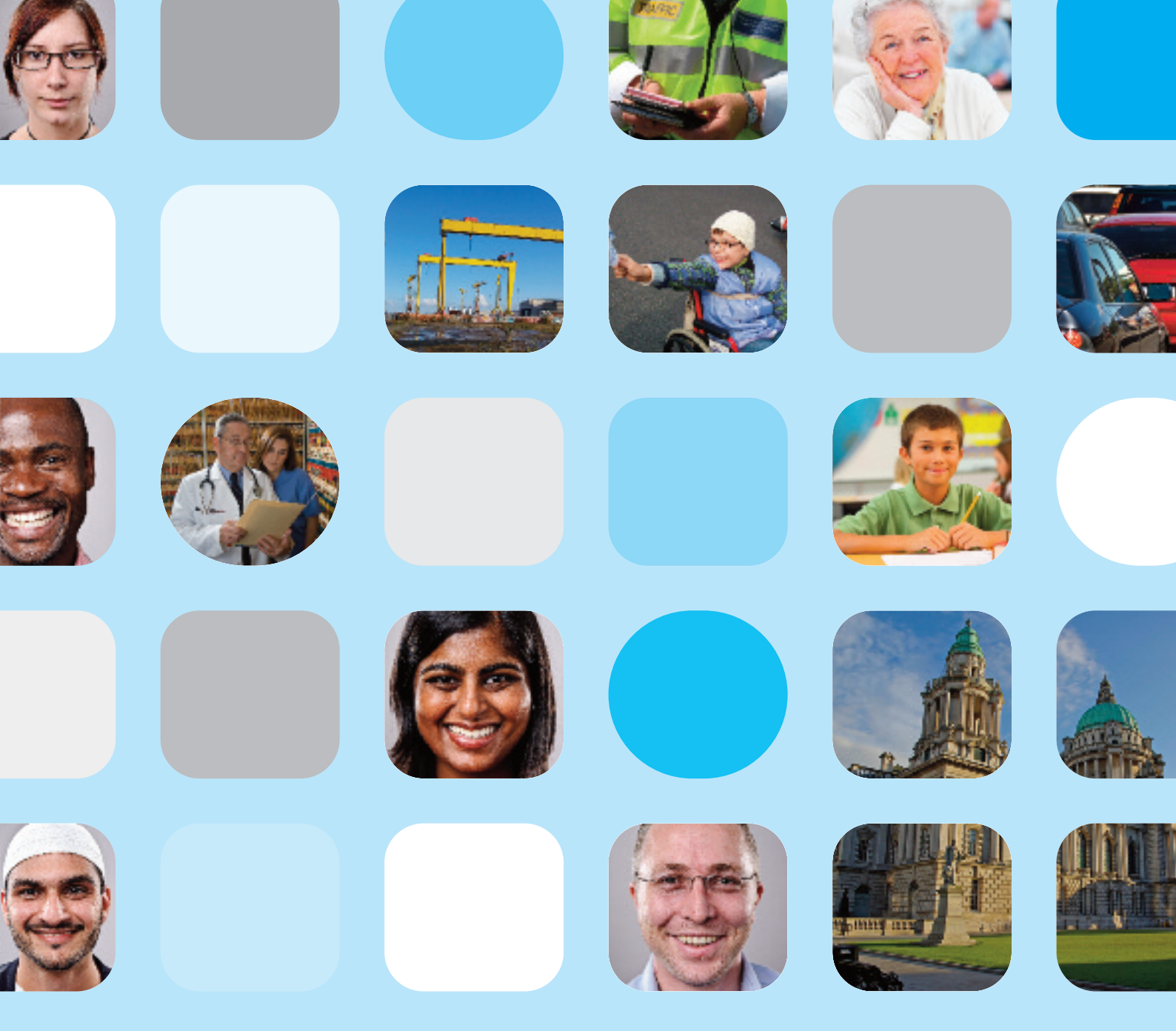




Mapping the Administrative Justice Landscape in Northern Ireland

Report on research undertaken on the
Administrative Justice System
in Northern Ireland

August 2014

Marie Anderson Andrea McIlroy Michaela McAleer

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Executive Summary

Introduction

The introduction at section 1 outlines the context and background to the Report.

Mapping the administrative justice landscape in Northern Ireland

Definitions of 'administrative justice' and an 'administrative justice system' from the academic literature are outlined in this section and the working definitions that have informed the approach to the authors' project are described.

A survey of internal complaints/review/appeal mechanisms

The research outlined in section 3 examines the internal complaints/review/appeal arrangements currently available to users for the resolution of disputes around public services in Northern Ireland. This research was undertaken from March to September 2011 using a survey questionnaire and a follow up survey was conducted between February and March 2013. The follow up survey was conducted in order to provide an updated analysis for the purpose of this Report and identified that, in the main, the complaints procedures and redress mechanisms had not changed. Section 3 of this Report sets out the outcomes and conclusions of the research. The authors welcome the initiative undertaken by the Inter-departmental Steering Group on Complaints to standardise complaints procedures across all public bodies in Northern Ireland and to develop a single NI Direct online portal for citizens to complain about public services.

Research on Tribunals in Northern Ireland

Section 4 of the Report explores the gaps and overlaps in redress, administration and signposting which interact with the tribunal sector and a range of other government organisations and departments. Consideration is given as to how these gaps and overlaps impact upon the user who seeks to challenge the administrative decisions of public bodies in Northern Ireland.

The role of the Ombudsman in the administrative justice system

Ombudsmen and their role in administrative justice is explored at section 5 of this Report. The research focused on the Northern Ireland Ombudsman's jurisdiction in investigating complaints of 'maladministration', identifying overlaps with the role of tribunals, other ombudsmen schemes and the courts. These 'overlaps' are confusing for the user and can be a barrier to remedy.

Research on judicial review in Northern Ireland

Academic research has traditionally focused on the administrative law grounds and remedies for judicial review. The authors analysed the available data on the user's experience of judicial review during the period 2009-2012, establishing success rates and remedies. An information gap was identified and the need for additional data on the workings of this court for the user so as to better inform his/her choice of redress mechanism is highlighted in section 6 of this Report.

Conclusions and recommendations

Section 7 outlines recommendations to address some of the gaps and overlaps identified by the research in the administrative justice system in Northern Ireland. Complainants will often have the option of pursuing a number of forms of redress and these are pursued for different reasons, providing the complainant with different outcomes. The recommendations are aimed at bringing a more joined up approach to each part of the administrative justice system in order to provide a mechanism of redress for the citizen.



1. Introduction

1.1 This Report presents an analysis of research undertaken on the key parts of the administrative justice system in Northern Ireland; highlighting some gaps and overlaps that affect the 'citizen' seeking redress. Dunleavy et al¹ describe the concept of citizen redress as a 'complex one' which starts with an error in the delivery of a public service to the service 'user'. A number of differing redress mechanisms exist in Northern Ireland to remedy the mistakes made by public service providers, these are:

- Internal Complaints Procedures
- Tribunals
- Ombudsmen
- Judicial Review

This is an initial scoping study presenting some evidence of the user journey through each of these avenues. An effective redress mechanism must provide 'correction of the factors that led to the initial mistake'; a 'reform' or change in the process that caused the initial error and a clear apology for the error as evidence of learning from the mistakes². Research on each redress mechanism focused on the user journey. Where sufficient information was available the redress mechanism was tested for effectiveness. While the user has a joined up view of redress in that they seek a remedy for the 'injustice' they have experienced, they rarely understand the dichotomy³ between complaints and appeals. The research on complaints at section 3 of this Report highlights the need for greater clarity for the user of internal complaints procedures. Section 4 highlights some gaps in the information provided to tribunal users at the end of their journey. The overlap between the courts, tribunals and Ombudsman is outlined in section 5 of this Report. The research outlined in section 6 discloses an information gap on judicial review in Northern Ireland. Each of these redress mechanisms have differing procedural rules, jurisdictional boundaries and time limits providing the user with varying remedies. This complex landscape can be difficult for the user to navigate.

This Report is published at a significant time for the system of administrative justice in Northern Ireland. The Minister of Justice has launched a consultation on 'The Future Administration and Structure of Tribunals in Northern Ireland'.⁴ The Committee of the First and deputy First Minister is developing legislation to reform the role and remit of the Northern Ireland Ombudsman and the Welfare Reform legislation will bring fundamental changes to the system of social security which will impact on the lives of many people in Northern Ireland. The research into the workings of the administrative system was undertaken by staff of the Northern Ireland Ombudsman's office (the authors).

¹ Patrick Dunleavy, Simon Bastow, Jane Tinkler, Sofia Goldchuk & Ed Towers, 'Joining up Citizen Redress in UK Central Government', (2010) In Michael Adler, *Administrative Justice in Context*, (Hart UK 2010) p. 421

² Ibid at p. 421

³ Dunleavy et al delineate the two mechanisms- a complaint focuses on a defect in the process and an appeal is seen as a request for a substantive decision to be 'looked at again', Ibid at pp. 424 -425

⁴ Launched by David Ford MLA (25 January 2013) and available at <www.dojni.gov.uk>

Project methodology

1.2 The research mapped the administrative justice landscape in Northern Ireland from a user perspective. Administrative justice is both the initial decision making and the redress mechanisms available for appeals or grievances arising out of that initial decision-making. When disputes between an individual and the state arise there are both internal and external redress mechanisms available. These comprise internal complaints handling mechanisms and externally, appeals to tribunals, complaints to ombudsmen and as a last resort the judicial review court. In addressing a single dispute, the user may bring his complaint to more than one part of the administrative justice system. For instance, if an application for planning approval is rejected, the applicant has the right to appeal to the Planning Appeals Commission. However, objectors to planning approvals are excluded from this recourse. If the planning objector is dissatisfied with a planning decision, he/she has the option to pursue a number of different forms of redress but only after complaining to the Planning Service first. The nature and scope of these avenues differ and provide different redress: if the objector initiates judicial review proceedings in the High Court, the Court will look at the legality of the decision. Whereas, if the planning objector submits a complaint to the Northern Ireland Ombudsman, the Ombudsman will investigate any failures in administrative functions. Each part of the system has differing jurisdiction rules and remedy and these differences can be confusing and complex for the user.

1.3 To inform the authors' project a desktop examination of the literature and research relating to administrative justice and administrative justice systems across the United Kingdom was undertaken. The literature review provided working definitions for administrative justice, an administrative justice system and an approach to mapping that system. The approach taken by the Law Commission for England and Wales in their consultation paper on Public Law Remedies⁵ was adopted. The Law Commission's report outlined the four pillars of administrative justice⁶ and Kenneth Parker QC, the Law Commissioner leading this project, identified these⁷, as:

⁵ Law Commission, *Administrative Redress: Public Bodies and the Citizen* (Law Commission Consultation Paper No 187, 2008) para. 2.3

⁶ *Ibid* para. 3.1-3.5

⁷ Address to the British and Irish Ombudsman's Association at Warwick University 2009



Four Pillars of Administrative Justice			
Internal mechanisms	External mechanisms	Ombudsmen	Courts
<i>For example:</i> Internal complaint mechanisms, mediation	<i>For example:</i> Tribunals, public inquiries	<i>For example:</i> Parliamentary and Health Service Ombudsman, Local Government Ombudsmen	<i>For example:</i> Judicial Review, negligence, breach of statutory duty, misfeasance in public office

The research focused on internal complaints mechanisms, tribunals, ombudsmen and the judicial review court. The user journey to access justice through these internal and external redress mechanisms is dependent on adequate information, signposting and joined up working between each of the 'pillars'. The recommendations address some of the gaps in information, signposting and oversight, further research is also needed.

1.4 An administrative justice system has three key aims as defined by Professor Tom Mullen as follows:

- Getting it Right First Time;
- Effective Redress;
- Learning from Mistakes⁸.

1.5 Given the devolution context for the administrative justice system in Northern Ireland, it was concluded that the Scottish approach to considering the system of administrative justice had particular relevance. Mullen's approach and the report of the Administrative Justice Steering Group (AJSG) to the Scottish Government was a key reference point⁹. In this Report, aspects of the Scottish administrative justice system were examined and the arguments made for a 'user' focused system. This focus underpins the principle of 'right first time'. A key aim of the getting it right first time approach is to improve decision making within the public body at the start of the user journey. Further, when the user is dissatisfied with a decision, the body should have an internal redress mechanism aimed at putting things right. This pointed to the need for research on internal complaints mechanisms of public bodies in Northern Ireland.

Internal complaints/review/appeal mechanisms

1.6 The research examined the internal complaints/review/appeal arrangements for resolution of disputes by the user of public services in Northern Ireland. This research was undertaken from March to September 2011 using a survey questionnaire and a follow up survey conducted February to March 2013. The follow up survey was conducted in order to provide an updated analysis for the purpose of this Report. A list of all public bodies (devolved and non-devolved) that make decisions affecting individuals in Northern Ireland was collated (Appendix 1). A survey questionnaire (Appendix 2) was drafted, comprised of mainly closed ended responses. Its purpose was to analyse the complaints/review arrangements for resolution of grievances/disputes within the respondent public bodies. An additional element of the research was the qualitative analysis of the complaints procedures of the respondent bodies. These complaints procedures were thematically analysed using a specially designed pro forma (Appendix 3) which assessed the content of the procedures against the following:

- accessibility;
- clarity;
- independence; and
- outcomes (remedy for the user)

Unstructured telephone interviews with relevant staff provided further clarification of these issues. The follow up survey identified that in the main the complaints procedures and redress mechanisms had not changed. Section 3 of this Report sets out the research outcomes and conclusions.

The authors welcome the initiative undertaken by the Inter-departmental Steering Group on Complaints to standardise complaints procedures across all public bodies in Northern Ireland and to develop a single NI Direct online portal for citizens to complain about public services.

Research on tribunals

1.7 Section 4 of the Report explores the gaps and overlaps in redress, administration and signposting which interact with the tribunal sector and a range of other government organisations and departments. Consideration is given as to how these gaps and overlaps impact upon the user who seeks to challenge the administrative decisions of public bodies in Northern Ireland.



The Role of the Ombudsman in the administrative justice system

1.8 Ombudsmen and their role in administrative justice is explored at section 5 of this Report. The research focused on the Northern Ireland Ombudsman's jurisdiction in investigating complaints of 'maladministration', identifying overlaps with the role of tribunals, other ombudsmen and the courts. These 'overlaps' are confusing for the user and a barrier to remedy.

Research on judicial review in Northern Ireland

1.9 Academic research has traditionally focused on the administrative law grounds and remedies for judicial review. The authors analysed the available data on the user's experience of judicial review during the period 2009-2012, establishing success rates and remedies. An information gap was identified and the need for additional data on the workings on this court for the users so as to better inform his/her choice of redress mechanism is highlighted in section 6 of this Report.

Conclusions and recommendations

1.10 Section 7 outlines recommendations to help address the identified gaps and overlaps with the aim of improving redress for the user who seeks to challenge the administrative decisions of public bodies in Northern Ireland. These recommendations are those of the authors, who recognise that many of the recommendations are cross cutting and impact on redress mechanisms that are sponsored or supported by more than one Northern Ireland Department. In the current economic climate, work on the costs of accepting any or all of the recommendations will be necessary.

The authors' project was a scoping study undertaken by staff from the Northern Ireland Ombudsman's office and resources were limited. There is a need for additional research on this subject and in presenting this Report the authors seek to strongly recommend further interest in administrative justice in this jurisdiction.

2. Mapping the Administrative Justice System in Northern Ireland

Defining administrative justice

2.1 Definitions of both administrative justice and an administrative justice system were considered following a comprehensive literature review. Administrative justice covers *'the administrative decisions by public authorities that affect individual citizens and the mechanisms available for the provision of redress.'*¹⁰ Mullen also describes it in these terms:

- *'Initial decision making by public bodies affecting individuals' rights and interests including the substantive rules under which decisions are made and the procedures followed in making decisions;*
- *systems for resolving disputes relating to such decisions and for considering individuals' grievances.'*¹¹

The literature review provided definitions of what administrative justice is and what it is not. In his introduction to *Administrative Justice in Context*,¹² Adler distinguishes this area from 'civil justice' whose aim is to secure the 'peaceful settlement' of disputes between the individual as to 'their respective legal rights' as well as remedies for the individual who has suffered as a result of a breach of statutory duty; and 'criminal justice' which is focused on the punishment and rehabilitation of offenders and protection of the innocent. In practical terms the Scottish Public Services Ombudsman (SPSO) has described administrative justice as a 'public service'¹³.

2.2 Administrative law is confined to considering the legality, procedural fairness and irrationality¹⁴ of the decisions and actions of public bodies in the exercise of their public law function. Administrative justice is broader, including issues of legality, procedural fairness and good administration; learning from mistakes with the aim of improving decision making. In Northern Ireland administrative decisions are those made by officials in devolved and non-devolved public bodies. These include decisions of devolved and UK-wide Government departments, statutory agencies and arms length bodies; decisions made by local councils, housing authorities, Education and Health Boards as well as Health and Social Care Trusts. The research examined the internal and external redress mechanisms for these decisions but did not include the actual decisions and rules and procedures of these decision making bodies. By focusing on data on the user experience of redress, the research provides some insight into the quality of decision making.

¹⁰ Nuffield Foundation (2008), *Administrative Justice: Choice of Redress Mechanisms, Briefing No. 3* (London Nuffield Foundation)

¹¹ *Administrative Justice in Scotland – The Way Forward – The Final Report of the Administrative Justice Steering Group* (Consumer Focus Scotland 2009) para. 2.1

¹² Michael Adler, *Administrative Justice in Context*, (Hart Publishing Oxford UK 2010)

¹³ *Designing and Implementing a Fit for Purpose Complaints Handling System* MacKay Hannah and Scottish Public Services Ombudsman Conference Edinburgh 31 January 2011

¹⁴ Council of Civil Service Unions and Others v Minister for the Civil Service [1985] AC 374



Defining an administrative justice system

2.3 A statutory definition of an 'administrative justice system' is to be found in the Tribunal Courts and Enforcement Act 2007¹⁵ as follows:

'The administrative justice system means the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including:

- (a) the procedures for making such decisions;*
- (b) the law under which such decisions are made; and*
- (c) the systems for resolving disputes and airing grievances in relation to such decisions.'*

Buck, Kirkham and Thompson provide a useful summary of a 'working definition' of an administrative justice system in *'The Ombudsman Enterprise and Administrative Justice'*:

'We can now summarise our working definition of the administrative justice system as inclusive of the following:

- 1. all initial decision-making by public bodies impacting on citizens – this will include the relevant statutory regimes and the procedures used to make such decisions ('getting it right');*
- 2. all redress mechanisms available in relation to the initial decision-making ('putting it right');*
- 3. the network of governance and accountability relationships surrounding the public bodies tasked with decision-making impacting upon citizens and those tasked with providing remedies ('setting it right').'*¹⁶

2.4 Dunleavy et al identified the complexity of the administrative justice system when it comes to citizen redress, *'there are multiple types and channels of redress, each of which is run by a different body or section, according to different rules and definitions and using different procedures'*.¹⁷ This can be confusing for the user who simply seeks remedy or redress but is required to navigate differing rules, time limits and procedural hurdles. The need for support for appellants in tribunals was highlighted in research undertaken by Gráinne McKeever¹⁸; and tribunal structures was the focus of a report by Brian Thompson.¹⁹ The present research on administrative justice in Northern Ireland covers internal complaints mechanisms, ombudsmen, the judicial review court and tribunals. These redress

¹⁵ Tribunal Courts and Enforcement Act 2007, Para. 13(4) Sch 7

¹⁶ Trevor Buck, Richard Kirkham and Brian Thompson, *The Ombudsman Enterprise and Administrative Justice*, (Ashgate 2011) p.57

¹⁷ Patrick Dunleavy, Simon Bastow, Jane Tinkler, Sofia Goldchuk & Ed Towers, 'Joining up Citizen Redress in UK Central Government', (2010) In Michael Adler, *Administrative Justice in Context*, (Hart UK 2010) p. 422

¹⁸ Gráinne McKeever, *Supporting Tribunal Users: Access to pre-hearing information, advice and support in Northern Ireland*, November 2011, Law Centre (NI)

¹⁹ Brian Thompson, *Structural Tribunal Reform in Northern Ireland: Proposals*, October 2011, Law Centre (NI)

mechanisms have overlapping jurisdictions which present a further hurdle to the user seeking remedy for an administrative 'mistake'. This is illustrated by the example of a claimant who currently seeks access to a social fund payment. Table 2.1 below outlines the overlapping jurisdictions and the complexity of the rules and jurisdiction in each 'forum'.

Table 2.1

Redress Mechanism	Jurisdiction	Time Limits	Potential Remedy
Department of Social Development (DSD) internal review of decision	Internal review ²⁰ on merits of DSD decision	28 days from date of decision	Grant or refusal of application
Social Fund Commissioner	External review on merits of internal review by DSD	28 days from date of DSD internal review	Grant or refusal of application
Northern Ireland Ombudsman	Investigates if DSD decision was attended by maladministration (requires MLA sponsorship)	Complaint made to MLA no later than 12 months from date of knowledge	Apology, financial redress ²¹ , systemic change, review of decision making process, remedial action
Judicial Review Social Fund Commissioner (Northern Ireland)	Review of decision (not an appellate jurisdiction)	Application to be brought promptly and in any event within three months of the date of decision	certiorari; declaration; mandamus; prohibition; damages

As the table highlights, a claimant for a social fund payment, if dissatisfied with the original decision refusing his claim, has several overlapping jurisdictions to navigate with differing rules, time limits and remedies. The remaining sections of this Report highlight the research on gaps and overlaps in the system of administrative justice in Northern Ireland. This research provides a snapshot of a complex and potentially confusing system from a user perspective.

²⁰ Social Fund (Application for Review) Regulations (NI) 1988 No. 20 - Regulation 2 sets down the timescales discretionary social fund customers are required to meet in order to request both an internal RO review and an independent review by a Social Fund Inspector. These are 28 days in both instances, with extensions by exception.

²¹ The 'Northern Ireland Ombudsman' is a popular title for two statutory offices, the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints. The potential remedy of financial redress does not apply to complaints falling within the jurisdiction of the Commissioner for Complaints from 28 January 2014 following the judgment in JR55 v Northern Ireland Commissioner for Complaints [2014] NICA 11.



3. A Survey of Bodies' Complaints Mechanisms

The survey

3.1 Most public bodies in Northern Ireland have an internal complaints procedure that allow their 'customers' to complain about failures of service and to challenge administrative decisions that affect them. Where bodies such as the DSD or the Northern Ireland Housing Executive (NIHE) make decisions about the award of a benefit, there is a right to seek a 'review' of that decision and a further avenue of appeal exists to an external tribunal (the Appeals Tribunal). Where the individual remains dissatisfied with the outcome of an appeal to that tribunal he/she may apply for leave to appeal on a point of law to the Office of the Social Security and Child Support Commissioners (OSSC) and if refused, may seek to judicially review the OSSC determination. If leave is granted, any full decisions on a point of law can be challenged further to the Court of Appeal in Northern Ireland. This range of channels for redress is complex and confusing for the user.

The beginning of a user redress journey is often the internal complaint mechanism of the body and thereafter there are external mechanisms for review or appeal. To examine the user journey, a survey and analysis of the complaints handling procedures of bodies in Northern Ireland was undertaken between March and September 2011 and the survey data was updated between February and March 2013.

This survey covered both devolved and non-devolved bodies and examined the internal complaints mechanisms, and the nature of methods of external review or appeal from the perspective of the body's internal procedures. The outcomes for the user whose complaint is successful at this first stage highlighted a range of available remedies including apology and financial redress. Finally, the evidence highlighted some gaps in relation to the internal complaints procedures of respondents. In this section recommendations to address these issues are outlined for further consideration.

Range of respondents

3.2 The total number of public bodies surveyed was 228. One hundred and fifty two responses were received giving a response rate of 67%. In order to identify the potential pool of respondents, a list of bodies within the jurisdiction of the Northern Ireland Ombudsman was obtained so as to ensure the most accurate coverage of all bodies making decisions which affect individuals living in Northern Ireland. The need to survey non-devolved bodies which are subject to

the jurisdiction of the Parliamentary and Health Service Ombudsman (PHSO) was identified. Therefore the survey extended to certain UK wide tribunals and bodies which make decisions about non devolved matters affecting individuals in Northern Ireland. A list of the bodies surveyed can be found at Appendix 1²². The overall response rate (67%, n=152²³) was encouraging and allowed for further qualitative analysis.

Research methodology

3.3 A survey questionnaire (Appendix 2) was designed based on an analysis of the themes emerging from the literature and relevant research into the administrative justice landscape within the United Kingdom. The survey questionnaire included a number of closed questions which aimed to capture the following data:

- whether the public body had an internal complaints procedure in place;
- whether an appeals procedure was in place;
- if the body's decisions under their complaint/appeal mechanisms were subject to external review, and
- if so what these external review mechanisms were.

Statistical data from the bodies surveyed on the number of complaints/appeals and external reviews were also sought as a means of establishing the frequency with which citizens were invoking internal mechanisms and their outcomes. Data was also sought on those users who remained dissatisfied and who progressed their dispute to the next stage in order to obtain appropriate redress. Where external review mechanisms were available, and these had been utilised by individuals dissatisfied with the public body's decision making, the number of upheld/not upheld cases was sought in an attempt to establish whether public bodies' internal complaints mechanisms were sufficient to ensure 'administrative justice' was delivered. The survey aimed to identify the primary reasons for complaints, appeals and reviews being requested by the user. Finally, the survey questionnaire asked respondents to identify the types of outcomes resulting from complaints, appeals, and external reviews with a view to ranking in order of frequency.

3.4 As part of the survey, bodies with complaints procedures, appeal and review mechanisms in place were asked to forward a copy of these for analysis. A thematic analysis of procedures was undertaken using a bespoke complaint procedure pro forma (Appendix 3) which assessed the content of the complaints/review procedures against a number of broad criteria as follows:

²² It should be noted that some of the organisations issued with a survey as part of the authors' project either no longer exist or have been subsumed into another organisation.

²³ 'n' is an abbreviation for number.



- accessibility;
- clarity;
- independence; and
- outcomes (remedy for the user).

These criteria were identified following a review of the literature which identified them as appropriate tests of the robustness of a complaints procedure.

3.5 The total number of survey respondents was 152 and, of these, 120 responses were 'viable' for analysis. The attrition of 32 responses was due to the fact that the body surveyed was not public facing, and, therefore, fell outside the scope of the authors' project. Some respondents were identified as having statutory provision for an appeal of their decision on determination. For instance, an individual who is dissatisfied with the outcome of an application for a decision from the Information Commissioner under section 50 of the Freedom of Information Act 2000 regarding a request for information covered by that act may appeal that decision to the First-tier Tribunal (Information Rights). In addition, the Information Commissioner has a service standards complaints mechanism which does not examine the merits of an Information Commissioner decision.

3.6 In the education sector, it was identified that a number of different appeal mechanisms exist in relation to a variety of decisions made by academic institutions. The nature of the complaint determines the process followed in the event of 'user' dissatisfaction. For schools, the decision of a school may be the subject of a complaint to the Board of Governors. There is currently no external review mechanism for these decisions. Where the issue is one of school admissions, there is a specialist tribunal as well as tribunals for expulsion, special educational needs, curriculum complaints and admission on the basis of exceptional circumstances. In the further and higher education sector the survey identified 'internal' appeal mechanisms dealing with a range of grievances on the part of students including examination decisions and procedural matters. In Northern Ireland there is currently no external review mechanism available to students to challenge administrative decisions in the further and higher education sector other than the possibility of a judicial review of the Board of Visitors decision.²⁴ This contrasts with the position in England and Wales where the Office of the Independent Adjudicator investigates complaints of maladministration, although this does not include the merits of an academic award. In Scotland, complaints of maladministration in this sector are investigated by the Public Services Ombudsman in this devolved jurisdiction.

There are a number of differing appeals and complaints mechanisms in the higher education sector and they may be overlapping when a student complains. The survey focused on internal complaints mechanisms and did not examine in detail those appeal mechanisms relating to academic decisions such as the merits of a grade or marking decision.²⁵

The 2011 survey results and analysis

Internal Review Mechanisms

3.7 As already indicated, of the 152 respondents, 120 were considered viable for inclusion in the overall results analysis. Of this number, the majority (111) had internal complaints procedures in place and these were also analysed. A second internal stage of review of the complaint was available to the user in the majority of respondent bodies (99) and these review procedures were also analysed. The detailed data from the results of the survey and analysis of the complaints procedures is set out at Appendix 4 and all tables referred to below are contained in that appendix.

External Review/Appeal Mechanisms

3.8 An external form of review or appeal from the internal complaints procedure was available to the user for most respondents (111). The data on the external review/appeal mechanisms of respondent bodies was collated in order to trace the user journey (see Appendix 4 - table 3.1). The emerging picture is one of complexity with overlapping arrangements depending on the nature of the complaint and also some sectoral specific arrangements. For instance, where the complaint relates to unfairness or discrimination in housing allocation, there are three potential external review mechanisms: judicial review, the Northern Ireland Ombudsman or the Equality Commission. Complaints about information such as delay in responding to a request can be investigated by the Information Commissioner or the Northern Ireland Ombudsman. Employment issues can be brought to a tribunal, the Equality Commission, the Labour Relations Agency or the Northern Ireland Ombudsman. For university students the Board of Visitors is a specific form of external review mechanism and in the case of the Reserve Forces Reinstatement Committee an Umpire or Deputy Umpire exists as the external review mechanism. This overlap and complexity can make the user journey more difficult.

²⁵ Higher education institutions in Northern Ireland are also subject to the National Student Survey which collects information from mainly final year undergraduate students regarding the quality of their courses. The survey helps prospective students when deciding where to study and the results are also used to help higher education institutions to address any problem areas and make improvements.



3.9 The volume of complaints received by respondents within a reporting year ranged from 0-4327. The modal²⁶ number of complaints received was 0 (n=17) and thereafter was 2 (n=6) and 1 (n=6). The volumes of appeals ranged from 0-14829.²⁷ It should be noted that 14829 was an outlier²⁸ as was the next figure of 1290²⁹ and the range may be more accurately reflected as 0-356.

Outcomes for the User – Internal and External Redress Mechanisms

3.10 In 27% of the responses received, complaints were upheld as a result of review under the internal complaints procedure, 51% were upheld at appeal and 5% were upheld as a result of an appeal or review by other external avenues. The information on number of complaints/appeals progressing to external review is set out at Appendix 4 - table 3.2. The analysis identified that in terms of external review, the category of other (range 0- 594) was the highest category. Under half of respondents (n = 58) held statistics on the number of complaints that were upheld by the external review mechanism. It is important to note that the number of cases progressing to the Northern Ireland Ombudsman, judicial review, tribunals and the courts was very small.

Service Complaints

3.11 Respondents were also asked to provide statistics relating to their internal service standards complaints procedures. These were supplied by 64 respondents. Of these, the range of complaints received and dealt with was (0-199).

User Redress

3.12 Whilst the number of complaints upheld or not upheld is an important indicator of the quality of decision making, the focus of the survey was on outcomes for the user in those complaints that had a successful result (upheld or partially upheld). Respondents were asked for and provided data on the types of outcomes arising from internal complaints (Appendix 4 - table 3.3). The most frequent form of redress was an apology followed by service improvement and a change in practice.

Why did things go wrong?

3.13 Respondents were asked to provide reasons for complaints in the first instance. Only 62 responses were deemed viable for inclusion in the research data and the analysis of these responses are recorded at Appendix 4 - table 3.4.

²⁶ Modal - relating to or constituting the most frequent value in a distribution.

²⁷ DSD Charity Commission

²⁸ Outlier – represents an extreme result. Inclusion of an outlier can significantly distort the remainder of results.

²⁹ Northern Ireland Legal Services Commission

The most frequent reason for the user to complain was a failure of service delivery and inadequate standards of service (34%). Delay, poor communication and failure to follow procedures was also a reason for the complaint in 32% of respondents. However 25% of respondents recorded poor information handling as a reason for the complaint and 10% recorded poor record keeping. In conclusion, there is an emerging theme of failures in information management of respondents being a significant cause of complaint. It is important to note the small sample size when considering these results.

Improvements arising from complaints

3.14 Respondent bodies were asked to indicate any changes introduced to improve performance that had resulted within an organisation in response to a complaint or external review. The results set out at Appendix 4 - table 3.5 are based on 91 responses deemed viable for inclusion in analysis. The range of improvements arising from complaints are ranked in order of frequency, the most frequent being a review of policy, procedure or service followed by staff training and thirdly, changes to communication with users. Complaint monitoring is the fourth most frequent service improvement and this is followed by an improvement in information available to users. The results of the survey are encouraging and demonstrate a willingness on the part of the respondents to learn from the initial error and to seek to use the learning to improve the service to the user.

Thematic Analysis of Complaints Procedures

3.15 An analysis of the complaints procedures provided by the respondents using the pro-forma was undertaken using the criteria outlined at paragraph 3.4 above. The results set out in Figure 3.1 at Appendix 4 are based on 120 responses. A number of responses were not included due to a number of factors³⁰. The following themes emerge from the analysis:

Accessibility

3.16 The survey data highlighted some good and some poor practices when examined from the user perspective. Only 33% of respondents had a dedicated complaints officer or complaints department. However where a dedicated complaints officer could not be identified, it was not clear who the complainant could contact with any queries. For example, a complaints procedure may indicate that the manager of the relevant division will handle stage one of a complaint; a director will manage stage two and the chief executive will deal

³⁰ See Figure 3.2 in Appendix 4



with stage three should the complaint progress to this point. In these cases, many complaints procedures lacked a clear indication as to whether or not the complainant could contact these individuals if he/she had any queries or if such queries should be directed to a different member of staff.

3.17 An identifiable trend in the respondents' complaints procedures analysed was the acceptance of a complaint in any form at the 'informal' stage of the process. Many respondents aim to resolve complaints as early as possible and are willing to accept complaints orally as well as in writing at this stage. Where a complainant remains dissatisfied following the first attempt to put things right, many respondents will seek to have the complaint made in writing. Overall the bodies surveyed demonstrated flexibility in the acceptance of oral complaints which is noteworthy. However, it is disappointing to note that 59% of respondents did not provide their complaints procedure in alternative formats such as large print. This statistic is of concern given that most of the respondents are subject to equality legislation aimed at promoting accessibility for all users.

Clarity

3.18 Disappointingly, under half (48%) of respondents surveyed had clearly stated in their complaints procedures who may bring a complaint. In some instances where the respondents did not define a complaint, the purpose of the complaints procedure was stated in general terms (for example 'you may complain about the service you have received'). In other instances no statement of purpose was provided. This lack of clarity makes it difficult for the user to know when and what to complain about when using the internal complaints mechanism.

Independence

3.19 It was unclear in many instances whether or not respondents offered the user the opportunity of a 'review' or an 'appeal'. Difficulties with the dichotomy between these two redress mechanisms was highlighted by Dunleavy et al³¹. In the survey responses, the term 'review' was used by many respondents but it was unclear whether this was conducted by an independent party or whether the review would be undertaken by a person not previously involved in the original decision or complaint. The independence of the reviewer is vital in ensuring the confidence of the user in the process. The use of the word 'appeal' proved to be more effective in distinguishing between earlier stages of the complaints process and a fresh consideration of the merits. There was little evidence on the part of the respondents as to the difference between an internal review and an appeal.

Where a review or appeal was available to the user, it proved difficult to determine if this was an automatic right or at the discretion of the respondent.

Outcomes

3.20 Where the complainant was unsuccessful in his complaint it is encouraging to note that 88% of respondents acknowledged further rights of redress. In only a small number of responses it was unclear if a further right of redress existed to the complainant outside of the organisation's internal complaints process.

Where the complainant was successful in bringing his complaint there were a range of remedies provided by respondents, these are outlined at Appendix 4 - table 3.3. As noted earlier the most frequent form of remedy was an apology followed by service improvement and a change in practice. This range of remedy is noteworthy and the focus on apology and learning from mistakes was evident from the survey data, demonstrating the effectiveness of the respondents' internal complaints procedures.

Data Protection and Confidentiality

3.21 The majority of respondent internal complaints procedures (60%) did not deal with data protection and confidentiality issues. In accordance with the Information Commissioner's recommended good practice, information issues were dealt with by way of a separate mechanism.

Review of Complaint Investigations

3.22 This part of the survey provided inconclusive results as the majority of responses in relation to this question were marked as 'not clear'. No conclusions can be reached on this issue from the survey data as it may be that these public bodies do carry out a regular assessment of their complaints handling processes but do not state this on their complaints literature. Therefore the 'not clear' statistics noted in Appendix 4 - figure 3.1 (Q15) must be viewed as inconclusive in relation to this issue.

Conclusions – 2011 Survey

3.23 The 2011 research did identify good practice as well as some gaps and omissions. Reassuringly from a user perspective, the survey identified that the majority of respondents have an internal complaints procedure. In 97% of



respondent bodies, an explanatory leaflet was provided to complainants. The majority of respondent bodies had target timescales for acknowledging a complaint. Most have (71%) have a single point of contact for each stage of the complaints procedure. Further, 80% of respondents commit to keeping the complainant informed although only 13% did so regularly. The majority (88%) of respondents did provide details to the complainant of further rights of redress. There were some gaps identified in relation to clarity about the definition of a complaint, a review and appeal. Also it was unclear in some instances as to who may bring a complaint. On the issue of accessibility, while most respondents (68%) do not require a complaint to be made in writing, the majority do not provide their complaints procedures in alternative formats such as large print.

Updated survey - February to March 2013

3.24 In February 2013, the survey data was updated. The 120 respondents to the original survey were asked if there had been any change since 2011 to their complaints handling, review or appeal mechanisms which would render their response to the 2011 questionnaire to be outdated. Of the 112 responses to this follow up, 73% indicated no change had occurred. The response figures are illustrated in the table below.

Update – February 2013

Total Number of Organisations Surveyed	Total Number of Responses Received	Total Number of Responses Indicating Change	Total Number of Responses Indicating No Change	Other
120	112	27	82	3

3.25 As the table shows, the majority of the respondents have maintained their internal complaints, review and appeal mechanisms in the 2011 format. Where changes occurred these ranged from minor alterations to a major review by the respondents. Minor changes included:

- making the complaints procedure more widely available by placing it on the body's website;
- providing an online feedback page for customers;
- defining a complaint more clearly;

- signposting complainants to the Northern Ireland Ombudsman as an external avenue of redress;
- procedural changes to bring the body's procedure in line with departmental guidance;
- clarification of the nature of complaints covered by the internal procedure;
- the provision of an explanation as to how different types of complaint are handled;
- a review of internal complaints processes to bring the procedure in line with departmental guidance with a view to strengthening internal procedures; and
- the establishment of a discrete procedure to deal with anonymous complaints.

3.26 A number of bodies indicated more substantial changes which included making their complaints procedure more accessible, clearer and more user focused, these included:

- the provision of dedicated staff to deal specifically with customer correspondence and queries;
- the provision of a new customer relations management system;
- the re-branding and re-launching of the electronic complaints handling system affording enhanced monitoring arrangements to ensure improvement and avoid recurrence of the complaint;
- the development of new policies to deal with the range of different complaints received including procedures regarding vexatious complainants;
- the introduction of new procedures to take account of legislative change; and
- the development of an inter departmental complaints procedure.

The 2013 update showed an encouraging indication of increased user focus on the part of respondents, driven in some instances by legislative, structural or technological change.

Conclusions

3.27 The 2011 survey and 2013 update evidence both good and poor practice on the part of respondents. Issues relating to accessibility, clarity, independence and outcome are highlighted. Completion of internal complaint mechanisms is a key part of the user journey in an administrative justice system. The user may be required often to exhaust this tier before moving to another part of the system. Complaint volumes were high compared with other parts of the administrative



justice system. The test for an effective redress mechanism³² depends on the extent to which that mechanism provides for correction of the factors that led to the initial mistake, a change of process and a clear apology. Respondents identified an apology as the most frequent form of redress outcome, followed by service improvement and a change in practice and this is clear evidence of effectiveness.

Benchmarking with other jurisdictions

3.28 The user of public services in Northern Ireland is entitled to expect a consistent approach when he/she brings his/her complaint to the service provider. The research shows some evidence of the absence of a consistent approach to complaints handling. By way of benchmarking the experiences of the Northern Ireland user, the authors examined models of oversight of good practice in complaints handling in other jurisdictions. The PHSO in England has developed three sets of interlinking principles to set good practice for public bodies. These are: The Principles of Good Administration, the Principles of Good Complaint Handling and the Principles for Remedy³³. These complaint handling principles were adopted by the Northern Ireland Ombudsman as representing good practice in complaints handling and in 2009 he (the Northern Ireland Ombudsman) published 'Rights, Responsibilities and Redress – A Guide to Effective Complaint Handling'. Since that date his staff have provided presentations on good complaints handling practice to a wide range of bodies in his jurisdiction.

3.29 Of particular relevance in the devolved context are the developments in complaints handling oversight in Wales and Scotland. In Scotland a different model of complaints oversight exists as the Scottish Public Services Ombudsman (SPSO) has an additional role as the Complaints Standards Authority³⁴ with the responsibility for developing standardised complaints handling procedures for all Scottish public bodies in jurisdiction. As part of that role, the Scottish Ombudsman consulted on and produced a Statement of Complaints Handling Principles which was approved by the Scottish Parliament. Model complaints handling procedures (CHPs) have since been developed with and for each public service sector. All public bodies have a statutory duty to comply with these procedures which are now in place across most of the public sector. In practice this means, amongst other things, there is now a standardised process and timescale. All public bodies will be publishing consistent detailed

³² Ibid at para. 1.1

³³ Available at <www.ombudsman.org.uk>

³⁴ Public Services Reform (Scotland) Act 2010. s 119

information on complaints, allowing greater transparency, learning and scrutiny of complaints handling performance. A copy of these procedures and associated documents can be found on the SPSO website.³⁵

3.30 In Wales, the Public Service Ombudsman (PSOW) introduced the Complaints Wales Signposting Service. This web and telephone based service set up in 2011, assists people in Wales who wish to complain about public services, to make the complaint to the right body and also provides details of help and support by the way of Citizens Advice or advocacy groups. This includes complaints about non-devolved service providers such as Her Majesty's Revenue and Customs (HMRC). The service is free of charge and is financed from the PSOW's overall funding, which is received through the National Assembly for Wales (that is from the Welsh block grant).

Recommendations

3.31 The authors acknowledge the limitation of the survey data and more in depth research is needed on internal complaints mechanisms and complaints handling in Northern Ireland, before arriving at a firm conclusion. Complaints of maladministration about non-devolved bodies are investigated by PHSO and, mainly due to the small numbers of complaints about these bodies, insufficient data was available to reach any conclusions.

3.32 Further, where the outcome was unfavourable to the complainant there was no available information linking the outcome of an internal complaint to a subsequent appeal to a tribunal, ombudsman investigation or judicial review application and, on whether having received an unfavourable outcome, a dissatisfied user would then pursue the matter further to a tribunal, ombudsman or court. The authors consider that there is merit in further research on this subject so as to highlight the extent of user traffic between each part of the administrative justice system.

3.33 There is currently no requirement on public bodies in Northern Ireland to report annually as part of their annual report on numbers and outcomes of complaints as well as those which are pursued to the next stage (ombudsmen, tribunal or court). Openness and transparency on this issue would enable proper scrutiny of the complaints handling performance of public bodies. Consideration should be given to improved reporting on complaints.

³⁵ Available at <www.valuingcomplaints.org.uk>



3.34 In line with developments in other jurisdictions, consideration should be given to consulting upon and developing a Statement of Complaint Handling Principles which in view of their cross cutting nature, should be approved by the Northern Ireland Assembly. In addition, in line with the work undertaken by the Scottish Ombudsman, thought should be given to the development of a Model Complaints Handling Procedure by the Northern Ireland Ombudsman following consultation with stakeholders in each sector. Failure to follow the model procedure could give rise to a finding in itself of 'maladministration'. These developments would help ensure greater consistency for the user when bringing a complaint.

3.35 A complaints and redress portal for all citizens to make complaints about public services in Northern Ireland (whether provided by devolved or non-devolved bodies) should also be considered. This will have funding implications.

4. Research on Tribunals in Northern Ireland

Tribunals in Northern Ireland

4.1 Tribunals provide an external mechanism through which users can challenge administrative decisions. Tribunals in Northern Ireland hear appeals against decisions about a wide range of issues including, housing benefit, social security, employment, mental health as well as special educational needs. They have been described as 'a key part of the justice system – they are places where citizens can go to present their grievance and obtain simple, speedy and inexpensive justice'.³⁶ In 2011/2012, the Tribunals administered by the DOJ dealt with an average of 16,000 cases as reported in the DOJ's consultation document issued in January 2013.³⁷ The DOJ, through the NICTS provides administrative support on behalf of Her Majesty's Courts and Tribunals Service (HMCTS) to UK wide tribunals which also sit in Northern Ireland such those dealing with tax, immigration and information (see Appendix 5). The DOJ, through the NICTS provides administrative support for the Appeals Tribunal and the Rent Assessment Panel which are sponsored by the Department for Social Development. In addition, the Fair Employment and Industrial Tribunals are administered by the Department for Employment and Learning (DEL), and a number of other tribunals are sponsored by the Department of Education (DE) and administered by Education and Library Boards (ELBs).

4.2 The research concentrated on areas not covered by the DOJ consultation process highlighting gaps in signposting and redress. Given the broad nature of the appellate function administered by the Appeals Tribunal, the research focused on these tribunals identifying user rates, likelihood of success, remedies for the user and signposting arrangements to the other parts of the administrative justice system. The DOJ consultation focused on those tribunals for which it has statutory responsibility. The research therefore extended to those tribunals supported by the DE and administered by ELBs that hear appeals from decisions about admissions and expulsions identifying a gap in relation to redress in respect of decisions relating to suspensions. Finally, some research relates to these tribunals' redress mechanisms.

Appeals and oversight arrangements

4.3 There are various appeal routes from tribunals that sit in Northern Ireland. For instance appeals on decisions relating to social security and child support can be made on a point of law to the OSSC. However, where the appeal relates to a decision of a non-devolved tribunal such as the First-tier Tribunal

³⁶ 'Ford includes tribunal reform in plans to reshape the justice system' (Advancing Tribunal Reform Conference 23 June 2012) available at <www.northernireland.gov.uk>

³⁷ Department of Justice, *The Future Administration and Structure of Tribunals in Northern Ireland* - Consultative Document (2013) Appendix 6, para. 3.5



(Information Rights), this is made to the Upper Tribunal. The tribunal system in Northern Ireland can be complex for the user and advisors to navigate. It should be noted however the judicial personnel for the Commissioners (OSSC) and Upper Tribunal are the same and both judicial bodies are administered by the same office. Oversight arrangements are varied and add to the complexity for the user. The oversight of the administrative functions of all tribunals sponsored or administered by Northern Ireland Departments as well as those administered by ELBs is the responsibility of the Northern Ireland Ombudsman. For non-devolved tribunals this oversight falls within the jurisdiction of the PHSO. These differing sponsoring, administrative and oversight arrangements in Northern Ireland add to the challenges a tribunal user may face when pursuing an appeal about the administrative process that supported a tribunal decision.

Volumes and trends

4.4 An executive agency of the DOJ, the Northern Ireland Courts and Tribunals Service (NICTS), provides administrative support to a wide range of tribunals. The volumes of business highlighted at table 4.1 in Appendix 6 demonstrate year on year increased user activity in this part of the administrative justice system. The case figures include those tribunals that the DOJ currently administer under a service agreement with another Department or HMCTS.

4.5 The NICTS provided additional information on the nature and volume of business in these tribunals and applications and appeals to the OSSC for the period 2009-2012 (see table 4.2 at Appendix 6). From the user perspective there is a useful link to each of the tribunals on the NICTS website. Each tribunal has its own webpage which provides detail on the nature of the business. The highest number of cases are undertaken by the Appeals Tribunal. The Appeals Tribunal deals with appeals from decisions made by the Social Security Agency, the Child Support Agency and the Northern Ireland Housing Executive (NIHE). Unsurprisingly given the areas of public services covered by the Appeals Tribunal jurisdictions, these have been the busiest tribunals during the period 2009-2012. The Criminal Injuries Compensation Appeals Panel and the Northern Ireland Traffic Penalty Tribunal are second and third respectively in terms of business volumes.

4.6 The incidence of appeals received by the Appeals Tribunal increased by 8% in 2010/11 and by 4% in 2011/12. On average over the period 2009-2012 the volume of appeals received by the Appeals Tribunal represented 86% of the total number of appeals across all DOJ administered Tribunals.

A useful source of information on the volumes and business undertaken by the Appeals Tribunal is publicly available and contained in the President's Report to DSD³⁸. Table 4.3 at Appendix 6 highlights the range of appeals dealt with by the Appeals Tribunal and the results of a monitoring exercise of the initial decision making during that period. However the data usefully highlights that in 2009/10 43% of appeals to the Appeals Tribunal related to decisions about Disability Living Allowance (DLA); 28% of appeals related to decisions on Employment Support Allowance (ESA) and 16% of appeals related to Incapacity Benefit.

4.7 The data on the success rate of appeals to the tribunals administered by the Appeals Service has been provided for the purposes of this Report and these reflect a consistent approach and a clear level of appeal success achieved by users in the period 2009-2012 (table 4.4 Appendix 6).

Signposting by The Appeals Service

4.8 The research also established that unsuccessful appellants to the Appeals Tribunal are provided with information on options available. These advice notes were provided for the purposes of this Report and they clearly signpost the user to the next stage of appeal. They do not signpost the appellants to the Northern Ireland Ombudsman. However signposting to the Ombudsman is evident in the complaints leaflet produced by the Appeals Service and on the Appeals Service internet site point.³⁹

4.9 An unsuccessful appellant at the Appeals Tribunal is not provided with a statement of reasons for the decision unless he makes a **written** request to the Clerk of the tribunal within one month of the date of notification of the decision on appeal. The statement of reasons for the decision is required if an appellant decides to apply for leave to appeal to the OSSC. The appellant has one month from the date of issue of the Statement of Reasons to make an application in writing to the OSSC for leave to appeal. The appellant must clearly state why he thinks the decision is wrong in law. A form for this purpose is available on request or an application for leave may be made by way of a letter. The Chairman of the tribunal has a discretion, in certain circumstances, to set aside the decision being appealed and may refer the decision to be re-determined by the same or another tribunal. The appellant must seek leave in the first instance to appeal to the Chairman. Where leave is refused by the Chairman of the Appeal Tribunal, an application may be made to the OSSC.

³⁸ Available at <www.dsdni.gov.uk>

³⁹ The Ombudsman retains a residual discretion to investigate cases where injustice remains unremedied for individuals who have exercised a right of appeal, reference or review to a tribunal. The Ombudsman has discretion to accept such a complaint. Tribunal is defined in the Ombudsman legislation as 'any determining body'.



In relation to applications to the OSSC for permission to appeal, the data for the period 2009-2012 is outlined at Appendix 6 table 4.2. It is noted that the applications to OSSC for leave to appeal appear to have reduced by approximately 40% in 2010/11 and 38% in 2011/12 from the 2009/10 volumes. On the face of it, there is a substantial reduction in applications for leave to appeal in these years from the 2009/10 level. However, additional information provided by OSSC (see Appendix 6 - table 4.5) for the period prior to 2009/10, highlights the fluctuating volumes of business. A possible explanation for the level of applications to the OSSC increasing in 2009/10 is the introduction of a new benefit (Employment and Support Allowance) in 2008 and the early testing for eligibility. An examination of payments to solicitors for legal advice and assistance for representation at the social security tribunals (including applications/appeals to OSSC) during the same period is outlined at Appendix 6 - figure 4.1.⁴⁰ The data highlight an increase in payments for social security matters in 2010/11 of approximately 45% from the level of payments in 2009/10. The 2011/12 figures reflect a level of payment similar to 2009/10. It is not possible to identify a direct link in this instance between availability of legal aid and the number of applications/appeals to OSSC.

Appeals to OSSC – outcomes

4.10 The user can only appeal to OSSC on a point of law. However, information to appellants is clear that in outlining the grounds of appeal, the user does not have to use legal technical language but they must explain the reasons as to why they consider the decision is wrong in law.⁴¹ An unsuccessful appellant may appeal to the Court of Appeal on a point of law but he must first ask a Commissioner for permission to appeal.⁴² Where an appellant is successful a number of differing outcomes are possible. Firstly, the Commissioner will set the decision aside and he/she may replace his/her decision for that of the appeal tribunal or remit the matter to another tribunal to re-hear and re-decide the case. An examination of the information given to appellants of this redress mechanism has been undertaken and there is no reference to the ability to revert to the Northern Ireland Ombudsman. This is of significance in relation to the outcome for the user. That is because while an appeal tribunal or the OSSC can make a determination on the entitlement to a social security benefit or child support payment, the Ombudsman has a discretion to recommend redress for injustice sustained by a complainant of a DSD or Child Maintenance and Enforcement

⁴⁰ Appendix 6 - figure 4.1 sets out information provided by the Northern Ireland Legal Services Commission on legal aid assistance for advice at tribunals.

⁴¹ An information leaflet on appealing to the OSSC is available on the NICTS website <www.courtsni.gov.uk>

⁴² Ibid

Division (CMED) decision which is broader than simply the legal entitlement to the relevant benefit or payment. This is highlighted by the CMED case referred to at paragraph 5.23 in the Report. It is important therefore that there is adequate signposting at each level of the tribunal process to the availability of the Northern Ireland Ombudsman as an alternative redress mechanism.

Informing the user's choice

4.11 The user seeks to find the best and speediest route to redress in an administrative justice system. For the tribunal user, access to information must be available at pre-hearing, during the appeal process and also at the end. This information should include possible alternative methods of dispute resolution (ADR); routes for complaints relating to tribunal administration and rights of appeal reference or review to the next part of the administrative justice system. Information at each stage will help the user to make an informed choice in relation to his/her grievance. The research identified methods of dispute resolution that are available to the user and examined signposting to a complaints procedure and to an ombudsman (the next stage in the user journey) for complaints of poor administration.

4.12 Early dispute resolution has advantages to the user and the whole system by saving costs and tribunal time. The value of Alternative Dispute Resolution (ADR)⁴³ is explored in detail by Jim Daniell in his Report on the Access to Justice Review. ADR is acknowledged increasingly as a valuable tool in appropriate cases to assist parties to resolve their disputes. In the pre-action protocol guidance on judicial review, parties are reminded (in accordance with traditional judicial review principles to exhaust their internal remedies) to seek to resolve a dispute using available alternative dispute mechanisms. Currently ADR is incorporated in arrangements for some users of devolved tribunals. This contrasts with the position for users of non-devolved tribunals where the procedural rules make provision for its use (see paragraph 4.13 below). In Northern Ireland, for the parties to an employment dispute, the Labour Relations Agency service is available to attempt to resolve issues and achieve settlement. Within education if parents are unhappy about the nature of any proposed special education provision they have two methods of redress - formally through the Special Educational Needs and Disability Tribunal (SENDIST) or informally through the Dispute Avoidance and Resolution Service (DARS). SENDIST will consider appeals in relation to formal assessments and/or statements of special

43 Access to Justice Review, Access to Justice Review Northern Ireland – The Progress Report, (Access to Justice, March 2011), para. 4.14



educational needs. DARS provides an opportunity to resolve areas of disagreement between parents and the Boards/Boards of Governors of a school in relation to any proposed special education provision. Parents may refer a dispute to DARS without reference to the Tribunal SENDIST and vice-versa. At each stage of the assessment process the ELBs also have a legal duty to inform parents of the availability of DARS and/or SENDIST.

4.13 The approach to ADR differs for users of the UK-wide Tribunals that are listed at Appendix 5. In bringing a dispute to these tribunals, the user journey differs as procedural Rule 3 allows for the tribunal to bring the option of ADR to the attention of the parties and to facilitate its use promoting compatibility with the overriding objective of dealing with the case justly and fairly. An example of Rule 3 can be found in The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 S.I. 2009 no. 1976 (L. 20) as in force from 6th April 2012:

'Alternative dispute resolution and arbitration

3 (1) *The Tribunal should seek, where appropriate:*

- (a) *to bring to the attention of the parties the availability of any appropriate alternative procedure for the resolution of the dispute; and*
- (b) *if the parties wish, and provided that it is compatible with the overriding objective, to facilitate the use of the procedure.*

(2) *Part 1 of the Arbitration Act 1996(g) does not apply to proceedings before the Tribunal.'*

4.14 The Deputy President of the Health, Education and Social Care Chamber of the First-tier Tribunal and senior judge in the SEN jurisdiction, HHJ John Aitken, now writes to all appellants when an appeal is lodged to advise them of the availability of mediation, indicating its benefits. It is planned to include a single point of contact for accessing providers of mediation compiled by reference to regional lists relevant to the appellants. A third phase of this process is planned, whereby local education authorities which do not engage in mediation are identified, and these will then be invited by the Deputy President to explain their reasons for failing to do so.⁴⁴ There is no research in this area on the use of this rule by UK tribunals to encourage ADR.

4.15 Thompson's⁴⁵ report on structural tribunal reform considered the scope of the ADR process alongside the various techniques available to parties in tribunals. The DOJ consultation proposed the use of suitably trained legal staff as

mediators. ADR is broader than simply the use of mediation or conciliation and can include the intervention of other parts of the administrative justice system such as ombudsmen whose powers to effect a settlement can also encourage early resolution of disputes and whose remedies may better fit users' needs. Ombudsmen remedies are explored at section 5 of the Report. The authors consider that information should be available to all tribunal parties on the availability of the broad range of ADR methods, not just mediation. The High Court Protocols make reference to the booklet 'Alternative to the Courts in Northern Ireland'.⁴⁶ A similar approach should be considered by tribunals. In relation to procedural rules, the powers of the Tribunal Chair on the motion of the parties or on his own motion to refer the parties to ADR, should be considered.

Signposting to the user - non-devolved tribunals

4.16 The research included an examination of signposting to parts of the administrative justice system. Gráinne McKeever's research⁴⁷ focused on information and support for tribunal users at pre-hearing stage. The research undertaken as part of the authors' project identified some gaps in information provided to the tribunal user at the 'end' of the process. In particular, signposting by individual tribunals to alternative parts of the administrative justice system. A tribunal applicant may appeal to the appellate body or bring a complaint of administrative service failure to an ombudsman. In Northern Ireland a number of non-devolved tribunals hear appeals from Northern Ireland users. NICTS provides administrative support to these tribunals under an agreement with HMCTS. While complaints of 'maladministration' in relation to local tribunals are investigated by the Northern Ireland Ombudsman⁴⁸ and require MLA sponsorship; complaints of 'maladministration' about non-devolved tribunals are investigated by the PHSO requiring MP sponsorship. For the Northern Ireland user of these non-devolved tribunals, it is not clear whom they should approach when administration fails in these tribunals. Research on this issue was conducted in March 2013 on all non-devolved tribunal websites and the results demonstrate a lack of adequate signposting (see Appendix 6b - table 4.7). The issue is mitigated somewhat by the fact there are detailed explanatory leaflets on both NICTS and HMCTS websites about how to complain to an ombudsman, or appeal or bring a complaint about judicial conduct. These leaflets do not deal specifically with the cases of hybrid administration. The matter can be compounded for personal litigants as illustrated in the case study below.

⁴⁶ Available on the Northern Ireland Ombudsman's website at <www.ni-ombudsman.org.uk>

⁴⁷ Gráinne McKeever, *Supporting Tribunal Users: Access to pre-hearing information, advice and support in Northern Ireland*, November 2011, Law Centre (NI)

⁴⁸ Appendix 6a - table 4.6 sets out the frequency and nature of the cases investigated, numbers are consistently low.



The First-tier Tribunal (Information Rights) – a case study

4.17 A case study may help to illustrate this point in relation to the experience of the Northern Ireland user who seeks to obtain information under the Freedom of Information Act 2000 (FOIA). If refused the information by the public authority, the user may seek a decision of the Information Commissioner under section 50 of FOIA as to entitlement to the information. If unsuccessful there is an appeal against the decision of the Information Commissioner to the First-tier Tribunal (Information Rights). During the period 2009 to 2013 that tribunal heard a number of cases (8-10 in total)⁴⁹ where the oral hearing took place in Northern Ireland. This will occur where the applicant lives in Northern Ireland and has requested a hearing take place in this jurisdiction or alternatively where the public authority is a Northern Ireland public authority. The administrative office of the First-tier Tribunal (Information Rights) is situated in Leicester but the tribunal does sit throughout the UK. To facilitate this 'mobility', hearings can be conducted by telephone. There have been two cases in the calendar year 2013⁵⁰ in Belfast and in both cases the appeal is being brought by a personal litigant. The Clerk to the Tribunal has confirmed that there are a number of sources of information for the appellant during the appeal and they are directed to the website for guidance notes.⁵¹ Where they contact the office staff who look after the case work for appeals, help is provided and specific questions can be asked of the Registrar and Chamber President. When appeals are heard in Belfast, the NICTS provides administrative support to these tribunals under an agreement with HMCTS. There is no reference on either website as to who to complain to when individuals wish to complain about maladministration in services provided under the service agreement. There is however clear signposting and information on the tribunal website as to when and how to appeal a decision of the First-tier Tribunal (Information Rights) to the Upper Tier tribunal which is helpful for the user.

Overlapping roles – tribunals and the Northern Ireland Ombudsman

4.18 There is overlap between the Ombudsman's jurisdiction and the role of tribunals in Northern Ireland. For instance, as described in section 5, his jurisdiction extends to issues concerning employment, social security and housing. However to deal with the overlap, there are provisions in the Northern Ireland Ombudsman's legislation⁵² which bar him from investigating a complaint where the person aggrieved has or had a 'right of appeal, complaint, reference or

49 This information was provided by the Clerk to the First-tier Tribunal (Information Rights) who confirmed it was not possible to be definitive with this number as hard copy files are destroyed after 12 months in line with their retention policy. Further, it would be difficult to identify by reference to the Tribunal decisions which cases were held in Northern Ireland

50 As at 8 April 2013

51 Available at <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

52 The Ombudsman (Northern Ireland) Order 1996, art 10(3)(a) and the Commissioner for Complaints (Northern Ireland) Order 1996, art 9(3)(a)

review to or before a tribunal constituted under any statutory provision or otherwise'. In the legislation, a tribunal is defined broadly to include 'any authority, body or person having power to determine any matter'. Further having signposted the user to an appropriate tribunal, the Ombudsman also informs the complainant that when the tribunal has made a determination and appeal rights have been exhausted he/she may revert to the Ombudsman where 'injustice remains unremedied'. In relation to the Northern Ireland Ombudsman legislation, article 10(4)(b) of the Ombudsman (Northern Ireland) Order 1996⁵³ sets out this right to further redress as follows:

'10. (1) The Ombudsman shall not conduct an investigation under this Order in respect of any such actions or matters as are described in Schedule 4.

(2) The Department may by order amend Schedule 4 so as to exclude from the provisions of that Schedule any such action or matter as is described in that order.

(3) Subject to paragraph (4) and to section 78 of the Northern Ireland Act 1998, the Ombudsman shall not conduct an investigation under this Order in respect of—

(a) any action in respect of which the person aggrieved has or had a right of appeal, complaint, reference or review to or before a tribunal constituted under any statutory provision or otherwise;

(b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in a court of law.

(4) The Ombudsman may conduct an investigation—

(a) notwithstanding that the person aggrieved has or had such a right or remedy as is mentioned in paragraph (3), if the Ombudsman is satisfied that in the particular circumstances it is not reasonable to expect him to resort to or have resorted to it; or

(b) notwithstanding that the person aggrieved had exercised such a right as is mentioned in paragraph (3)(a), if he complains that the injustice sustained by him remains unremedied thereby and the Ombudsman is satisfied that there are reasonable grounds for that complaint.

(5) Nothing in this Order authorises or requires the Ombudsman to question the merits of a decision taken without maladministration by a department or authority to which this Order applies in the exercise of a discretion vested in that department or authority.'

⁵³ The Commissioner for Complaints (Northern Ireland) Order 1996, art 9(4)(b) contains a similar provision.



There may be confusion on the part of an appellant as to where to bring his complaint. There are two potential internal sources of information for the users of devolved tribunals to signpost to the next redress mechanism. Those sources are firstly, information provided to the appellant when the decision of the tribunal is communicated and secondly, the website of the individual tribunal. In relation to the Appeals Service, it has been confirmed that at the end of the Appeals Tribunal process, advice notes are provided to the appellant which include details on how to request a statement of reasons for the decision, a record of proceedings and how to apply for leave to appeal to the OSSC. From the user perspective this is a convoluted process and the right of appeal to the OSSC is only available on a point of law. The advice notes do not refer to the right to complain to the Northern Ireland Ombudsman nor do they provide a link to the NICTS website on complaints. Where people are issued with written decisions on their case, they should be provided with sufficient information on other available avenues of redress.

However the NICTS website⁵⁴ hosts a link to all DOJ supported tribunals. While there is no direct link to a complaints procedure, on each information page of these tribunals, the NICTS complaints procedure is available. This procedure provides a clear explanation to the public on how to complain about the conduct of tribunal members, failures in administration and appeals to the next stage. In relation to signposting (for tribunal users), consideration should be given to improving publicly available information to tribunal users as well as appellants at the end of the process.

4.19 The user journey in the administrative justice system has the potential to interact with a number of different routes of redress. These redress mechanisms are pursued for different reasons and provide different outcomes for the user. If the user is dissatisfied with the decision of a tribunal, he/she has the right to appeal the matter to an Upper Tribunal (for non-devolved tribunals), High Court, Court of Appeal or other appellate body such as the OSSC or the Lands Tribunal on a point of law. Where the issue is one of failings in administration, the user may also bring his complaint to the Northern Ireland Ombudsman having exhausted the internal complaints process of the body in question. The Ombudsman has a discretion to consider these complaints and investigate whether 'maladministration' and injustice has occurred. However, in the period 2009-2012, only one case had been accepted for investigation using this ground. It is considered that one explanation for this low level of complaints about 'injustice unremedied' is lack of adequate signposting by the tribunal or

appellate body. Another possible explanation is the lack of public knowledge of the Ombudsman's role and/or remit and/or a lack of motivation on the part of complainants having pursued the tribunal and appeal route. It is recommended that on completion of a tribunal or appeal process, some further consideration should be given to clearer signposting and more explicit advice on how to proceed with remaining options in the area of administrative justice.

Education tribunals in Northern Ireland

4.20 The research included the administration and oversight arrangements of a number of tribunals in the education sector which were not covered in the DOJ consultation on tribunal reform because these tribunals are currently sponsored by the DE and the DOJ consultation focused on those tribunals for which it has statutory responsibility. SENDIST like the majority of other tribunals in Northern Ireland, is sponsored by the DOJ and administered by the NICTS. With respect to appeals about admission decisions of Boards of Governors of grant aided schools, there is a specialist tribunal known as the School Admissions Tribunal. Every ELB must make arrangements for an appeal to be made in respect of these decisions by a parent or child who live in the area of the Board⁵⁵. The DE makes provision for the constitution and procedure of the tribunal by way of regulations⁵⁶ while the tribunal is administered by the ELB. In addition, the Expulsion Appeals Tribunal hears appeals from pupils expelled from schools.⁵⁷ The DE makes provision for the constitution and procedure of the tribunal by way of regulations⁵⁸ and administration is provided by the ELB.

The Exceptional Circumstances Body (ECB) provides a route to have a pupil admitted to a school over and above its approved admission and enrolment numbers, where a child seeks admission to a grant aided secondary school on grounds of exceptional circumstances and has been unable to gain a place through the normal open enrolment procedures.⁵⁹ The DE provides for the constitution and procedure of the ECB to determine these applications and is solely responsible for its administration.⁶⁰

The Curriculum Complaints Tribunal was established to hear and determine any complaint made about an ELB or Board of Governors in relation to the curriculum of a grant aided school.⁶¹ The DE provides for the constitution and procedure of the tribunal by way of regulations.⁶² The tribunal is constituted of three panel members established by the ELB.

⁵⁵ Education (Northern Ireland) Order 1997, art 15

⁵⁶ Schools Admissions (Appeals Tribunals) Regulations (Northern Ireland) SI 1998/115

⁵⁷ Education and Libraries (Northern Ireland) Order 1986, article 49

⁵⁸ Schools (Expulsion of Pupils) (Appeal Tribunals) Regulations (Northern Ireland) SR 1994/13; Schools (Expulsion of Pupils) (Appeal Tribunals) (Amendment) Regulations (Northern Ireland) SR 1998/256

⁵⁹ Education (Northern Ireland) Order 2006, article 29

⁶⁰ Schools Admissions (Exceptional Circumstances) Regulations (Northern Ireland) 2010

⁶¹ Education Reform (Northern Ireland) Order 1989, article 33

⁶² Curriculum (Complaints Tribunal) Regulations (Northern Ireland) SR 1992/457; Curriculum (Complaints Tribunal) (Amendment) Regulations (Northern Ireland) 1997



Finally, the DE may by regulations provide for an appeal against the decision of a Board of Governors to suspend a child from a grant aided school.⁶³

Notwithstanding this power, no independent appeal tribunal to deal with suspension decisions has been set up. There is however the option of submitting a complaint to the DE under article 101 of the Education and Libraries (Northern Ireland) Order 1986.⁶⁴ Although it would appear that this redress mechanism has its limitations:

*'this [Article 101 of the 1986 Order] is restricted to complaints about ELBs and Boards of Governors acting unreasonably in the exercise of their statutory functions.'*⁶⁵

In the education sector there are a number of tribunals supported by ELBs which deal with appeals from the decisions of Boards of Governors. SENDIST, however, is sponsored by the DOJ and administered by the NICTS. However there is a redress gap with respect to suspensions as referred to above. In relation to the administration, differing arrangements exist for admissions, expulsions, exceptional circumstances, curriculum complaints and special educational needs. This is a potential source of confusion for the user. Although the research did not extend to the user's experience of these tribunals, the authors consider that links to the ELBs and the DE could give rise to the perception, on the part of the user, that the system lacks independence. The authors are of the view that consideration should be given to amalgamating all of these tribunals under the administration of the DOJ.

Oversight body

4.21 The research recorded in this section on some gaps and overlaps in relation to the tribunals sector in Northern Ireland highlights the need for oversight which spans not only the tribunals but the whole of the administrative justice system. In England, Scotland and Wales that oversight had existed in the form of the Administrative Justice Tribunals Council (AJTC). The AJTC was established in 2007 under the provisions of the Tribunals, Courts and Enforcement Act 2007, with an expanded remit compared to that of its predecessor, the Council on Tribunals.

⁶³ Education and Libraries (Northern Ireland) Order 1986, article 49

⁶⁴ L. Lundy, *Education Law, Policy and Practice in Northern Ireland*, (SLS Publications (NI) 2000) p. 58: 'Article 101 of the 1986 Order contains a procedure whereby individuals or bodies can complain to the Department about the unreasonable exercise of powers under the Education Orders. The power to complain and the Department's powers to remedy the action complained of are both wide ranging yet appear to be used infrequently.'

⁶⁵ Ibid at p. 223, footnote 2

The AJTC had a wide remit and its general functions were as follows:

- to keep the administrative justice system (the system) under review;
- to consider ways to make the system accessible, fair and efficient;
- advise the Lord Chancellor, Scottish Ministers, Welsh Ministers and Senior President of Tribunals on the development of the system;
- refer proposals for changes in the system to the above persons, and
- make proposals for research into the system.

The AJTC kept administrative justice as a whole under review, with committees in Scotland and Wales.

4.22 The UK government abolished the AJTC and subsumed some of its functions into the Ministry of Justice (MOJ). This raised issues of independence and a perception that administrative justice is exclusive to the MOJ. During the Parliamentary scrutiny of the draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013, the Justice Committee⁶⁶ recommended an extension of the scrutiny period applying to the Order in which time it heard evidence from a number of interested parties including the MOJ and the AJTC. The Committee concluded that there were functions which could be transferred to the MOJ without significant detriment to the administrative justice and tribunals system but the Committee did not consider that the abolition of the AJTC met the tests of efficiency and effectiveness and invited the government to reconsider its proposal to abolish this body. The Committee considered it should have a more restricted role limited to issues concerning accessibility of the system following the removal of legal aid from many areas and the need to reduce dependency on systems of redress by 'promoting better decision making.'

The government took the Committee's views into account but proceeded with abolition. It did decide that a new non-statutory advisory body, the Administrative Justice Forum, which has a more limited role than that of the AJTC, should advise the MOJ on their oversight of the administrative justice and tribunals system. The government determined that the Forum, which had been created before the abolition of the AJTC, should have an independent chair and meet twice a year.⁶⁷ Further information regarding the role of the Forum can be found on the MOJ's website.⁶⁷

⁶⁶ House of Commons Justice Committee, Scrutiny of the draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 15 March 2013

⁶⁷ Further information regarding the Forum is available at: <https://www.gov.uk/government/groups/administrative-justice-advisory-group>



Non-statutory successors have been established in Scotland and Wales. In June 2013, the Welsh Assembly sought agreement as to the broad principles for establishing the new committee and on 31 October 2013, the First Minister agreed to the appointments of the Chair and members to the Committee for Administrative Justice and Tribunals Wales⁶⁸. The Chair of the new committee in Scotland has been appointed and other members are currently being assembled.

4.23 The authors consider that an oversight body for administrative justice in Northern Ireland would help to ensure that the user is placed at the heart of administrative decision making and the redress mechanisms available to correct errors in that decision making. The tribunal sector in Northern Ireland is complex and differing tribunals are the responsibility of a number of Northern Ireland Departments and bodies.⁶⁹ The need for oversight across the system is evidenced by the overlaps and gaps between the decision making bodies' complaints procedures, tribunal appellate functions, the role of ombudsmen and the availability of appeal or review from a tribunal decision to the High Court or Court of Appeal (in the case of non-devolved tribunals this appeal is to the Upper Tribunal). This confusing range of redress mechanisms requires a joined-up approach to ensure that the system enables the user to obtain redress in the appropriate forum for his/her dispute. Recommendations relating to an oversight body are contained in the concluding section of this Report.

We appreciate that the establishment of a new oversight body has financial implications. However the authors suggest that consideration be given to the establishment of an administrative justice advisory group in Northern Ireland like that established in Wales. The aims of this independent non-statutory group could include, among other objectives, the promotion of research on the administrative justice system in Northern Ireland and to consider whether an oversight body is needed.

68 Further information regarding the new Welsh Committee is available at <www.wales.gov.uk>

69 The majority of tribunals in Northern Ireland have transferred to the DOJ. However the Industrial Tribunals and Fair Employment Tribunal remain the statutory responsibility of the Department for Employment and Learning. In addition, the Appeals Tribunal and the Rent Assessment Panel are sponsored by the Department for Social Development and administered by the NICTS.

5. The Role of the Ombudsman in the Administrative Justice System

The ombudsman institution and administrative justice

5.1 As part of the system of administrative justice in Northern Ireland ombudsmen are independent and impartial investigators of complaints. There are nine ombudsman schemes overseeing the administrative decisions of bodies that affect individuals in Northern Ireland, with differing roles, remits, procedural rules and remedies available to the successful user. The schemes are:

- Assembly Ombudsman for Northern Ireland;⁷⁰
- Northern Ireland Commissioner for Complaints;
- Northern Ireland Judicial Appointments Ombudsman;
- Ombudsman for the Republic of Ireland;
- Parliamentary Ombudsman;
- Pensions Ombudsman;
- Police Ombudsman for Northern Ireland;
- Prisoner Ombudsman for Northern Ireland, and
- Property Ombudsman.

5.2 A summary of the role and remit of these schemes can be obtained in the booklet *Alternatives to the Court in Northern Ireland* available on the Northern Ireland Ombudsman's website.⁷¹ This range of investigators are all called 'ombudsman' and selecting the appropriate ombudsman for the issue of complaint can be confusing for the user who seeks a resolution to his/her grievance with a body. Overlap between the role of ombudsmen, the courts and tribunals adds to this confusing and complex landscape. The Northern Ireland Ombudsman has the broadest jurisdiction of these schemes as his remit covers complaints of poor administration against 175 public bodies. These include 12 out of the 13⁷² Northern Ireland Departments, all local councils, ELBs, health and social care trusts as well as general and independent health service providers. An unusual feature of this scheme is the joint jurisdiction with the Irish Ombudsman for complaints of administrative failure and information against the North-South Implementation Bodies (Waterways Ireland, Food Safety Promotion Board, Intertrade Ireland, Special European Union Programmes Body, the Language Body and Foyle, Carlingford and Irish Lights Body) (NSBs). In addition the Northern Ireland Ombudsman investigates complaints about the full range of employment matters including recruitment, appointment, discipline and pay. Under the Commissioner for Complaints legislation, the County Court has power to award damages where the Commissioner finds maladministration and injustice. The

⁷⁰ The Assembly Ombudsman for Northern Ireland and Commissioner for Complaints for Northern Ireland are separate schemes and have a single office holder known as the Northern Ireland Ombudsman.

⁷¹ Available at <www.ni-ombudsman.org.uk>

⁷² The Public Prosecution Service for Northern Ireland is a non-ministerial department and is not in the Northern Ireland Ombudsman's jurisdiction for complaints about its administrative functions.



latter element of this jurisdiction is outwith the 'classic' ombudsman model. Given the unique features of the Office of the Northern Ireland Ombudsman and the overlap with tribunals and courts the research focused on this scheme. This section follows the user journey in bringing a complaint about a body in the Northern Ireland Ombudsman's jurisdiction; the incidence of complaints received, outcomes and remedies. The linkages and overlaps with other ombudsman schemes and courts and tribunals are highlighted as a potential further source of confusion for the user.

5.3 A user must exhaust the internal complaints mechanism of a body in jurisdiction before bringing his complaint to the Northern Ireland Ombudsman (the Ombudsman). The Ombudsman cannot investigate where the complainant has a legal remedy or a right of reference, review or appeal to a tribunal. Where a tribunal user exhausts the appellate process he may revert to the Northern Ireland Ombudsman where his injustice remains unremedied. The Ombudsman has a discretion to consider whether to accept this complaint at the end of the tribunal process. Only the Ombudsman has a bird's eye view of the different parts of the administrative justice system in Northern Ireland with links to each part: complaints processes, tribunals and courts. In this regard he can properly be described as the buckle in the belt⁷³ of an administrative justice system. The remedies that an ombudsman can recommend are flexible and differ from those provided by the judicial review court or a tribunal. He can recommend a range of remedies to meet the user's grievance but can also recommend system improvement so that the lessons learned from his investigation of the user complaint are highlighted and fed back into the system.

The classic ombudsman in the administrative justice system

5.4 The Ombudsman's role in an administrative justice system has been defined as follows:

*'A reliable person who for the purposes of legal protection of individuals as well as parliamentary control supervises almost all administrative bodies and civil servants. He cannot correct their decisions, but based on submitted complaints or on own initiatives, he may criticise them.'*⁷⁴

*'An office created by statute, reporting to the legislature, with tenure, accessible to the citizen, with powers of discovery, protected by privilege, and with powers to investigate and make recommendations.'*⁷⁵

⁷³ 'the buckle in the belt of redress' in Trevor Buck, Richard Kirkham and Brian Thompson, *The Ombudsman Enterprise and Administrative Justice*, (Ashgate 2011) p.194.

⁷⁴ Hansen 1972

⁷⁵ Maurice Hayes 1991

5.5 As a second tier body for resolving citizens disputes with the state, the Ombudsman investigates complaints of 'maladministration' where an individual or body has suffered an 'injustice' and where these are found he makes non-binding recommendations to the body complained of. However both 'maladministration' and 'injustice' are without a legal definition. In the course of the debates during the passage of the Bill for the Parliamentary Commissioner Act 1967, the Leader of the House of Commons, Richard Crossman set out what may constitute 'maladministration':

- bias;
- neglect;
- inattention;
- delay;
- incompetence;
- ineptitude;
- perversity;
- turpitude; and
- arbitrariness (and so on).

This interpretation is referred to as the 'Crossman catalogue' (18 October 1966). A key feature of ombudsmen is the discretion that they enjoy in terms of what constitutes 'maladministration' and 'injustice' and some examples of maladministration are as follows:

- avoidable delay;
- failure to apply policies or procedures correctly;
- failure to follow legislative requirements;
- poor communication;
- unfair outcome; and
- over rigid application of rules or procedures.

5.6 When considering whether maladministration has occurred the Ombudsman applies the Principles of Good Administration as benchmarks. These are available on the PHSO's website⁷⁶ and include 'Getting it Right', 'Being customer focused', 'Being open and accountable', 'Acting fairly and proportionately', 'Putting things right' and 'Seeking continuous improvement'. Like tribunals, the Ombudsman is an alternative to the court in relation to issues of avoidable delay and poor communication or lack of information. These are not issues on which a judicial review court will adjudicate in relation to

⁷⁶ Available at <www.ombudsman.org.uk>



administrative decision making. However, a judicial review may be sought against 'improper procedural rules' or the 'legality' and 'irrationality' of a public body's decision. The judicial review court can make a declaration of illegality or quash a decision, the Ombudsman cannot. His role is to find if there is maladministration and 'injustice' to the user and make recommendations based on that finding.

Jurisdiction of the Northern Ireland Ombudsman

5.7 The Northern Ireland Ombudsman is the popular title for two statutory offices: the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints. The first Northern Ireland Ombudsman's office was established in 1969, known as the Northern Ireland Parliamentary Commissioner for Administration (PCA). Its role was to investigate complaints about the devolved government in Northern Ireland. A second office, the Northern Ireland Commissioner for Complaints, was also established later that same year to investigate complaints about 'local bodies' including councils, hospital management committees, general health service providers and a number of other bodies. In 1996 the original legislation was updated and the PCA was rebranded as the Assembly Ombudsman for Northern Ireland. One of the main differences between the jurisdiction of the Assembly Ombudsman and Commissioner for Complaints is the existence of a MLA filter for Assembly Ombudsman complaints (these are complaints about Northern Ireland Departments and their agencies) which does not exist in the Commissioner for Complaints jurisdiction. Complaints about health and social care bodies are investigated under this jurisdiction and in 1997 the health jurisdiction of the Northern Ireland Commissioner for Complaints was extended to include complaints of maladministration about general and independent health service providers. Complaints of maladministration from that date were also to include the clinical judgment of health professionals. In 1999, the jurisdiction of the Assembly Ombudsman was further expanded to include a joint jurisdiction with the Irish Ombudsman over NSBs that included complaints about breaches of the voluntary code on access to information held by those bodies.

5.8 In April 2010 with the devolution of policing and justice powers to the Northern Ireland Assembly, complaints about the newly formed DOJ for Northern Ireland and its statutory agencies came within the Assembly Ombudsman's jurisdiction. Complaints about a number of bodies⁷⁷ also came

under the remit of the Commissioner for Complaints. The tables listed in Appendix 7 set out the overall elements of this varied jurisdiction and the incidence of complaints in each. Appendix 7 - table 5.1 provides an overview of the complaints received by the Ombudsman in relation to the separate jurisdictions of Assembly Ombudsman and Commissioner for Complaints.

5.9 Complaints about Health and Social Care (HSC) bodies such as Health and Social Care Trusts as well as general health service providers and independent health service providers fall within the jurisdiction of the Commissioner for Complaints for Northern Ireland and these make up the largest category of complaints (Appendix 7 - table 5.2). Complaints in this sector have experienced some fluctuation but have increased overall since the introduction of the new HSC complaints procedure in April 2009. The HSC complaints procedure is a statutory procedure and has a single internal tier with an external redress route to the Commissioner for Complaints. In the first year of the new HSC procedure, the Commissioner's office experienced a 120% increase in complaints about HSC bodies due to the removal of the middle tier of the Independent Convener. In 2012/13, an increase of 21% of complaints in this sector was recorded over the period 2009/2010 – 2012/2013.

5.10 Table 5.1 shows a drop in complaints about Northern Ireland Departments (jurisdiction of the Assembly Ombudsman) in the period 2010/11 and again 2011/12. However there was a 34% increase in 2012/13. The NSBs operate on an all-island basis. They each have an operational remit, are funded by the two Administrations, North and South. The bodies were established by international agreement between the British and Irish Governments in 1999 pursuant to article 51 of the Northern Ireland Act 1998 and operate under the overall policy direction of the North South Ministerial Council. The bodies are creatures of international law and although subject to Data Protection legislation, they are not subject to Freedom of Information legislation in either jurisdiction. However, they do deal with requests for information under a Code of Practice.⁷⁸ The Irish Ombudsman and Northern Ireland Ombudsman investigate complaints about the administrative functions of the NSBs and requests for information under the Code, based on a Memorandum of Understanding. Complaints to the ombudsmen have been low in number.⁷⁹ Given the limited operational remit of the bodies this may explain why complaints from the public to the Ombudsman in relation to NSBs are small in number.

⁷⁸ Freedom of Information Code of Practice – North/South Implementation Bodies and Tourism Ireland Ltd, available at <http://www.northsouthministerialcouncil.org/foi_code_of_practice.doc> (accessed 22 April 2013)

⁷⁹ Assembly Ombudsman for Northern Ireland: 2009/10(1); 2010/11 (1); 2011/12(1); 2012/13(0)



5.11 On average over the period 2009-13 the Ombudsman received 619 cases per annum, this figure is less than the figures for appeals to the Appeals Tribunal tribunals but more than the numbers of applicants seeking judicial review. The breadth of the jurisdiction is highlighted in Appendix 7 - table 5.3.

5.12 The data illustrates (Appendix 7 - table 5.3) the dominance of health and social care complaints to the Northern Ireland Ombudsman over the period 2009-2013, with peaks in 2012/13. In the period 2009 to 2013 complaints about agriculture and education have dropped. Complaints about HSC bodies represented 38% of the total of complaints in 2012/13 compared with 36% in 2011/12. There was a notable increase of 22% in the number of written complaints received about HSC bodies between 2011/12 and 2012/13. In 2011/12 numbers of complaints about employment rose substantially and the Ombudsman in his annual report on that period commented that in his view this was evidence of the impact of the financial crisis on employee relations in the public sector.

Jurisdictional limits

5.13 The Ombudsman's jurisdiction on matters he may investigate is restricted. For instance, he cannot deal with a range of matters such as those where a legal remedy exists and where a tribunal has jurisdiction. The Assembly Ombudsman jurisdiction is subject to a MLA filter. Under this jurisdiction (Assembly Ombudsman) he cannot investigate where the issue is one relating to the conduct of civil or criminal proceedings. Complaints about commercial or contractual matters can be investigated under the Commissioner for Complaints legislation but this is not the case within the Assembly Ombudsman's jurisdiction. Complaints must be in writing and brought within twelve months of the decision or action that is being complained of and the question as to whether a complaint is duly made is one for the Ombudsman to decide in the exercise of his discretion. The process by which the Ombudsman decides whether or not to investigate is called 'validation'. The data on cases accepted for preliminary investigation following validation in the period 2009-13 is set out in Appendix 7 - table 5.4.

5.14 A range of 45% - 54% of written complaints received have been accepted for investigation during the period 2009-2013. Each year a substantial number of complaints are not accepted by the Northern Ireland Ombudsman for investigation because either the body is out of jurisdiction or the matter complained of is out of jurisdiction.

5.15 Data on cases out of jurisdiction are at Appendix 7 - table 5.1 and 5.5, in 2012/13 there were 74 written complaints within this category. Most complaints that are out of jurisdiction relate to complaints about financial institutions that are matters for the Financial Ombudsman Services. The evidence shows some confusion on the part of the user with the brand 'name' of ombudsman. Also, incorrect or inadequate signposting to the Northern Ireland Ombudsman by the bodies in jurisdiction and confusion on the user's part provide an explanation for the cases brought that are outside jurisdiction. These figures also highlight a significant drop overall in contacts made to the Northern Ireland Ombudsman's office outside jurisdiction from 2010/11 onwards. One possible explanation for this reduction was considered by the authors to be due in part to the publication in September 2011 of the public information booklet *Alternatives to the Court in Northern Ireland*. This was produced by the Northern Ireland Ombudsman in conjunction with Queens University Law School and the Law Centre (NI). The booklet provides detail on the role of all of the Ombudsman schemes operating in Northern Ireland and information for users and their advisors on the role of the Northern Ireland Ombudsman.

User outcomes

5.16 The research sought to establish how successful the complainant is likely to be in relation to his complaint to the Ombudsman. The outcomes for the user who complains of maladministration during the period 2009-13 over the total number of cases closed during those years has been fairly consistent and is illustrated by Appendix 7 - table 5.6.

Ombudsman and remedy

5.17 A key feature of the classic ombudsman model is flexibility in terms of remedy. Remedies deal with the injustice sustained by the individual by way of a recommendation for an apology, conferral of a benefit or repayment of expenses wrongfully incurred. The remedy may also deal with the systemic failure which the complaint has highlighted and therefore it can include recommendations for changes in practice or procedure, training for relevant staff or a recommendation for financial redress.⁸⁰ Where the Ombudsman finds maladministration and injustice he will seek to put the individual back in the position he/she would have been in if the 'maladministration' had not occurred.

⁸⁰ Ibid at p.11, footnote 21



5.18 An analysis of data on redress provided by the Ombudsman is set out in Appendix 8. The information recorded in Appendix 8 - table 5.7 demonstrates the range of remedies the Ombudsman can provide and identifies that a recommendation for an apology combined with a recommendation for a payment⁸¹ is the most frequent form of remedy. Other forms of remedy included a review of process, action taken by the body, establishing a protocol, a referral of the matter to the Coroner and in housing can include repairs to be undertaken or a housing transfer. The issue of financial redress⁸² and the range of payments recommended by the Northern Ireland Ombudsman was explored for each year and in each jurisdiction. This data is set out at Appendix 8 - tables 5.8-5.10. Tables 5.8 and 5.9 deal exclusively with financial redress⁸³ provided in HSC complaints while table 5.10 records the lowest, average and highest payment in each year with respect to all cases investigated by the Ombudsman. There has been an increase overall in the figures during the period. The highest payments in 2009/10 were shared equally between CMED, the NIHE and HSC complaints. In 2010/11 and 2011/12 the highest payments recommended by the Ombudsman were £20,000 and £30,000. The payment of £20,000 recommended in 2010/11 related to a case involving the NIHE while the payment of £30,000 recommended in 2011/12 related to a health complaint involving failures in clinical judgment, care and treatment. The data shows that despite a dip between 2009/10 and 2010/11, the average level of financial redress⁸⁴ recommended by the Ombudsman has increased overall.

5.19 Ombudsmen seek to improve public services by providing feedback to the administrators on their decision making and processes. Service improvement can derive from remedies arising in a specific case or from guidance on good administrative practice. The Welsh Ombudsman (PSOW) has an explicit power to issue guidance⁸⁵ to bodies in jurisdiction and has used this to provide guidance to local authorities on good complaints handling. He must consult on the guidance with such persons and bodies as he thinks are appropriate. Bodies in the PSOW's jurisdiction (listed authorities) must have regard to his (the PSOW's) guidance in the discharge of their functions and in conducting an investigation into administrative failure by a body, the PSOW may have regard to the extent to which the body has complied with any guidance issued by him. He may find maladministration where a body fails to follow the guidance. Locally, the Northern Ireland Ombudsman issued guidance in 2009 on complaints handling ('Rights, Responsibilities and Redress – A Guide to Effective Complaint Handling'⁸⁶) and has provided training to bodies on good complaints handling explaining his approach.

81 Ibid at p.11, footnote 21

82 Ibid at p.11, footnote 21

83 Ibid at p.11, footnote 21

84 Ibid at p.11, footnote 21

85 The Public Services Ombudsman (Wales) Act 2005, s 31

86 Available at <www.ni-ombudsman.org.uk>

The overlap between the Ombudsman and tribunals

5.20 In addition to having a jurisdiction in relation to complaints about failures in the administrative functions⁸⁷ of all Northern Ireland tribunals, the Northern Ireland Ombudsman's role overlaps with that of tribunals in relation to a number of areas including education, employment, housing and social security. In deciding whether to investigate a complaint of maladministration, the Assembly Ombudsman and Commissioner for Complaints is barred from investigating where the individual has or had:

'a right of appeal, complaint, reference or review to or before a tribunal constituted under any statutory provision'.⁸⁸

There is a residual discretion to investigate a complaint

'where the Ombudsman is satisfied that in the particular circumstances it is not reasonable to expect him to resort or have resorted to'

that route of appeal. Further, having exhausted an appeal route, the Ombudsman may conduct an investigation brought by the complainant:

'...if he complains that the injustice sustained by him remains unremedied thereby and the Ombudsman is satisfied that there are reasonable grounds for a complaint.'⁸⁹

5.21 The figures for cases accepted for investigation by the Ombudsman for the period 2009-2013 identify only one case in 2012/13 where the Ombudsman has used his discretion to investigate injustice unremedied. The numbers of such cases are low and one possible explanation for this could be the lack of signposting by some Northern Ireland tribunals to the Ombudsman at the end of the tribunal appeal route. This issue is explored at paragraph 4.16 of the Report.

5.22 This overlap with tribunal and appellate bodies can be confusing for the user and it is important to ensure that the user is correctly signposted to the appropriate part of the administrative justice system to fit his 'fuss'. Overall in 2012/13, the Ombudsman refused to investigate 12 issues of complaint where the complainant had a right of appeal to a tribunal. The resources for the project were limited and so the research focused mainly on the overlap with the tribunals administered by the Appeals Service. These tribunals can overturn a decision but the Ombudsman's remit is limited (with the exceptions of health

⁸⁷ Administrative functions is defined in the Ombudsman (Northern Ireland) Order 1996, art 9(4)

⁸⁸ The Ombudsman (Northern Ireland) Order 1996, art 10(3)(a) and the Commissioner for Complaints (Northern Ireland) Order 1996, art 9(3)(a)

⁸⁹ The Ombudsman (Northern Ireland) Order 1996, art 10(4)(b) and the Commissioner for Complaints (Northern Ireland) Order 1996, art 9(4)(b)



cases where he can investigate clinical judgment) to whether 'maladministration' has occurred. A finding of maladministration can be based on bias, unfairness or failure to provide an opportunity for review or appeal. Ombudsman remedies can go further than that of a tribunal whose decision can involve a re-instatement of benefit. The Ombudsman can recommend financial redress⁹⁰ as well as a change in practice or procedure. In Social Fund cases for instance the decision on the merits of an application for a social fund can be made by the Social Fund Commissioner and feedback to the decision maker (DSD) is also given to improve decision making. The Ombudsman can provide recommendations on changes in practice that can result in learning from mistakes which provides the decision maker with an insight into how to improve decision making. This point is illustrated by the case referred to at paragraph 5.23 below.

5.23 The Ombudsman's role overlaps with the role of the Appeals Tribunal which hears appeals on a variety of DSD decisions as to child support. DSD is a body in the jurisdiction of the Ombudsman and he can investigate whether maladministration has occurred in processing a benefit claim. In his 2009/10 Annual Report, the Ombudsman highlighted a case concerning child maintenance⁹¹. This case concerned a complaint that the administrative actions of CMED had resulted in the complainant receiving only 6% of the child maintenance to which she, as the parent with care, was entitled. The Ombudsman's investigation found numerous failings on the part of CMED. These included delay in assessing the non-resident parent's child maintenance liability; incorrectly assessing the liability; failure to inform the parent with care of the liability; delay in pursuing payment by the non-resident parent; failure to maintain accurate records; failure to follow procedures regarding the recording of telephone calls; and poor complaint handling. CMED accepted the Ombudsman's recommendation that it provide a written apology and a payment of £5,000 to the complainant. CMED also agreed to make an advance payment to the complainant of more than £3,000 maintenance arrears that were due to her. An appeal in relation to child support to the Appeals Tribunal will only provide the 'user' with a limited remedy by way of backdated benefits. The Ombudsman as a redress mechanism can provide a broad range of remedies as highlighted by this case and he also aims to feedback learning from mistakes so as to 'get things right' for the future. In this case the complainant obtained an apology, a payment and arrears. In addition, the Ombudsman recommended CMED undertakes a comprehensive review of its failings in this case and that it put in place *'effective monitoring systems to ensure that maintenance applications are assessed in an accurate and timely manner'*.

The role of the Independent Case Examiner (ICE) as a redress mechanism should also be highlighted.⁹² The purpose of the ICE is to act as an independent referee for individuals who feel that Government Agencies such as the Social Security Agency and CMED have not treated them fairly or have not dealt with their complaint in a satisfactory manner. The ICE cannot deal with complaints or disputes that the Ombudsman has either investigated or is investigating. However if an individual remains dissatisfied with the ICE's decision in his/her case, he/she can bring his/her grievance to the Ombudsman further emphasising the role of the Ombudsman as an office of last resort. In relation to complaints about discretionary payments from the Social Fund, complaints can be made to the Office of the Social Fund Commissioner.⁹³ The area of social security benefits is a complex one for the user and often he/she is confused about whether his/her grievance relates to the merits of a decision which can be appealed to a tribunal or a service complaint which can be dealt with by the ICE or the Ombudsman.

Overlap between the Ombudsman and the courts

5.24 In addition to overlapping roles with tribunals, there is an overlap with the role of the courts. Ombudsmen are independent and impartial investigators of complaints of maladministration. Their role is inquisitorial in nature. They are not empowered to determine whether an administrative decision is unlawful. In the Notes on Clauses to the Parliamentary Commissioner Bill it is explicit that this institution was not created to encroach upon matters that are properly within the purview of courts. As stated in the Notes, there is 'the principle that the [Ombudsman] shall not usurp the functions of existing institutions which provide protection for the citizen in his dealings with the executive'. The role of the Ombudsman in the system of administrative justice is described by the former Parliamentary and Health Service Ombudsman, Ann Abraham, in her affidavit evidence in the case of *R (on the application of Mencap) v The Parliamentary and Health Service Ombudsman*.⁹⁴

'...The Ombudsman system of justice provides an alternative to taking a case to court but it is not a substitute or surrogate court. The Ombudsman asks different questions from those asked in a court and looks at different issues. While the courts determine whether people have suffered damage as a result of unlawful actions, the ombudsman considers whether people have suffered injustice or hardship as a consequence of maladministration or service failure.'

⁹² Further information is available at <www.ind-case-exam.org.uk>

⁹³ Further information is available at <www.osfcni.org.uk>

⁹⁴ [2011] EWHC 3351 (Admin) at para. 22



There is a clear distinction between the two systems of justice and, like tribunals, ombudsmen are alternatives to the courts.

5.25 Generally ombudsmen are statutorily barred from investigating matters where the individual has a legal remedy but there is some scope for overlap. By way of example the Assembly Ombudsman for Northern Ireland is barred by statute from conducting an investigation in respect of:

- (a) *'any action in respect of which the person aggrieved has or had a remedy by way of proceedings in a court of law.'*⁹⁵

The Assembly Ombudsman does retain a residual discretion however, by virtue of article 10(4)(a) and he may conduct an investigation:

- (a) *'notwithstanding that the person aggrieved has or had such a right or remedy as is mentioned in paragraph (3)'*⁹⁶, *if the Ombudsman is satisfied that in the particular circumstances it is not reasonable to expect that person to resort or have resorted to it.'* [emphasis added]

5.26 These provisions are replicated for the Northern Ireland Commissioner for Complaints at article 9(3)(b) and 9(4)(a) of the Commissioner for Complaints (Northern Ireland) Order 1996 respectively. The provision confers a residual discretion on the part of the Ombudsman to consider a case where the complainant may have a legal remedy and herein lies the potential for overlap between the two parts of the system of administrative justice. This overlap has the potential to cause confusion for the user and in any event many complaints to the Ombudsman relate to administrative actions or decisions where the individual may have a legal remedy. The Ombudsman does apply this discretion and in 2012/13 he refused to investigate eighteen issues of complaint where the complainant had a legal remedy.

5.27 Wade explains the overlap between the courts and the PHSO describing the flexibility with which ombudsmen approach the statutory bar on alternative legal remedy:

- 'This provision means that the line of demarcation between the Commissioner and the legal system is not a rigid one and that much technicality and inconvenience can be eliminated by the Commissioner using his discretion.'*

It may frequently happen that there is a possibility of a legal remedy but that the law is doubtful; in such cases the Commissioner may decide that it is not reasonable to insist on recourse to the law. Where there is clearly a case for a court or tribunal, on the other hand, he will refuse to act. It is not easy to tell from the Commissioner's reports how often he has made use of the provision. But it seems probable that, with or without doing so, he has investigated many cases where there would have been legal remedies

*A certain overlap between the Commissioner and the legal system must be accepted as inevitable, and this, though untidy, is doubtless in the public interest.'*⁹⁷

5.28 This 'overlap' has existed since the first office of Parliamentary Commissioner for Northern Ireland was created in 1969. In theory many complainants to an ombudsman have a potential legal remedy and this can be confusing for the user but the question arises what is the outcome that is being sought – is it an explanation for what went wrong or a change in process or practice or a guarantee that the complainants experience will not be replicated in future? If the answer to these questions is yes then the appropriate route to redress is an ombudsman and not the courts. In practice the Ombudsman in approaching the issue of legal redress will first consider whether the complainant has a legal course of action in relation to his/her claim and will not necessarily consider whether the claim will be a successful one. Where the legal process cannot address the injustice or aspects of the injustice then the Ombudsman will investigate. For instance, a legal action cannot be brought for most cases of classic maladministration such as lost records or misinformation, lack of communication, rudeness and avoidable delay. In the administrative justice context the judicial review court can quash a decision of a public body such as the Department of the Environment on a planning matter and declare that it is unlawful or unreasonable. The court can make an order compelling that body to quash a decision and requiring the body to reconsider the issue afresh but it cannot order an apology or a change in process or procedure. The Northern Ireland Ombudsman also has jurisdiction over planning decisions and can challenge the merits of a decision where he finds maladministration such as failures in process. Where the Ombudsman finds a failure in process he can make a variety of recommendations including improvements to the system and financial redress⁹⁸.

⁹⁷ Wade and Forsyth, *Administrative Law* (Oxford University Press 10th edition 2009), chapter 10, p. 81
⁹⁸ Ibid at p.11, footnote 21



Conclusions

5.29 In conclusion, the Ombudsman is part of the administrative justice system and investigates complaints from the user about failures in public service or faulty decision making. In deciding to accept a complaint for investigation, he must consider whether the complainant has a legal remedy or right of appeal, reference or review to another part of the system and is not empowered to usurp these roles except as provided for in legislation.

These overlaps can be confusing for the user as is highlighted by the number of written complaints that are outside the Ombudsman's jurisdiction for the period 2009 to 2013. A joined-up approach to administrative justice would ensure that the user gets to the right part of the system for the remedy he seeks. The Ombudsman is placed at the heart of the system of administrative justice investigating complaints about failures of bodies in jurisdiction when the complainant has exhausted the internal complaint mechanism; he has a discretion to investigate cases where the individual has a legal remedy or right of appeal in certain circumstances and his role may overlap with the courts and tribunals; further, a dissatisfied appellant to a tribunal may revert to the Ombudsman at the end of the appeal process. The authors consider that given the Ombudsman's overview and overlap with each of the parts of the administrative justice system consideration should be given to establishing a complaints portal that would assist the user in reaching the correct part of the (administrative justice) system for his dispute. The centrality of the Ombudsman's role has been recognised in Wales where the Public Services Ombudsman provides an independent, telephone and web based signposting service offering advice on how to complain about a public service (in Wales). The Complaints Wales service was launched in 2011.⁹⁹ A similar initiative was launched in Ireland and designed by a range of organisations chaired by the Irish Ombudsman relating to complaints about health and social care¹⁰⁰. This service provides information on how to make a complaint or give feedback about health and social care services in Ireland. The website has been developed for people who use health and social care services in Ireland, as well as for their families, care-givers and advocates. The authors recommend that consideration be given to a single complaints portal to assist the public in Northern Ireland in bringing complaints about public services to include the services provided by non-devolved public bodies.

6. Research on Judicial Review in Northern Ireland

6.1 The Law Commission description of an administrative justice system presented the role of the courts and in particular the role of the administrative court as the final pillar. This is in keeping with the traditionally held view that the judicial review court is the court of last resort in which to challenge administrative decisions. This section of the Report analyses the research undertaken by the authors on judicial review in Northern Ireland for the period 2009-2012. This research focuses on the incidence of judicial review; the likelihood of the user success; and judicial review remedies provided during this period. Information gaps exist in relation to this important and powerful redress mechanism and the authors conclude that there is a need to consider the collection and collation of further information/data that will offer insight into the user experience and aid research on this important area of the administrative justice system.

6.2 An initial source of information for the research comprised data on judicial reviews helpfully provided by the NICTS in support of the authors' project. This information is attached in tabular format at Appendix 9 of this Report. The NICTS quarterly High Court Bulletins and Judicial Statistics publication also provided additional data which was analysed for the period 2009-2012 and is set out at tables 6.1-6.3 below. The NICTS data was limited to numbers of leave and substantive judicial review applications (see tables 6.1 and 6.2 below). Further, the NICTS data contained in Appendix 9 highlight the different categories of cases subject to an application for judicial review including a category of cases referred to as 'miscellaneous'. This is the largest category of judicial review and leave applications and there was insufficient information available to ascertain the nature of the bodies and issues subject to judicial review, and where the user was successful to determine the relief granted.¹⁰¹ Therefore, a significant amount of qualitative data on 'reported' judgments was provided by the Law Society (Northern Ireland) from the Libero database for the period. This was key to enabling supplemental analysis of the nature of the bodies and issues brought before the judicial review court.

6.3 The recorded incidence of judicial review is illustrated in tables 6.1 and 6.2 below which are based on NICTS publicly available data:¹⁰²

¹⁰¹ Greater detail on the specific 'causes of action' is available on the originating papers relating to the judicial reviews retained by the High Court. A further qualitative analysis of this information, if feasible under Data Protection and Freedom of Information legislation, may yield further detail as required in this area of administrative justice.

¹⁰² Source – NICT Judicial Statistics available at <www.courtsni.gov.uk>



Table 6.1 Application for leave to apply for judicial review

Year	Received*	Granted	Withdrawn/ Refused/ Dismissed	Other
2009	268	76	116	31
2010	234	63	99	51
2011	247	100	67	30
2012	298	106	80	44
Totals	1047	345	362	156

Table 6.2 Application for judicial review

Year	Received*	Granted	Withdrawn/ Refused/ Dismissed	Other
2009	105	19	54	27
2010	80	13	53	26
2011	116	20	46	23
2012	108	9	55	26
Totals	409	61	208	102

**The received columns do not reflect the number of applications 'disposed of' within the reporting period as some may have rolled forward to the next calendar year for disposal or may have been disposed of within the reporting period but received in the previous period.*

Table 6.1 demonstrates that, in respect of the applications for leave received and disposed of in the same period, on average a third of applications will be granted (mean 33%; range 27%-41%). In respect of substantive applications for judicial review, as set out in table 6.2 on average only 15% will be granted (mean 15%; range 8%-18%). There is no information on what the category 'other' relates to and ancillary applications are not included as part of the analysis.

6.4 The NICTS data¹⁰³ demonstrates a broadly consistent view of judicial review as a means of challenging the decisions of public bodies in Northern Ireland. The range is from 234-298 leave applications over the period producing an average of 262 leave applications each year. While there was a drop in the number of applications for leave for judicial review in 2010 and 2011 by 13% and 8% respectively compared with the 2009 applications; in 2012 the number of applications increased by 21% on the 2011 total.

6.5 To further examine the user experience in this area, table 6.3 shows the qualitative research on the NICTS Court of Appeal statistics on appeals relating to judicial review decisions of the High Court showing the success rates for the same period.

Table 6.3 Appeal to the Court of Appeal

Year	No of Appeals	Granted	Refused
2009	11	4	7
2010	7	0	7
2011	16	5	11
2012	8	4	4
Totals	42	13	29

The data in the above table demonstrates a high attrition rate of appeals relating to judicial review decisions of the High Court. On average 69% of appeals for the period 2009-2012 were unsuccessful. In 2010 no appeals were successful. The number of appeals granted during the period ranged from 0-5. In order to provide further evidence of the user experience in this part of the administrative justice system an analysis of reported judgments was completed from information provided by the Law Society Libero database. The detailed information provided was analysed and the tables are set out in Appendix 10.

¹⁰³ Ibid



Analysis of reported judicial review judgments provided by the Law Society Libero database for the period 2009–2012

6.6 In order to provide assurance for this data, the Chief Librarian and staff of the Law Society Library cross-checked these judgments with Lexis Nexis. Whether or not an application for leave for judicial review is reported as a judgment is a matter at the discretion of the judge and this discretion may be used where the case is of significant public interest. Therefore this data is indicative and of qualitative value. The data was categorised as leave applications, judicial review applications, Court of Appeal cases and ancillary applications to assist with the analysis. The figures and commentary set out below and in Appendix 10 focuses on the judicial review applications which reached a substantive hearing. Information relating to reported Court of Appeal cases for the period 2009–2012 is also included. The detailed data is attached at Appendix 10¹⁰⁴ and an analysis is provided at paragraphs 6.7 to 6.13 below with the following caveat. In a number of instances it was difficult to determine the stage and outcome of the application and relief granted. As a result there may be anomalies in the data sets. Therefore the figures are approximate and the accompanying commentary aims to provide a broad overview of the issues, success rate and remedy granted. In order to provide a more comprehensive picture of this part of the administrative justice system, consideration should be given to the collection and publication of all judicial review statistics including unreported cases. This would aid further research.

Reported judgments – an analysis of bodies and issues

6.7 It was not possible from the NICTS data to ascertain the incidence of judicial review challenges brought against bodies and the issues raised in those challenges. However, this was possible for those reported judgments contained in the Libero database. This data was analysed and the bodies subject to judicial review, nature of the application, volumes and outcomes for the period 2009–2012 are recorded in tables 6.4 and 6.5 (Appendix 10).

6.8 As the data shows, (of reported judgments) the Planning Appeals Commission, the Prison Service and PSNI received the most judicial review applications in 2009 with the Coroner and the Parole Commissioners following closely behind. The Prison Service and the PSNI¹⁰⁵ maintained a position within the top three bodies subject to the most judicial review applications in 2010

¹⁰⁴ Please note that the figures contained within Appendix 10 were obtained towards the end of 2012–2013 financial year and are therefore not reflective of judicial review applications following that time period.

¹⁰⁵ It is also important to bear in mind that other applications heard during the period analysed may be related to decisions and/or legislation concerning the PSNI (as illustrated in table 6.4 in Appendix 10) but may not have been explicitly cited as being brought against the PSNI.

following on from 2009. The Prison Service experienced a 10%¹⁰⁶ increase in applications received in 2010 while the PSNI experienced a 2% rise compared with 2009. These figures take account of the reported judgments on applications in which the Prison Service and PSNI were joint applicants with each other or with other respondents.

6.9 In 2009 there were four reported judgments on cases involving the Planning Appeals Commission, although no further judgments are reported for the period 2010 to 2012. Reported judgments in the period relating to the Coroner, which are often complex and contentious were examined. In terms of applications for judicial review of the Coroner, the same number of judgments were reported in 2009 and 2010. Immigration issues were reported on and the data on challenges brought against the UK Borders Agency experienced a 5% rise in applications between 2009 and 2010.

6.10 From the Libero database on reported judgments in 2011 and 2012, the PSNI and Prison Service remained within the top three bodies subject to the most judicial review applications with the PSNI continuing to be the body with most reported cases. The Northern Ireland Legal Services Commission experienced a 5% rise in applications in 2012 compared with 2011. This placed that body along with the Prison Service into second place as regards frequency of judicial review reported judgments in 2012.

Reported judgments - judicial review remedies

6.11 It was not possible to ascertain the remedies granted by the judicial review court and Court of Appeal from the NICTS published data. Therefore the information provided by the Law Society was analysed along with the types and incidence of remedy awarded in reported cases during the period 2009-2012. The information is recorded in table 6.6 at Appendix 10. In 2009 certiorari was the most frequently recorded outcome from a successful judicial review challenge followed by declaratory relief. Declaratory relief appears to have been the most common form of remedy granted in 2010 signifying a rise of 13% from 2009. However there were difficulties in ascertaining the outcomes in a high number of successful applications for 2010. The grant of certiorari replaced declaratory relief as the most common remedy granted in 2011 increasing in frequency by 44%¹⁰⁷ in 2011 compared with 2010. Certiorari declined in frequency in reported judgments in 2012, decreasing in frequency by 35%

¹⁰⁶ The percentage changes noted in the analysis at paragraphs 6.8-6.13 of the Report represent the percentage changes year on year, proportionate to the total number of reported judicial review cases (please see the figures recorded at Appendix 10). The analysis encompasses the following: the bodies and issues being challenged; outcomes of judicial review applications; types and incidence of remedy and Court of Appeal applications.

¹⁰⁷ This percentage rise takes account of the award of certiorari exclusively as well as cases where it has been combined with declaratory relief.



compared with 2011. Despite this, certiorari continued to be frequently granted in reported cases in 2012. Declaratory relief was less frequently granted in 2011 compared with 2010, but increased slightly in incidence again in 2012.

Court of Appeal applications

6.12 The outcomes of the applications to the Court of Appeal arising from judicial review proceedings in reported judgments are illustrated in table 6.7 at Appendix 10 for the period 2009-2012. The data clearly indicates that the majority of appeal applications were brought by the original applicant to judicial review proceedings. Appellants were more likely to be unsuccessful in these applications while the appeal applications initiated by the public body who had been the respondent to the original proceedings were more likely to succeed. Regrettably, difficulties were encountered in ascertaining the nature and outcome of around 27% of the Court of Appeal applications made in 2010. However in relation to the applications which were viable for analysis, all of these applications appear to have been dismissed by the Court of Appeal in that year. It is interesting to note that no appeal applications were made by the respondent body in the judicial review proceedings in 2010.

Dismissed appeal applications brought by the original applicant decreased by 9% in 2011 compared with 2010 but continued to be the most prevalent outcome for the third consecutive year. The appeal applications initiated by the respondent public body in the original judicial review proceedings appeared to be more likely to obtain a successful outcome in 2011 similar to the appeal applications heard in 2009 in comparison with applications initiated by the original applicant (there did not appear to be any applications made by the respondent in 2010). It is interesting to note that there were some signs of success in 2011 for appellants who had been the original applicant in the judicial review proceedings compared with 2010 where there was a 0% success rate. This improvement was maintained somewhat in 2012 but the dismissal rate remained high. The applications brought by the public body experienced an equal mix of success and dismissal in 2012.

6.13 A summary of the analysis of the reported judgments is set out below:

- The PSNI accounted for the majority of judicial review applications for the period analysed receiving an average of 14% of applications. The Prison Service followed closely behind receiving an average of 12% on the basis of the Libero database.
- Applications for judicial review were more likely to have been dismissed/refused or rejected as opposed to granted or partially granted. However as the Libero database indicates, the success rate of applications did increase by 27% between 2009 and 2012.
- Certiorari was awarded on average in approximately 47% of successful judicial review applications for the period under scrutiny. This figure takes account of the instances in which certiorari was granted exclusively as well as the cases where it was awarded in combination with another form of relief. This is compared with the grant of declaratory relief which was awarded on average in approximately 24% of successful applications. Similar to certiorari, the figure in relation to declaratory relief takes account of the cases where declaratory relief was granted exclusively as well as those cases where it was combined with another form of relief.
- In reported cases, applications to the Court of Appeal made by the applicant were more likely to be dismissed than be successful over the four year period. This is in contrast to the appeal applications brought by the public body who had been the respondent in the original judicial review application who were more likely to attain success or partial success.

6.14 In conclusion, the data demonstrate a fairly consistent picture of judicial review appeals to the Court of Appeal with the user being less likely to be successful as he progresses through each stage. There is also a fairly consistent response on behalf of the judiciary to judicial review as a means by which to challenge the decisions of public bodies in Northern Ireland. The data does not support the view promulgated by some officials that the applicant for judicial review proceedings in Northern Ireland is more likely to succeed to overturn a decision of a public body.



6.15 In relation to withdrawn leave applications, it was not possible to establish whether the user had been successful in achieving a resolution of his grievance and this was the reason for the application being withdrawn. Other possible reasons for withdrawal may be a recognition on the part of the applicant that his case was weak and the judge had given an early indication of his view of the application and the parties resolved their differences, or that an alternative dispute mechanism was recognised as appropriate. Further information and detail on this category of application would provide evidence of the user's journey and the quality of the decision making by public bodies in Northern Ireland.

Access to justice – Legal Aid for judicial review

6.16 For the purposes of this report and to further assess the Northern Ireland Legal Services Commission (NILSC), provided data on the numbers of cases where applications have been received and granted for judicial review by the NILSC, during the period 2007-2013. This information is provided at table 6.8 below:

Table 6.8 Judicial Review 2007-12 Summary

Judicial Review	2007 /08	2008 /09	2009 /10	2010 /11	2011 /12	2012/13 to 31.12.12
Applications received	290	345	330	323	329	309
Applications granted	262	274	247	218	211	196

Legal aid is granted using two tests; a merit and a means test. The data shows a range in the number of applications received from 290 to 345. This number has increased annually on the original 2007/8 figure of 290. However, it is noted that the number of applications granted has reduced each year from 2008/9. All applications for funding of judicial reviews are subject to the two statutory tests of the financial means of the applicant and the legal merits of the case as presented. The NILSC in deciding whether to grant funding cannot by statute, and does not in practice, have regard to the potential cost of the case. It is noted that the pre-action protocol for judicial review was introduced in 2008 and the NILSC has confirmed that in its view, the pre-action protocol has had an impact on the number of applications granted for the following reasons:

- The proofs now required to support a legal aid application are more rigorous which means that the NILSC has more detailed information to determine the merits of the case;
- The NILSC is in a better position to identify premature applications and also applications in which the time limit for lodging the judicial review proceedings has lapsed; and
- To a lesser extent, under the protocol a solicitor has to evidence that alternative remedies have been exhausted.

The NILSC has clarified that this information is based on the experience of the NILSC's adjudication team and the NILSC holds no empirical evidence on the decline in the number of applications granted.

The purpose of the research was not to ascertain the reasons for the reduction in the number of legal aid applications granted. However further study may determine whether or not those who are unsuccessful in their application for legal aid then pursue another means of redress within the administrative justice system.

Remedies in judicial review

6.17 The judicial review jurisdiction of the High Court allows individuals or groups of individuals to challenge the decision, action or inaction of a public body (department, council or other body) exercising a public law function. Judicial review only extends to decisions of inferior courts and tribunals and is generally not available to those who seek to challenge a decision of the High Court or Court of Appeal. The remedies available to a judicial review applicant are as follows:

- Mandamus – a mandatory order requiring the public body to do something;
- Prohibition – a prohibiting order preventing the public body from doing something;
- Certiorari – an order quashing the body's decision;
- Declaration – an order declaring the decision unlawful;
- Injunction – an order compelling or restraining the public body in relation to certain action;
- Damages – these are a judicial review remedy but are not frequently awarded in judicial review cases



Conclusions

6.18 Each of the pillars of the administrative justice system in Northern Ireland provide differing remedies to the user who brings the dispute to their jurisdiction. Judicial review provides a number of potential public law remedies to the applicant. However it was not possible to obtain primary data on the remedies sought. The analysis of reported judgments provided qualitative data on remedy and provides only a snapshot of relief granted in the context of judicial review. Unfortunately, no other information is available to inform the authors' scoping study on the user of this part of the administrative justice system in Northern Ireland. However, from the available information it is clear that the most frequently granted relief/remedy for the applicant in a judicial review application is certiorari. The NICTS High Court Bulletin and Judicial Statistics publication did provide a valuable data source, yet consideration should be given to recording in more detail the outcomes and remedies in all applications and making these publicly available.

6.19 Individuals are faced with a confusing array of possible routes to challenge – internal complaints systems, tribunals, ombudsmen and courts. Each redress mechanism has differing outcomes and remedies. More research is needed to establish an adequate information flow which would assist the user and his advisors in making the best choice of external redress mechanism to deliver the justice he seeks in respect of the administrative decision.

6.20 As highlighted in the research, the internal complaints mechanisms relating to administrative decision making can provide remedies by way of an apology, change in practice or financial redress. A tribunal can provide a hearing of the issues and a legally binding decision. The judicial review remedies are limited and include a declaration of unlawfulness, irrationality or unfairness as well as quashing orders. On the basis of the available data it is difficult to assess fully the user experience. In the judicial review court the user will not obtain an apology and is less likely to obtain damages or any form of financial redress. Ombudsmen provide a flexible redress system and can recommend a range of remedies, from an apology to financial redress¹⁰⁸ or a change in practice. This role in the administrative justice landscape is explained in the next section of this Report.

7. Conclusions and Recommendations

- In Summary

7.1 The authors' project was an initial scoping study aimed at identifying each of the pillars of administrative justice in highlighting some gaps and overlaps in the administrative justice system. The research highlighted data on the user's experience in each part of the system and considered signposting issues as well as remedies for the user. Each part of the system has differing jurisdictions, time limits, and procedural rules and provides different forms of redress. Resources for this initial scoping study were limited and no data existed to map a user journey through each part. For instance, there was no data available linking a complaint from the respondent bodies through the system to establish where that complainant had ultimately achieved his/her remedy. The lack of adequate information charting a complainant's journey through both internal and external redress mechanisms is a significant gap. The absence of such an information map means that data on complaints which end in legal proceedings in the system is not available. This information flow would be a valuable tool in assessing the user journey and the costs in financial terms of the initial failure in service. A gap in information on the service improvement that may arise resulting from learning from complaints also exists. The authors consider that further research in this area is needed to complete the picture of the user journey and to better ascertain the effectiveness of existing redress mechanisms in sharing the learning from complaints.

7.2 There is currently no legislative requirement for bodies to direct complaints to the Northern Ireland Ombudsman at the end of the internal complaints process. This contrasts with the position in Wales and Scotland, where there is a statutory requirement on all bodies in the jurisdiction of these two Ombudsman offices to direct a complainant to the relevant ombudsman if the complainant is dissatisfied with their internal complaints process¹⁰⁹. This is an issue which the Committee of the Office of the First and deputy First Minister is considering as they develop legislation to refresh and reform the office of the Northern Ireland Ombudsman.

7.3 The authors consider that the existence of such confusion on the part of bodies operating these processes does highlight the potential for confusion on the part of the user seeking to use these mechanisms to obtain redress for administrative failures. Complainants will often have an option of pursuing a number of forms of redress such as an appeal, judicial review or complaining to an Ombudsman. However these redress mechanisms are pursued for different reasons and provide different outcomes. For example, an appeal will assess the merits of a decision, a judicial review is a challenge to the legality of the decision

¹⁰⁹ A similar complaints portal is operated by the European Ombudsman in the form of an interactive guide is available <<http://www.ombudsman.europa.eu>>

The Guide is available in 23 languages and guides users through a series of questions to over 100 ombudsmen and other problem solving mechanisms throughout Europe. Around 20,000 users receive advice through the Guide every year.



and ombudsmen investigate the administrative process. The remedy that can be provided by each of these redress mechanisms will not necessarily satisfy all of the issues in the complaint. There is no empirical data in Northern Ireland to evidence whether complainants will pursue one or more avenue. The authors strongly recommend that this is an area which would benefit from further research.

There is currently no single portal for all complaints about public bodies that make decisions about individuals in Northern Ireland (in relation to devolved and non-devolved public bodies). This contrasts with the position in Wales where the PSOW has introduced a new service aimed at people receiving public services who wish to complain about those services¹¹⁰. Consideration should be given as to whether a complaints portal should be provided for public service users in Northern Ireland.

7.4 The Northern Ireland Ombudsman issued guidance in 2009 on complaints handling ('Rights, Responsibilities and Redress – A Guide to Effective Complaint Handling'¹¹¹) and has provided training to bodies on good complaints handling, explaining his approach. The survey of public bodies as part of this report highlighted the need for a common approach to complaints handling in Northern Ireland. In Wales the Public Services Ombudsman has worked with the Welsh government to develop model complaints handling procedures for each sector. In Scotland the Ombudsman has an additional role as the Complaints Standard Authority and has developed standardised complaint handling procedures for all Scottish public bodies in jurisdiction. Building on the work undertaken by the Welsh and Scottish Ombudsmen, consideration should be given to the development of an agreed set of principles for effective complaints handling in Northern Ireland to ensure greater consistency in complaints handling. Given the variety and complexity in certain sectors, it would be preferable that the principles should be consulted upon using a sectoral approach on standardised complaints procedures. In Scotland, the Public Services Ombudsman has developed, in consultation with stakeholders and approved by the Scottish Parliament, a set of high level principles which all complaints procedures in Scotland must reflect. The authors recommend that consideration is given to this approach in Northern Ireland.

An oversight body for administrative justice

7.5 The mapping exercise demonstrated the complexity of the administrative justice system in Northern Ireland, with gaps and overlaps that make the system difficult for the user to navigate. The four pillars cannot be viewed in isolation but with a focus on the gaps and overlaps. In 2007 the Tribunals, Courts and Enforcement Act came into force, establishing a new body to replace the Council on Tribunals. The AJTC came into being on 1 November 2007 with an expanded remit compared to that of its predecessor.

7.6 The DOJ produced a consultation document in January 2013 containing proposals¹¹² to establish an oversight body for tribunals only in Northern Ireland. A Summary of Responses has been produced¹¹³ which indicates that overall, respondents to the consultation welcomed the proposal to reform the tribunal system in Northern Ireland. The evidence contained in this Report demonstrates the need to extend oversight to the system of administrative justice as a whole and not simply one part of that system. Given the House of Commons Justice Committee's recommended proposals to retain an oversight body in England albeit with a limited remit as well as the establishment of non statutory advisory Committees in Scotland and Wales, consideration should be given in Northern Ireland to the wider role of an advisory body. The Northern Ireland user of the system should not be disadvantaged.

The research undertaken as part of the authors' project is a snapshot of the administrative justice system in Northern Ireland. The authors consider it highlights gaps and overlaps that impede the user in seeking redress. The need for oversight of the pillars of administrative justice to focus on the user perspective cannot be viewed in isolation from the tribunal reform programme. The authors consider such a body can provide oversight, advice, information and promote the research necessary to improve the workings of the system as a cohesive whole. The body, if established, would take forward research on the issues highlighted in this report and begin to consult on and develop the principles of administrative justice while overseeing the introduction of a complaints portal.

¹¹² Department of Justice, *The Future Administration and Structure of Tribunals in Northern Ireland* – Consultative Document (2013) paras. 3.1 onwards

¹¹³ Department of Justice, *Tribunal Reform: Future Administration and Structure of Tribunals in Northern Ireland – Consultative Document – Summary of Responses* (2013), available at < www.dojni.gov.uk >



Appendices

- Appendix 1: List of public service organisations surveyed
- Appendix 2: Complaints mechanisms survey questionnaire
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- Appendix 4: Results of survey questionnaire and complaints procedure pro forma
- Appendix 5: UK-wide tribunals operating in Northern Ireland
- Appendix 6: Tribunal statistics
 - Appendix 6(a): Complaints of 'maladministration' against local tribunals investigated by the Northern Ireland Ombudsman
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- Appendix 7: Incidence of complaints received by the Northern Ireland Ombudsman 2009-13
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- Appendix 9: NICTS judicial review statistics, April 2009-12
- Appendix 10: Data on reported judicial review judgments 2009-12

APPENDIX 1

LIST OF PUBLIC SERVICE ORGANISATIONS SURVEYED

Abbeyfield UK (NI) Ltd	Broadway Housing Association Ltd
Access NI	Business Services Organisation
Agri-food and Biosciences Institute	Carrickfergus Borough Council
Alpha Housing Association (NI) Ltd	Castlereagh Borough Council
Antrim Borough Council	Civil Service Commissioners
Ards Borough Council	Clanmil Housing Association Ltd
Ark Housing Association (NI) Ltd	Clonard Housing Association Ltd
Armagh City & District Council	Coleraine Borough Council
Armagh Observatory	Coleraine Harbour Commissioners
Armagh Planetarium	College of Agriculture, Food and Rural Enterprise (CAFRE)
Arts Council	Colleges of Further Education
Assembly Commission	- <i>Belfast Metropolitan College</i>
Ballymena Borough Council	- <i>Northern Regional College</i>
Ballymoney Borough Council	- <i>North West Regional College</i>
Ballynafeigh Housing Association (now amalgamated with Trinity Housing Association)	- <i>South Eastern Regional College</i>
Banbridge District Council	- <i>Southern Regional College</i>
Belfast City Council	- <i>South West College</i>
Belfast Community Housing Association Ltd (now amalgamated with Trinity Housing Association)	Community Relations Council
Belfast Education & Library Board	Companies Registry
Belfast Harbour Commissioners	Connswater Homes Ltd
Belfast Health & Social Care Trust	Construction Industry Training Board
	Consumer Council
	Cookstown District Council
	Council For Catholic Maintained Schools
	Council for the Curriculum, Examinations & Assessment



Covenanter Residential Association Ltd	Driver & Vehicle Agency
Craigavon Borough Council	Dungannon & District Housing Association Ltd
Craigowen Housing Association Ltd	Dungannon & South Tyrone Borough Council
Criminal Justice Inspection Northern Ireland	Edexcel
Department for Employment & Learning	Education and Skills Authority
Department for Regional Development	Equality Commission for Northern Ireland
Department for Social Development	Fermanagh District Council
Department of Agriculture & Rural Development	Filior Housing Association Ltd
Department of Culture, Arts & Leisure	Financial Ombudsman Service
Department of Education	Financial Services Authority
Department of Enterprise, Trade & Investment	Fisheries Conservancy Board
Department of Finance & Personnel	Flax Housing Association Ltd
Department of Health, Social Services & Public Safety	Fold Housing Association
Department of Justice	Food Safety Promotion Board
Department of the Environment	Foras na Gaeilge
Derry City Council	Forensic Science Northern Ireland
District Policing Partnerships	Forest Service
Donacloney Housing Association Ltd (now amalgamated with Gosford Housing Association (Armagh) Ltd)	Foyle, Carlingford & Irish Lights Commission
Down District Council	General Dental Council
	General Medical Council
	General Register Office

General Teaching Council for Northern Ireland	Larne Borough Council
Gosford Housing Association (Armagh) Ltd	Limavady Borough Council
Grove Housing Association Ltd	Lisburn City Council
Guardian Ad Litem Agency	Livestock & Meat Commission for Northern Ireland
Habinteg Housing Association (Ulster) Ltd	Local Government Staff Commission
Health & Safety Executive	Londonderry Port & Harbour Commissioners
Health Estates Agency	Loughs Agency
Health Promotion Agency for Northern Ireland	Magherafelt District Council
Hearth Housing Association	Mental Health Commission (now falls within RQIA)
Helm Housing	Mental Health Review Tribunal
Historic Buildings Council	Ministry of Justice Tribunals*
Historic Monuments Council	- <i>Immigration Services</i>
Independent Case Examiner	- <i>Information Tribunal</i>
Industrial Court	- <i>Estate Agents Appeals Panel</i>
Information Commissioner	- <i>Consumer Credit Appeals Tribunal</i>
Integrated Education Fund	- <i>Immigration and Asylum</i>
InterTradelreland	- <i>Tax</i>
Invest NI	- <i>Social Entitlement in respect of Asylum Support</i>
Labour Relations Agency	Moyle District Council
Laganside Corporation	National Museums Northern Ireland
Land and Property Services	Newington Housing Association (1975) Ltd
	Newry & Mourne District Council
	Newtownabbey Borough Council

* Please note that the titles of these tribunals refer to the titles at the time the survey was carried out.



North & West Housing Ltd (now known as Apex Housing Association)

North Down Borough Council

North Eastern Education & Library Board

Northern Health & Social Care Trust

Northern Health & Social Services Council

Northern Ireland Ambulance Service Trust

Northern Ireland Audit Office

Northern Ireland Authority for Utility Regulation

Northern Ireland Blood Transfusion Service

Northern Ireland Certification Office

Northern Ireland Co-Ownership Housing Association Ltd

Northern Ireland Commissioner for Children and Young People

Northern Ireland Council for Integrated Education

Northern Ireland Courts and Tribunals Service

Northern Ireland Economic Council

Northern Ireland Environment Agency

Northern Ireland Fire and Rescue Service

Northern Ireland Fishery Harbour Authority

Northern Ireland Higher Education Council

Northern Ireland Housing Executive

Northern Ireland Human Rights Commission

Northern Ireland Judicial Appointments Ombudsman

Northern Ireland Law Commission

Northern Ireland Legal Services Commission

Northern Ireland Local Government Officers' Superannuation Committee

Northern Ireland Medical & Dental Training Agency

Northern Ireland Museums Council

Northern Ireland Police Fund

Northern Ireland Policing Board

Northern Ireland Practice and Education Council for Nursing & Midwifery

Northern Ireland Prison Service, HQ

Northern Ireland Regional Medical Physics Agency

Northern Ireland Social Care Council

Northern Ireland Statistics & Research Agency

Northern Ireland Tourist Board	Public Prosecution Service for Northern Ireland (PPSNI)
Northern Ireland Water	
Oaklee Housing Association Ltd	Public Record Office of Northern Ireland
Ofcom	Regional Health & Social Care Board
Office of Fair Trading (OFT)	Regulation and Quality Improvement Authority
Office of the First Minister and Deputy First Minister	Reinstatement Committee
Office of the Industrial Tribunals & Fair Employment Tribunal	Rivers Agency
Office of the Social Fund Commissioner	Roads Service
Omagh District Council	RUC George Cross Foundation
Open Door Housing Association (NI) Ltd	Rural Development Council
Parades Commission for Northern Ireland	Rural Housing Association Ltd
Parole Commissioners	Service Complaints Commissioner for the Armed Forces
Patient & Client Council	SHAC Housing Association
Planning Appeals Commission	South Eastern Education & Library Board
Planning Service	South Eastern Health & Social Care Trust, HQ
Police Ombudsman for Northern Ireland	Southern Education & Library Board
Probation Board for Northern Ireland (PBNI)	Southern Health & Social Care Trust, HQ
Police Service of Northern Ireland (PSNI)	South Ulster Housing Association Ltd
	Special European Union Programmes Body



Sports Council for Northern Ireland
Social Security Agency
St Matthews Housing Association Ltd
Staff Commission for Education & Library Boards
Strabane District Council
Strategic Investment Board Ltd
The Compensation Agency
The Competition Appeals Tribunal
The Competition Commission
The Electoral Commission
The Electoral Office for Northern Ireland
The Northern Ireland Office
The Office of the President of Appeal Tribunals
The Pensions Ombudsman
The Press Complaints Commission
The Property Ombudsman
Triangle Housing Association Ltd
Trinity Housing
Ulidia Housing Association Ltd
Ulster Supported Employment Ltd
Ulster-Scots Agency

Universities
- *Queen's University Belfast*
- *University of Ulster*
University Colleges
- *St Mary's University College*
- *Stranmillis University College*
Warrenpoint Harbour Commissioners
Water Appeals Commission
Waterways Ireland
Wesley Housing Association Ltd
Western Education & Library Board
Western Health and Social Care Trust
Woodvale & Shankill Housing Association Ltd
Youth Council
Youth Justice Agency of Northern Ireland

APPENDIX 2

COMPLAINTS MECHANISMS SURVEY QUESTIONNAIRE

QUESTIONNAIRE ON INTERNAL AND EXTERNAL REVIEW MECHANISMS THAT EXIST WITHIN PUBLIC BODIES IN NORTHERN IRELAND

Q1. Does your organisation have a formal complaints procedure allowing citizens to challenge appeal decisions that affect them?

Yes ☐ No ☐

(If you have answered yes, please supply a copy)

Does your organisation operate an appeal procedure/mechanism?

Yes ☐ No ☐

(If you have answered yes, please supply a copy)

Q2. Can the decisions made by your organisation which affect individual citizens be reviewed by an external body?

Yes ☐ No ☐

If you have answered yes, please specify the external review bodies:

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Q3. Please provide statistics in relation to the number of complaints/appeals handled by your organisation within the past 12 months.

Complaints

Appeals

Q4. Please provide statistics in relation to the number of cases that have resulted in external review.

- | | |
|---------------------------------------|----------------------|
| (a) Ombudsman | <input type="text"/> |
| (b) Judicial Review | <input type="text"/> |
| (c) Tribunals/Courts | <input type="text"/> |
| (d) Other (i.e. regulatory decisions) | <input type="text"/> |

Q5. Does your organisation hold any statistics on the number of cases upheld/partially upheld in the applicant's/complainant's favour?

Yes ☐ No ☐

If you have answered yes, please provide the statistics for upheld/partially upheld cases in relation to the mechanism of redress used:

(a) Internal complaints procedure

(b) Appeal mechanism

(c) External avenues

(Ombudsman, Judicial Review, Tribunals/Courts or Other)

Q6. What are the types of redress offered by your organisation where a complaint was upheld/partially upheld? Please tick all that apply.

(a) Financial redress - consolatory payment or compensation

☐

(b) Recovery of costs/expenses

☐

(c) Apology

☐

(d) Service improvement

☐

(e) Change in practice/systems

☐

(f) Review of decision

☐

(g) Re-employment/re-deployment

☐

(h) Other, please specify

☐

Q7. In relation to a complaint where a decision made by your organisation has been found to be incorrect or invalid either internally or by an external review body, what were the top three reasons as to why things went wrong?

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Q8. What changes as a result of a complaint or external review has your organisation made to ensure improved performance in the future?

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Q9. Would you be willing to participate in a face to face interview or telephone interview to discuss these matters further?

Yes ☐

No ☐

If you have answered yes, please supply contact details of the relevant person:

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APPENDIX 3

COMPLAINTS PROCEDURE PRO FORMA

1. How many stages are in the complaints procedure?
2. Is a complaints leaflet or a complaints procedure provided to complainants?
3. Are target timescales included for acknowledging the investigation of a complaint?
4. Does the public body commit to keeping the complainant informed? (If Yes, how often?)
5. Is there a single point of contact for each stage of the complaints procedure?
6. Is there a review stage?
7. Is there an automatic right to review?
8. Is there a nominated complaints officer?
9. Is a definition of what constitutes a complaint included?
10. Are the complainant's further rights of redress acknowledged?
11. Does the complaints procedure deal with issues of data protection and confidentiality?
12. Is there a requirement that the complaint is in writing?
13. Does the complaints procedure set out who may complain and address issues of third party complaints?
14. Are there alternative methods of complaints communication? (i.e. alternative formats such as large print etc.)
15. Is a regular review of the investigation of complaints carried out?

APPENDIX 4

RESULTS OF SURVEY QUESTIONNAIRE AND COMPLAINTS PROCEDURE PRO FORMA

Table 3.1 External review/appeal mechanisms

Bodies
Assistant Director of Personal Services Division (*n=1)
Board of Visitors (n=1)
Criminal Injuries Compensation Appeals Panel Northern Ireland (n=1)
Commissioner for Public Appointments (n=1)
Competition Appeals Tribunal (n=1)
Consumer Council (n=1)
Equality Commission (n=1)
Government Department (various) (n=5)
Government Auditor (n=1)
Information Commissioner (n=7)
Independent Assessor (n=1)
Independent Complaints Reviewer (n=1)
Judicial Review (n=16)
Labour Relations Agency (n=3)
Ombudsman (various) (n=79)
Tribunal (n=5)
Planning Appeals (n=1)
Queen's University Belfast (n=1)
Umpire/Deputy Umpire (n=1)

* 'n' is an abbreviation for number.



Table 3.2 Complaints progressing to external review

External Review Method	Range of cases progressed to external review	Modal no of cases progressed by respondent bodies
Ombudsmen	0-10	0 (n=79)
Judicial Review	0-7	0 (n=93)
Tribunals	0-17	0 (n=81)
Other	0-594	0 (n=82)

Table 3.3 Outcomes arising from complaints/appeals – user redress

Outcome	% (n=) of respondent bodies from which the outcome is available
Financial redress	30% (n=43)
Recovery of costs	40% (n=48)
Apology	80% (n=96)
Service improvement	78% (n=94)
Change in practice	77% (n=92)
Review of Decision	65% (n=77)
Re-employment	15% (n=18)
Other	28% (n=34)

Table 3.4 Reasons for complaints/appeals

Why did things go wrong?	
Reason for failure	Respondent organisations who noted this failure
Service delivery and standard of service	34% (n=21)
Delay	32% (n=20)
Poor communication	32% (n=20)
Failure of staff to follow procedures	32% (n=20)
Poor information handling	25% (n=16)
Attitude of staff	11% (n=7)
Poor record keeping	10% (n=60)
Interpretation of legislation/legal errors	8% (n=5)
Circumstances outside control of the organisation (i.e. information not available at time decision made)	8% (n=5)
Staffing issues	2% (n=1)



Table 3.5 Changes to improve performance

What is being done to improve performance?		
Improvements	Respondent organisations who noted this improvement	Percentage of organisations who noted this improvement
Review of procedures/policies/service	62	68%
Staff training	37	41%
Improved communication with customers/improved customer interface	26	29%
Complaint monitoring	25	27%
Improve quality of information available to service users	23	25%
Improve customer facilities	7	8%
Installation of a complaints handling system, i.e. database	4	4%
Implementation of court/tribunal ruling/case law	4	4%
Review of legislation	2	2%
Introduction of a complaints procedure	2	2%

Figure 3.1 Results of thematic analysis of complaints procedures**Q1 How many stages are in the complaints procedure?**

Number of stages:	One stage	Two stages	Three stages	Four stages	Not clear
Number of organisations:	10	51	50	5	4
Percentages:	8% ¹	43%	42%	4%	3%

Q2 Is a complaints leaflet or a complaints procedure provided to complainants?:²

Response:	Yes	No	Not clear
Number of organisations:	116	1	3
Percentages:	97%	1%	3%

Q3 Are target timescales included for acknowledging the investigation of a complaint?

Response:	Yes	No	Not clear
Number of organisations:	106	9	5
Percentages:	88%	8%	4%

¹ Please note, the percentages contained within Figure 3.1 are rounded.

² In some instances the public organisation provided a copy of their complaints policy in the format of a document which appeared to be for staff guidance purposes only, while in other cases the document provided may have operated a dual purpose i.e. for staff guidance as well as the official complaints literature for potential complainants. Some of these documents referred to the provision of a separate complaints leaflet for customer use while others did not and so it was assumed when conducting the research that the policy document would have been provided to potential complainants and the answer to question 2 above would have been recorded as 'yes' in this instance.



Q4 (i) Does the public body commit to keeping the complainant informed?

Response:	Yes	No	Not clear
Number of organisations:	96	12	12
Percentages:	80%	10%	10%

(ii) If yes how often?

Response:	Regularly	Once	Not clear how often	As often as necessary	N/A*
Number of organisations:	16	30	42	8	24
Percentages:	13%	25%	35%	7%	20%

[*Results recorded as N/A are indicative of one of the following:

- The answer to Q4(i) was deemed as 'not clear' and therefore answers to Q4(ii) could not be categorically recorded or
- the answer to Q4(i) was 'no' and so Q4(ii) was not applicable.]

Q5 Is there a single point of contact for each stage of the complaints procedure?

Response:	Yes	No	Not clear
Number of organisations:	85	23	12
Percentages:	71%	19%	10%

Q6 Is there a review stage?

Response:	Yes	No	Not clear
Number of organisations:	60	37	23
Percentages:	50%	31%	19%

Q7 Is there an automatic right to review?

Response:	Yes	No	Not clear	N/A*
Number of organisations:	27	8	37	48
Percentages:	23%	7%	31%	40%

[*Results recorded as N/A are indicative of one of the following:

- The answer to Q6 was deemed as 'not clear' and therefore answers to Q7 could not be categorically recorded or
- the answer to Q6 was 'no' and so Q7 was not applicable.]

Q8 Is there a nominated complaints officer?

Response:	Yes	No	Not clear
Number of organisations:	40	71	9
Percentages:	33%	59%	8%



Q9 Is a definition of what constitutes a complaint included?

Response:	Yes	No	Not clear
Number of organisations:	58	57	5
Percentages:	48%	48%	4%

Q10 Are the complainant's further rights of redress acknowledged?

Response:	Yes	No	Not clear
Number of organisations:	106	11	3
Percentages:	88%	9%	3%

Q11 Does the complaints procedure deal with issues of data protection and confidentiality?

Response:	Yes	No	Not clear
Number of organisations:	43	72	5
Percentages:	36%	60%	4%

Q12 Is there a requirement that the complaint is in writing?

Response:	Yes	No	Not clear
Number of organisations:	25	82	13
Percentages:	21%	68%	11%

Q13 Does the complaints procedure set out who may complain and address issues of third party complaints?

Response:	Yes	No	Not clear
Number of organisations:	57	59	4
Percentages:	48%	49%	3%

Q14 Are there alternative methods of complaints communication? (i.e. alternative formats such as large print etc)

Response:	Yes	No	Not clear
Number of organisations:	38	71	11
Percentages:	32%	59%	9%

Q15 Is a regular review of the investigation of complaints carried out?

Response:	Yes	No	Not clear
Number of organisations:	40	1	79
Percentages:	33%	1%	66%



Figure 3.2

Reasons for exclusion of responses from thematic analysis of complaints procedures

- The body had a fundamental lack of a formal complaints process for service complaints;
- The nature of the work conducted by the body did not necessitate a service complaints process;
- The body's response to the survey was included in another body's submission (for example, a Departmental agency's response was also included within the Departmental response. Therefore, to avoid duplication this response only accounted for one submission);
- The body's complaints procedure was under review;
- The body provided incorrect information, i.e. the survey response was based on staff grievances and not service complaints;
- The body was not public facing; or
- The survey was not relevant in view of the nature of the work of the body.

APPENDIX 5

UK-WIDE TRIBUNALS OPERATING IN NORTHERN IRELAND³

Social Entitlement Chamber

Asylum Support

General Regulatory Chamber

Consumer Credit

Estate Agents

Information Rights

Immigration Services

Tax Chamber

Direct and Indirect Taxation

MPs Expenses

Immigration and Asylum Chamber

Immigration and Asylum

Administrative Appeals Chamber⁴

Pension Appeals Tribunal

³ These tribunals have been grouped under the Chambers in which they appear in England and Wales.

⁴ This is the equivalent of the War Pensions and Armed Forces Compensation Tribunal which sits in England and Wales.



APPENDIX 6

TRIBUNAL STATISTICS

Table 4.1 DOJ tribunal business volumes⁵

Period	Number of cases
2008/9	15,114
2009/10	15,756
2010/11	16,670
2011/12	17,439

The data in Table 4.1 includes those tribunals which DOJ administer on a non-statutory basis through NICTS (i.e. the Appeals Tribunal, Rent Assessment Panel and the Pensions Appeal Tribunal).

⁵ The NICTS assumed administrative responsibility for the Lands Tribunal; Care Tribunal; Mental Health Review Tribunal; Schedule 11 Tribunal; and SENDIST on the 1 September 2009 and the Appeals Tribunal, Rent Assessment Panel, Health & Safety Tribunal and the Charity Tribunal on 1 April 2010. Statutory responsibility for the Lands Tribunal, Care Tribunal, Mental Health Review Tribunal, Schedule 11 Tribunal, SENDIST, Health & Safety Tribunal and the Traffic Penalty Tribunal transferred to the DOJ on 1 April 2011. The Charity and Valuation Tribunal also came within the remit of the DOJ on this date but no statutory functions required to be transferred.

Table 4.2 Nature and volume of business for DOJ tribunals

	2009/10		2010/11		2011/12		
Tribunal	Received	Disposed	Received	Disposed	Received	Disposed	
OSSC – applics	261	188	158	195	162	147	Office of Social Security Commissioners
OSSC – appeals	99	96	141	141	121	125	Office of Social Security Commissioners
PAT	290	266	155	229	169	188	Pensions Appeal Tribunals
TPT	437	443	533	501	492	513	NI Traffic Penalty Tribunal
NIVT	24	36	27	17	40	30	NI Valuation Tribunal
SENDIST	79	97	66	69	81	79	Special Educational Needs and Disability Tribunal
MHRT	314	300	281	283	335	342	Mental Health Review Tribunal
Care	8	3	2	4	2	5	Care Tribunal
CICAP	617	715	647	619	670	651	Criminal Injuries Compensation Appeals Panel
Lands	173	245	154	218	216	155	Lands Tribunal
H&ST	-	-	-	-	1	1	NI Health & Safety Tribunal
the Appeals Tribunal	13436	12864	14568	14386	15140	14995	The Appeals Tribunal
Total	15738	15253	16732	16662	17429	17231	
Total minus the Appeals Tribunal	2302	2389	2164	2276	2289	2236	



Table 4.3 Range of appeals dealt with by the Appeals Tribunal 2009-2010[^]

Appeals by category 06 April 2009 – 04 April 2010				
Category	Total registered	Number monitored (sample size)	Initial decision incorrect	Percentage incorrectness
Attendance Allowance*	199	81	0	0
Bereavement Benefit	8	6	1	16.7
Carer's Allowance*	75	48	6	12.5
Child Support*	41	18	0	0
Compensation Recovery*	49	43	6	14
Disability Living Allowance*	5427	230	3	1.3
Employment Support Allowance*	3586	281	2	0.7
Incapacity Benefit*	1999	172	7	4.1
Income Support*	580	153	24	15.7
Industrial Injuries Disablement Benefit*	145	58	0	0
Jobseekers Allowance*	431	196	12	6.1
Recovery of Health Service Charges	3	3	0	0
Pension Credit*	35	27	1	3.7
Retirement Pension*	7	4	1	2.5
Social Fund*	144	89	3	3.4
TOTAL	12729	1409	66	4.7

Note: bold type indicates a complete census

* Indicates that all cases selected were not available for monitoring

[^] As indicated in 2009-2010 Report by the President of Appeal Tribunals on the Standards of Decision Making by the Department for Social Development, Table 4.3 illustrates 'the total number of cases registered by benefit, the number actually monitored, the number of decisions incorrectly made in the first instance, and the percentage error, in the period. Some benefits required a complete census of cases. Such benefits are indicated by bold type.' Further information regarding the information contained within Table 4.3 can be found in the President's Report at < www.dsdni.gov.uk >

Table 4.4 Success rates of appeals to the tribunals administered by the Appeals Service

Year	Success rate (%)
2009/10	33% ^o
2010/11	30%
2011/12	33%

Table 4.5 Volumes of business of the Social Security and Child Support Commissioners

Year	Outstanding at the Beginning		Total Lodged		To be Dealt With	
1995+	30	37	215	116	245	153
1996+	52	68	280	128	332	196
1997+	65	82	326	181	391	263
1998*	92	140	323	221	415	361
1999*	146	166	298	142	444	308
2000*	96	117	190	93	286	210
2001+	62	71	185	65	247	136
2002+	110	28	268	122	378	150
2003+	126	65	194	107	320	172
2004+	74	49	184	80	258	129
2005+	99	48	169	61	268	109
2006+	75	23	211	73	286	96
2007+	93	24	189	62	282	86
2008+	85	22	167	66	252	88
2009+	90	40	258	92	348	132
2010+	169	41	179	140	348	181
2011+	138	42	154	118	292	160
2012+	152	38	165	101	317	139

^o These figures are rounded
+ represents two Commissioners
* represents three Commissioners



Figure 4.1 Legal aid assistance for advice at tribunals

The Northern Ireland Legal Services Commission (NILSC) indicates that legal advice and assistance is claimed by solicitors for the provision of advice and assistance in respect of three tribunals, namely:

- Mental Health Tribunals
- Employment Tribunals
- Social Security Tribunals

The tables below illustrate the volume of reports and payments made for these areas in the last 4 financial years and year to date figures for 2012/2013.

2009/2010

Case Types	Full Report Volume	Payments Made	Average Costs
Mental Health Review Tribunal	23	£2,242.98	£97.52
Tribunals - Employment	16	£2,066.24	£129.14
Tribunals - Social Security Agency	67	£8,769.86	£130.89
Total	106	£13,079.08	£123.39

2010/2011

Case Types	Full Report Volume	Payments Made	Average Costs
Mental Health Review Tribunal	37	£3,156.02	£85.30
Tribunals - Employment	31	£3,962.89	£127.84
Tribunals - Social Security Agency	87	£15,815.26	£181.78
Total	155	£22,934.17	£147.96

2011/2012

Case Types	Full Report Volume	Payments Made	Average Costs
Mental Health Review Tribunal	31	£2,582.83	£83.32
Tribunals - Employment	27	£2,757.17	£102.12
Tribunals - Social Security Agency	65	£9,923.32	£152.67
Total	123	£15,263.32	£124.09

2012/2013 (to 7 March 2013)

Case Types	Full Report Volume	Payments Made	Average Costs
Mental Health Review Tribunal	38	£3,166.48	£83.33
Tribunals - Employment	23	£2,268.61	£98.64
Tribunals - Social Security Agency	37	£5,797.39	£156.69
Total	98	£11,232.48	£114.62

This is not to say that these are the only tribunals in respect of which legal advice and assistance is provided. In law there is no impediment to this scheme to be used to provide advice and assistance for a wide range of tribunals, subject to the statutory tests being satisfied. However, these are the only three tribunals which are specifically named by solicitors. Other areas in respect of which legal advice and assistance is used which may include advice for appearances before tribunals include:

- Special Educational Needs;
- Land Issues;
- Parole; and
- Political Asylum.



APPENDIX 6(A)

Complaints of 'maladministration' against local tribunals investigated by the Northern Ireland Ombudsman

Table 4.6 Complaints of 'maladministration' against local tribunals investigated by the Northern Ireland Ombudsman

Year	Complaints	Outcome
2009/10	2	Not accepted for investigation.
2010/11	4	Not accepted for investigation.
2011/12	0	
2012/13	1	Accepted for investigation (ongoing)

APPENDIX 6(B)

Signposting arrangements of Northern Ireland tribunals

Table 4.7 Signposting arrangements of Northern Ireland tribunals

Name of Tribunal	Signposting	Signposting where injustice is unremedied
Care Tribunal	No	No
Charity Tribunal	No	No
Criminal Injuries Compensation Appeals Panel	No	No
Health and Safety Tribunal	No	No
Lands Tribunal	No	No
Mental Health Review Tribunal	No	No
Northern Ireland Valuation Tribunal	No	No
Traffic Penalty Tribunal	No	No
Tribunal under Schedule 11 07 HPSS (NI) Order 1972	No	No
Social Security and Child Support Commissions	No	No
SENDIST	Yes	No
Appeals Tribunal	Yes	Yes
Rent Assessment Panel	Not clear	No
Pensions Appeal Tribunal	Not clear	No



APPENDIX 7

INCIDENCE OF COMPLAINTS RECEIVED BY THE NORTHERN IRELAND OMBUDSMAN 2009-2013

Table 5.1 Written complaints received by the Ombudsman within jurisdiction

Jurisdiction	2009/2010	2010/2011	2011/2012	2012/2013
Assembly Ombudsman (inc North/South Bodies)	248	208	174	233
Commissioner for Complaints (inc HSC ^o complaints)	352	428	397	435
Totals	600	636	571	668

Written complaints received by the Ombudsman outside jurisdiction

	2009/2010	2010/2011	2011/2012	2012/2013
Complaints outside jurisdiction (AO, CC* & HSC)	81	59	69	74

Overall total amount of written complaints received by the Ombudsman

	2009/2010	2010/2011	2011/2012	2012/2013
Complaints in jurisdiction (AO, CC & HSC)	600	636	571	668
Complaints outside jurisdiction (AO, CC & HSC)	81	59	69	74
Total	681	695	640	742

Table 5.2 Complaints received by the Ombudsman against HSC bodies

	2009/2010	2010/2011	2011/2012	2012/2013
HSC Body	209	237	208	252

Table 5.3 Subject matter of written complaints received by the Ombudsman

Subject Matter	2009/2010	2010/2011	2011/2012	2012/2013
Agriculture	21	8	8	8
Benefits	28	15	10	28
Building Control	3	3	7	-
Child Support	18	11	9	14
Education	16	8	6	12
Employment/Personnel	60	79	102	61
Environment	12	15	17	3
Environmental Health & Cleansing*	8	81	12	-
Health and Social Care	209	186	208	253
Housing	60	59	51	71
Land & Property	-	-	5	-
Miscellaneous	35	54	52	-
Planning	59	41	43	53
Rates	30	23	16	24
Recreation & Leisure	4	22	10	-
Roads	37	31	14	27
Water	-	-	1	-

Table 5.4 Written Complaints Accepted for Investigation

2009/2010	2010/2011	2011/2012	2012/2013
48%	45%	45%	54%

* All complaints were against councils.



Table 5.5 Cases outside jurisdiction

Outside Jurisdiction	2009/2010	2010/2011	2011/2012	2012/2013
Telephone calls from public	1574	1642	828	836
Face to face interviews	3	3	3	5
Written enquiries	81	59	69	74
Totals	1658	1704	900	915

Table 5.6 Favourable outcomes for complainants

Year	% 'determined' cases with 'favourable outcome'
2009/2010	37%
2010/2011	47%
2011/2012	31%
2012/2013	39%

APPENDIX 8

INCIDENCE OF FINANCIAL REDRESS^{^^} IN CASES INVESTIGATED BY THE NORTHERN IRELAND OMBUDSMAN 2009-2013

Table 5.7 Redress in reported cases

	2009/2010	2010/2011	2011/2012	2012/2013
Apology	5	14	14	7
Payment	2	1	3	4
Apology and payment	33	61	24	23
Apology, payment and action by body	-	-	-	8
Apology, payment and production of public information leaflet	-	-	1	-
Apology, payment and review of process	-	2	14	1
Apology and review of action	-	2	-	-
Apology and review of process	-	4	5	2
Apology and action by body	-	-	1 (repairs)	1
Review of process	-	2	1	-
No maladministration	-	1	-	-
Offer of housing transfer	-	1	-	-
Repairs	-	2	-	-
Payment and reimbursement of legal fees	-	1	-	-
Payment and action by body	-	-	-	2
Reassessment of need	-	-	1	-
Settled during investigation	-	-	1	-
Local resolution	-	-	3	1
Report death to Coroner and amend death certificate	-	-	1	-
Protocol established	-	-	1	-
Withdrawal of inspection report	-	-	-	1
Revisit procedures and make guidance available	-	-	-	1
Change of procedure	-	-	-	1
Housing repairs	-	-	-	1
Total	40	92	69	53

^{^^} Ibid at p.11, footnote 21



Table 5.8 Percentage of recommendations made against HSC bodies involving financial redress^{^^}

2009/2010	2010/2011	2011/2012	2012/2013
69%	63%	50%	70%

Table 5.9 Financial redress^{^^} recommended against HSC bodies

	2009/2010 £	2010/2011 £	2011/2012 £	2012/2013 £
Lowest	250	200	150	100
Average	1750	2067	3198	2978
Highest	5000	10000	30000	20000
Total	15750	45472	63950	47650

Table 5.10 Financial redress^{^^} recommended by the Ombudsman against all bodies in jurisdiction

	2009/2010 £	2010/2011 £	2011/2012 £	2012/2013 £
Lowest	150	100	100	100
Average	1910	1874	2051	4017
Highest	5023	20000	30000	45863
Total	66849	121780	86150	152643

APPENDIX 9

NICTS JUDICIAL REVIEW STATISTICS 2009-2012

Judicial Review applications received - 2009-2013

		Type			Total
		Application for leave to apply for judicial review	Application for judicial review	Ancillary applications	
Relief	Mental Health	0	2	0	2
	Immigration	0	16	0	16
	Planning	0	3	0	3
	Prison	0	21	0	21
	Miscellaneous	0	63	0	63
	Discovery	0	0	2	2
	Interim Relief	0	0	1	1
	Leave to apply for Judicial Review	268	0	0	268
	Total	268	105	3	376



Judicial review applications disposed – 2009

Type		Granted	Withdrawn	Refused	Dismissed	Other	Total
Application for leave to apply for judicial review	Leave to apply for Judicial Review	76	65	50	1	29	221
	Miscellaneous	0	0	0	0	2	2
	Total	76	65	50	1	31	223
Application for judicial review	Mental Health	1	1	0	0	0	2
	Immigration	3	3	0	8	3	17
	Planning	1	1	0	1	1	4
	Prison	5	2	0	9	4	20
	Inquests	0	0	0	0	1	1
	Legal Aid						
	Department	0	0	0	0	1	1
	Miscellaneous	9	3	0	26	17	55
	Total	19	10	0	44	27	100
Ancillary applications	Discovery	0	0	0	0	1	1
	Interim Relief	0	0	0	0	1	1
	Total	0	0	0	0	2	2
Total	Mental Health	1	1	0	0	0	2
	Immigration	3	3	0	8	3	17
	Planning	1	1	0	1	1	4
	Prison	5	2	0	9	4	20
	Inquests	0	0	0	0	1	1
	Legal Aid						
	Department	0	0	0	0	1	1
	Miscellaneous	9	3	0	26	17	55
	Discovery	0	0	0	0	1	1
	Interim Relief	0	0	0	0	1	1
	Leave to apply for Judicial Review	76	65	50	1	29	221
	Miscellaneous	0	0	0	0	2	2
	Total	95	75	50	45	60	325

Judicial Review applications received – 2010

		Type			Total
		Application for leave to apply for judicial review	Application for judicial review	Ancillary applications	
Relief	Mental Health	0	1	0	1
	Immigration	0	10	0	10
	Housing Executive	0	1	0	1
	Planning	0	2	0	2
	Prison	0	14	0	14
	Inquests	0	1	0	1
	Parades Commission	0	1	0	1
	Trust	0	1	0	1
	Legal Aid Department	0	2	0	2
	Miscellaneous	0	46	0	46
	Discovery	0	0	2	2
	Interim Relief	0	0	1	1
	Leave to apply for Judicial Review	225	0	0	225
	Miscellaneous	9	1	0	10
	Total	234	80	3	317



Judicial Review applications disposed – 2010

Type		Granted	Withdrawn	Refused	Dismissed	Other	Total
Application for leave to apply for judicial review	Leave to apply for Judicial Review	61	47	49	1	49	207
	Miscellaneous	2	0	2	0	2	6
	Total	63	47	51	1	51	213
Application for judicial review	Immigration	0	5	0	2	9	16
	Planning	0	1	0	0	1	2
	Prison	3	6	0	8	4	21
	Inquests	0	0	0	1	0	1
	Parades Commission	0	0	0	1	0	1
	Firearms Certificate	0	0	0	0	1	1
	Miscellaneous	10	8	0	21	11	50
	Total	13	20	0	33	26	92
Ancillary applications	Interim Relief	0	0	0	0	1	1
	Total	0	0	0	0	1	1
Total	Immigration	0	5	0	2	9	16
	Planning	0	1	0	0	1	2
	Prison	3	6	0	8	4	21
	Inquests	0	0	0	1	0	1
	Parades Commission	0	0	0	1	0	1
	Firearms Certificate	0	0	0	0	1	1
	Miscellaneous	10	8	0	21	11	50
	Interim Relief	0	0	0	0	1	1
	Leave to apply for Judicial Review	61	47	49	1	49	207
	Miscellaneous	2	0	2	0	2	6
	Total	76	67	51	34	78	306

Judicial Review - applications received 2011

		Type			Total
		Application for leave to apply for judicial review	Application for judicial review	Ancillary applications	
Relief	Immigration	0	7	0	7
	Housing Executive	0	1	0	1
	Planning	0	5	0	5
	Prison	0	15	0	15
	Inquests	0	1	0	1
	Legal Aid Department	0	2	0	2
	Schools Transfer Procedure	0	1	0	1
	Miscellaneous	0	84	0	84
	Discovery	0	0	1	1
	Interim Relief	0	0	1	1
	Leave to apply for Judicial Review	227	0	0	227
	Miscellaneous	18	0	0	18
	Set Aside Leave	2	0	0	2
	Total	247	116	2	365



Judicial Review applications disposed – 2011

Type		Disposal			Total
		Granted	Withdrawn/ Refused/ Dismissed	Other	
Application for leave to apply for judicial review	Leave to apply for judicial review	95	65	25	185
	Miscellaneous	5	2	4	11
	Set Aside Leave	0	0	1	1
	Total	100	67	30	197
Application for judicial review	Mental Health	0	0	1	1
	Immigration	1	10	0	11
	Housing Executive	0	3	0	3
	Planning	2	0	0	2
	Prison	3	5	3	11
	Inquests	0	1	0	1
	Trust	0	0	1	1
	Legal Aid Department	1	1	0	2
	Schools Transfer Procedure	0	0	1	1
	Miscellaneous	13	26	17	56
	Total	20	46	23	89
Ancillary applications	Discovery			1	1
	Total			1	1

Judicial Review applications received – 2012 (Provisional Figures)

		Type			Total
		Application for leave to apply for judicial review	Application for judicial review	Ancillary applications	
Relief	Mental Health	0	2	0	2
	Immigration	0	12	0	12
	Planning	0	3	0	3
	Prison	0	6	0	6
	Inquests	0	2	0	2
	Firearms Certificate	0	1	0	1
	Legal Aid Department	0	2	0	2
	Miscellaneous	0	80	0	80
	Discovery	0	0	2	2
	Leave to apply for judicial review	277	0	0	277
	Leave to take oral evidence	1	0	0	1
	Miscellaneous	18	0	0	18
	Set aside leave	2	0	0	2
	Total	298	108	2	408



Judicial Review applications disposed – 2012 (Provisional Figures)

Type		Disposal			Total
		Granted	Withdrawn/ Refused/ Dismissed	Other	
Application for leave to apply for judicial review	Leave to apply for judicial review	103	80	37	220
	Miscellaneous	3	0	7	10
	Total	106	80	44	230
Application for judicial review	Mental Health	0	1	1	2
	Immigration	0	11	3	14
	Planning	0	3	1	4
	Prison	1	4	4	9
	Firearms Certificate	0	1	0	1
	Legal Aid Department	1	0	1	2
	Miscellaneous	7	35	16	58
	Total	9	55	26	90
Ancillary applications	Discovery		1	1	2
	Total		1	1	2
Total	Mental Health	0	1	1	2
	Immigration	0	11	3	14
	Planning	0	3	1	4
	Prison	1	4	4	9
	Firearms Certificate	0	1	0	1
	Legal Aid Department	1	0	1	2
	Miscellaneous	7	35	16	58
	Discovery	0	1	1	2
	Leave to apply for judicial review	103	80	37	220
	Miscellaneous	3	0	7	10
	Total	115	136	71	322

APPENDIX 10

DATA ON REPORTED JUDICIAL REVIEW JUDGMENTS 2009-2012

Table 6.4 The public bodies and issues being challenged

Body/legislation challenged	2009	2010	2011	2012
Adoption (NI) Order 1987	-	-	-	1
Belfast Health and Social Care Trust	-	1	-	-
Belfast International Airport – Aviation Security Act 1982	-	-	-	1
Board of Governors	-	-	2	-
Coroner	3	3	1	
Council of Advertising Standards Agency	-	-	1	-
Criminal Injuries Compensation Appeal Panel	1	-	1	1
Department of Agriculture and Rural Development	1	-	1	1
Department of Health Social Services and Public Safety	1	1	2	-
Department of the Environment	1	-	-	-
Director of Public Prosecutions	-	1	-	-
Director of Public Prosecutions and Public Prosecution Service (joint application)	-	1	-	-
District Judge	-	1	1	-
Down District Council	-	1	-	-
Education and Library Board	-	-	-	2
First Minister and deputy First Minister for Northern Ireland	1	-	-	-
Health Trust (unnamed)	-	-	1	-
Immigration and Asylum Chamber	-	-	-	1
Judicial Committee of the Law Society of Northern Ireland	1	-	-	-
Justice and Security (Northern Ireland) Act 2007	-	-	-	1



Table 6.4 The public bodies and issues being challenged (continued)

Body/legislation challenged	2009	2010	2011	2012
Law Society of Northern Ireland and Northern Ireland Legal Services Commission	-	-	-	1
Lough Neagh Fishermen's Cooperative Society	-	1	-	-
Mental Health Review Tribunal	1	1	1	-
Minister for Education and Departmental Officials	-	-	1	-
Minister of the Department of Justice	-	-	1	-
Minister of the Department of Health Social Services and Public Safety	-	-	-	1
Minister of Justice for England and Wales	-	-	-	1
Minister of State and Secretary of State – Limited Home Protection Scheme	1	-	-	-
Minister of State and Secretary of State – Royal Prerogative of Mercy	-	1	-	-
Minister of the Department for Social Development	1	-	-	-
Minister of the Department of the Environment	-	1	-	-
National Referral Mechanism	-	-	-	1
Northern Health and Social Services Trust and Belfast Health and Social Services Trust	1	-	-	-
Northern Health and Social Care Trust	-	-	-	2
Northern Ireland Commissioner for Complaints	-	-	-	1
Northern Ireland Courts and Tribunals Service	1	-	-	-
Northern Ireland Housing Executive	-	-	1	-
Northern Ireland Legal Services Commission	-	1	1	3
Northern Ireland Local Government Officers' Superannuation Committee	-	-	-	2

Table 6.4 The public bodies and issues being challenged (continued)

Body/legislation challenged	2009	2010	2011	2012
Northern Ireland Prison Service	4	9	4	3
Northern Ireland Prison Service and Police Service of Northern Ireland (PSNI)	-	1	-	-
Parole Commissioners (replaced the Life Sentence Review Commissioners)	3	2	2	2
Planning Appeals Commission	4	-	-	-
Planning Service (Department of the Environment)	1	3	2	1
Police Ombudsman for Northern Ireland	-	-	1	1
Police Service Northern Ireland Reserve (Injury Benefit) Regulations 2006	-	1	-	-
Police Service of Northern Ireland	4	4	4	4
PSNI and Northern Ireland Courts and Tribunals Service	-	-	1	-
PSNI and Northern Ireland Policing Board	-	-	1	-
PSNI and North West Regional College	-	-	1	-
PSNI and Public Prosecution Service	-	-	-	1
PSNI and South Eastern Health and Social Care Trust	-	1	-	-
Public Prosecution Service	-	-	-	1
Secretary of State for Northern Ireland – Criminal Damage (Northern Ireland) Order 1977	1	-	-	-
Secretary of State for Northern Ireland – criminal injury compensation	-	1	-	-
Secretary of State for Northern Ireland – Criminal Justice Act 1988	1	-	-	-
Secretary of State for Northern Ireland – Firearms (Northern Ireland) Order 2004	-	1	-	-
Secretary of State for Northern Ireland – Immigration and Asylum Act 1999	-	1	-	-



Table 6.4 The public bodies and issues being challenged (continued)

Body/legislation challenged	2009	2010	2011	2012
Secretary of State for Northern Ireland – Life Sentences (Northern Ireland) Order 2001	1	-	-	-
Secretary of State for Northern Ireland – Northern Ireland Sentences Act 1998	-	1	-	-
Secretary of State for Northern Ireland – Royal Prerogative of Mercy	-	-	-	1
Secretary of State for Northern Ireland and the Northern Ireland Public Protection Panel	-	-	1	-
Smoking (Northern Ireland) Order 1996	-	1	-	-
Social Security Agency and Social Fund Commissioner	-	1	-	-
South Eastern Health and Social Care Trust	-	-	1	-
Sports Council for Northern Ireland	1	-	-	-
Terrorism Act 2000	1	-	1	-
The Solicitors' Disciplinary Tribunal	-	1	-	-
Trafficking Convention	-	-	1	-
UK Border Agency	2	5	3	1
Veterinary Medicines Directorate	-	1	-	-
Western Health and Social Care Trust	-	1	1	1
Unclear – the nature of these applications could not be determined	2	1	-	-
Total	39	50	39	36

Table 6.5 The outcome of judicial review applications

Outcome	2009	2010	2011	2012
Dismissed/refused/rejected	23	29	20	18
Granted	8	19	18	17
Referred back to body for reconsideration	5	-	-	-
Partially granted	1	1	1	1
Unclear – the outcome of these applications could not be determined	2	1	-	-
Total	39	50	39	36

Table 6.6 Types and incidence of remedy

Remedy	2009	2010	2011	2012
Certiorari	3	6	12	4
Certiorari and declaratory relief combined	-	-	2	2
Certiorari and matter referred back to body for reconsideration	1	-	-	1
Court indicated relief still to be addressed	2	1	3	4
Damages*	-	-	-	-
Declaratory relief	2	7	1	2
Order of Mandamus	-	-	-	2
No further order for relief required by Court	-	-	-	2
Unclear – remedy could not be determined**	1	6	1	1
Total	9	20	19	18

* On examination of the material provided there proved to be a number of instances in which the Court directed that a further hearing was required in order to determine the appropriate award of damages. As a result, the nil record in the 'Damages' column in the table may not accurately reflect awards of damages granted following successful judicial review applications since these may have been determined at a later date.

** This category is indicative of applications whereby the remedy granted in a successful judicial review application could not be determined from the material provided.



Table 6.7 Court of Appeal applications

Court of Appeal applications brought by original applicant in judicial review proceeding				
Outcome	2009	2010	2011	2012
Decision quashed	-	-	1	-
Decision quashed and damages awarded	-	-	1	-
Decision quashed and referred back to body for reconsideration	-	-	1	-
Declaratory relief	1	-	-	-
Dismissed	9	8	7	3
Granted	-	-	-	1
Remitted to a lower court (Crown Court)	-	-	-	2
Unclear	-	3	-	-
Sub total	10	11	10	6

Court of Appeal applications brought by respondent body in judicial review proceeding				
Outcome	2009	2010	2011	2012
Dismissed	-	-	-	1
Partially successful	1	-	-	1
Successful - decision of lower court set aside	1	-	-	-
Successful - declaratory relief	-	-	1	-
Sub total	2	0	1	2
Overall total	12	11	11	8



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Mapping the Administrative Justice Landscape in Northern Ireland

Report on research undertaken on the Administrative Justice System in Northern Ireland

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