

Civil Justice Policy and Legislation branch
Access to Justice Directorate
Massey House
Stormont Estate
Belfast
BT4 3SX

10 April 2013

Dear Sirs

Future Administration and Structure of Tribunals in Northern Ireland

I write in response to the above consultation.

As you will be aware, my office was set up by statute with the primary aim of safeguarding and promoting the rights and best interests of children and young people. I have a number of statutory duties including keeping under review law, practice and services which relate to children and young people.

I wish to broadly welcome the proposals contained in your Consultative Document. Any proposals which result in a more efficient, faster, transparent and user friendly experience for users of the various Tribunals are to be encouraged.

My office has primarily been involved with users of the Special Educational Needs and Disability Tribunal. However, we have also heard the experiences of users of the Mental Health Review Tribunal. We understand that for users the process can be a daunting and stressful experience.

Regarding the specific proposals we broadly agree with the proposals to establish a new Appeals Tribunal. However, we would wish to be assured that this combined approach will not cause any further delay to cases coming before the Tribunal. In relation to the Judicial Structures proposed, we have no specific comments to make save that we welcome the designation of the Lord Chief Justice as head of the Tribunal Judiciary and the responsibility being vested in him for the efficient disposal of business through the Tribunal.

We further agree with the proposal that cases on a point of law should normally be heard by a legal member sitting alone. However, in Paragraph 3.17 it is proposed



that “in cases involving questions that are reasonably straightforward, such as those where issues of fact can be analysed within a settled framework of law, legal members should be able to sit and determine the appeal alone”. While we broadly agree with this, we would caution that there are cases where often seemingly simple factual cases can benefit from the practical experience and guidance of lay members. We feel that this is particularly so in relation to the SENDIST where issues of provision are concerned.

In relation to the Tribunal encouraging the use of alternative dispute resolution procedures we would broadly welcome this with the caveat that there should be no compulsion on Applicants to engage in ADR and further that there should be no prejudicial delay or costs associated with same. We note that the Department intends to put a mechanism in place to allow it to assess the success rate of the current ADR in the SENDIST framework. We would be very interested in seeing such data in due course.

Regarding the Review and Appeals mechanism we would be keen to ensure that any current appeal rights would not be eroded in any way. Further we would suggest that in Paragraph 3.38 it would be prudent to give the Tribunal the power to direct a full re-hearing of the case before a differently constituted panel.

We are keen that when new Tribunal rules are being drafted that they are consulted on as widely as possible with users of the service.

In relation to the advisory body, again we would be keen that it is made up of a wide variety of users and other disciplines.

One further point that we would wish to raise at this stage relates to the SENDIST. NICCY has been calling on the Minister for Education, via the SEN and Inclusion Review, to extend the right of appeal to the SENDIST to the child as an applicant. We understand from him that he is awaiting the outcome of a pilot in England and Wales before determining the issue¹. Clearly, if the right of appeal is extended to the child this will have further impacts on the current proposals. We would ask that you keep this possibility in mind when moving forward.

¹ see paragraph 23(c)(ii) of http://www.deni.gov.uk/minister_s_presentation_to_education_committee_-_website_version.pdf.)

We trust that this assists and we look forward to hearing from you.

Yours faithfully

A handwritten signature in cursive script that reads "Patricia Lewsley-Mooney". The signature is written in black ink and is positioned above the printed name.

Patricia Lewsley-Mooney
Commissioner