



Justice Committee

Oral evidence: [The work of the Administrative Justice Forum](#),
HC 313

Tuesday 15 July 2014

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Members present: Sir Alan Beith (Chair); Steve Brine; Mr Robert Buckland; Rehman Chishti; Jeremy Corbyn; Mr Elfyn Llwyd; Andy McDonald; and John McDonnell

Questions 1–53

Witness: **Ms Jodi Berg OBE**, Chair, Administrative Justice Forum, gave evidence.

Q1 Chair: I welcome Jodi Berg to this session. Thank you for agreeing to come and talk to us. No one has any interest to declare relative to the area you are responsible for. You chair an advisory body that has had so many names that I wonder whether you can remember what it is at the moment. We are having difficulty remembering.

Ms Berg: As it stands, it is the Administrative Justice Forum.

Q2 Chair: For many of us, of course, it goes back historically to the Council on Tribunals, notably chaired for many years by our late colleague Tony Newton. In those early years, and prior to him, it did a lot to establish the judicial character and independence of the tribunal system. Do you think that the structure you are now presiding over is able to carry out the functions that the predecessor bodies performed?

Ms Berg: It is fair to say that we do not have the same statutory authority, as you will understand. Actually, we do not have the same remit. For example, the Council on Tribunals, followed by the Administrative Justice and Tribunals Council, had the authority to visit tribunals—and did so regularly. It was able to engage in academic studies and to ensure that work was done in the field to advise it of the help it could give in the administrative justice area. So it had a wider reach.

It also had a wider membership. A number of you may know that I was a member of the Administrative Justice and Tribunals Council—and was very proud to be so. I was as sad as anybody when abolition came along. Having said that, I am a natural pragmatist. We have to look to the future, rather than to the past. The forum has an opportunity to engage with Government perhaps slightly differently from the way in which the AJTC did—and, hopefully, more closely than the AJTC did. It also has a chance to concentrate on some

important areas of administrative justice and to try to make a real difference. There are things we can do that we share in common with the AJTC. On the other hand, I do not think our reach is as wide.

Q3 Chair: There are two different views one could take on the system of courts that grew out of tribunals. One is that these are essentially fact-finding bodies that were designed to conduct themselves in a different way from courts of law and that if they get too like the High Court they are defeating the purpose, because it becomes expensive and necessary to have representation—all those problems arise. It is therefore appropriate to recognise that they are different and have a different structure. There is a rival view that says, “The family division does not have a council. The chancery division does not have a council. Why do you have to have some special structure?” Where do you fall in that range?

Ms Berg: Since the AJTC—and, subsequently, the AJF—came along, our focus has been wider than simply tribunals. We are able to look across the whole of the system, to see where the joins should be and where there are gaps, and to think about how things are working on the front line. That is why the AJTC published its very worthy document “Right First Time.” We are able to do that as well within the forum. The informality of tribunals is extremely important for users, but we need to think about how tribunals can work more closely with other parts of the system, such as ombudsmen and courts, to see how users can be best served in a system that, as far as most people are concerned, is really rather a maze. While the Council on Tribunals did some very worthy work in the early days, it is right that we now concentrate more widely on the whole of the system to see how it fits together.

Q4 Steve Brine: Hello. Thanks very much for coming in. You know that the Committee held an inquiry into the abolition of the AJTC, one of your former incarnations. We will come on to some of the things that it said, but could you tell the Committee what your main priorities are as the chair?

Ms Berg: My role within the forum is to bring together people who can make a contribution to speaking about administrative justice and to advising Government—that is to say, people from the advice sector. We have now brought in people from the judiciary and people from different parts of Government as well, so that everybody can sit together and discuss how we can make inroads into the administrative justice system.

My priorities, I think, are not terribly different from the ones that the AJTC had. We are picking on the bigger subjects—subjects like feedback and how that works throughout the system, and proportionality and how you can make the system work better, more swiftly and more fairly for people in different parts of it. Another subject is the disconnect within the system, which I mentioned earlier, between courts, ombudsmen and tribunals, and how we can try to make those disparate organisations work together more closely. In its “Putting it Right” document, the AJTC had pretty much the same priorities. I am pleased to say that the Ministry of Justice, too, has adopted those priorities. We are all singing from the same hymn sheet.

Q5 Steve Brine: Marvellous—what a happy family.

Ms Berg: Not necessarily.

Q6 Steve Brine: I was tempting you into saying that. One of the things the report said was that AJF was a “poorly planned afterthought”—which was rather unkind, but there you go. Do you think you have a credible and influential voice?

Ms Berg: The first thing to say is that there was a great deal of discontent at the beginning. The Chair has mentioned the change of name. When I became the chair, I thought it was important to set down some ground rules for how this was going to work. It is right to say that there was a credibility gap at the beginning. People were very unhappy about the abolition of the AJTC, were very worried about a new organisation that might seem to be the creature of the MOJ and were simply not interested in engaging because of that. What has happened subsequently is that we have changed the name, yes, but the focus as well. I have been able to persuade people that we will act in an independent way and will bring an independent voice to these issues. As a result of that, we now have on the forum some influential voices within the system who can make a difference and who, frankly, would not be there if they thought they were wasting their time.

Q7 Steve Brine: Linked to that, how have you as chair found engagement with Ministers? Are you consulted on policy and legislative proposals? Could you give us an example of where Ministers have taken your advice and it has caused them to reconsider?

Ms Berg: It is very early days. You will understand that we had our first round-table event only recently. Our plan from that is to write to the Minister to give our advice and to follow that up with a meeting. As chair, I am promised meetings with the Secretary of State. If I were to need more meetings than are currently planned, I would ask for them. It is interesting to note that when I was appointed I was asked to go and see the Secretary of State, which shows some interest in the role of the forum and the work we are going to do. I was pleased to do that. We will carry on in that way.

Q8 Mr Llwyd: Good morning, Ms Berg; it is nice to see you again. When the AJTC was effectively abolished, it made several suggestions to the successor body—the one that came after it but before your body was set up. For example, it said that the AJF should meet more than twice a year—ideally at least every quarter—at the discretion of the chair, that minutes of the AJF’s meetings should be published and that the MOJ should routinely ask for views on policy and legislative proposals, including those from other Government Departments and so on. It made quite a few rather important points. Given that the AJTC met on a monthly basis, should the AJF be meeting more often than it currently is?

Ms Berg: Actually, it is meeting more than twice a year. We are meeting several times a year and are having sub-committee meetings as well. We have decided that the best way forward is to have just a few meetings a year—it has been working out at two or three—that are main decision-making meetings. On the other hand, we are having other meetings—you were kind enough to attend our round-table event—that are taking a deeper dive into certain issues, so that we can provide the right advice, and helpful advice, to the MOJ about how to take forward some of our strategic aims. So we are doing what the AJTC suggested was the right thing. It was very helpful for this Committee to say that there should be an independent chair and for the AJTC to feel the same way, because that has galvanised everybody who is working with the AJF to think that we can make a real difference here. We are concentrating on doing that.

Q9 Mr Llwyd: On the issue of publishing minutes—

Ms Berg: We do.

Mr Llwyd: You do that, do you? Do you have an online presence? In other words, do you have a website at all?

Ms Berg: We do. It is part of the general website, and if you google us you will find that we are the first organisation that comes up. When we changed the name, one of the concerns that we had was that the initials of the original advisory group put you to a different website. What we get now is a direct link to the AJF, which is very helpful. Yes, we do publish minutes, and we do intend to keep people informed about what we are doing and what progress we are making.

Q10 Mr Llwyd: I know it is early days, but to what extent does your body now set its own agenda? How much is driven by responding to Government proposals or initiatives?

Ms Berg: Again, there is a real difference between the original advisory group and the new forum. With the original advisory group, people just arrived, waited for what MOJ officials had to ask and responded to various questions. The AJF is intent on setting its own agenda and making sure that we address all of those issues that we think are important within the system and where we can make the most difference.

Q11 Mr Llwyd: Going back to your previous answer about the publishing of minutes, I think I am right in saying that minutes are available upon request. Is that right?

Ms Berg: No; minutes are published on the system. I believe they are available on the system.

Q12 Mr Llwyd: According to the instructions I have here on the website, the page states that minutes of meetings will be made available upon request—therefore not routinely.

Ms Berg: I will look into that and make sure that they are on the system.

Q13 Mr Llwyd: Does a lack of your own budget constrain your activities? In particular, would there be a benefit to your having access to funds in order to commission research, given that, presumably, there is a gap here following the abolition of the AJTC, which had a specific research agenda?

Ms Berg: The answer to that is that it is a blessing and curse. It is a blessing because I do not have to worry about funding—that is the MOJ's role. My role is simply to say what is needed—to advise what is needed and what work needs to be done, and to expect the MOJ to respond in a positive way to the suggestions that are made. It is true that we do not have a research budget. The curse is that we cannot decide off our own bat that a piece of research is necessary and engage academics to carry out that research. On the other hand, we can press for research to be done in particular areas if we think it is important.

Q14 Mr Llwyd: What do you say to the view that the law relating to tribunals—in particular, employment tribunals and the various kinds of social security tribunals—has now become so complex that somebody needs to take stock and say, “Look, let's go back to where we were initially. It was meant to be a fast-track, simple procedure”? When I was a law student, “Harvey on Industrial Relations” was one single volume. Now it is four or five tomes—and that is just on employment law. Is the whole thing spinning out of control? Do you have a view on that?

Ms Berg: I do. I agree with you that the law is extremely complex. It is very difficult for users to find their way around the law without advice. As advice becomes more difficult to get, that creates problems as well. You have to see the system holistically. We have to start from saying that administrative justice is about giving people their rights and entitlements and making sure they understand what those rights and entitlements are. Very often the way in which legislation and rules are drafted does not help with that effort. When we draft legislation and rules, we need to think more carefully about how we can make this

information more user-friendly. If we cannot do it within those documents, we have to find other ways of making that information user-friendly.

Q15 John McDonnell: On the research point, has the research you have asked for from the MOJ been delivered, or have any requests been declined?

Ms Berg: We have not asked for any research yet. We are still in the process of thinking about what is necessary. Coming out of our event on feedback mechanisms, we may well be asking the MOJ to carry out some research with other Departments.

Q16 Mr Llwyd: I have one final question, Ms Berg, if I may. What input, if any, did the AJF provide into the first annual performance report on administrative justice that was published by the MOJ in June?

Ms Berg: We gave some information about the work we were doing. We have engaged with the particular part of the Department we are working with, which has fed into some of what it says there. Some of the priorities that are picked out in the report are priorities we at the AJF have said we will concentrate on. Those are the issues I have mentioned—feedback, proportionality and the disconnect within the system, and how we can make that better. All of those things are in the report, as well as signposting, to which we have just alluded. It is very important that people understand their rights and how to access them.

Q17 Andy McDonald: Good morning, Ms Berg. Can I ask you about Scotland and Wales? The abolition of the AJTC resulted in the Scottish and Welsh committees going; there are now some non-statutory committees performing those functions. How have the recent changes impacted upon the oversight of administrative justice in Scotland and Wales, particularly in respect of reserved matters such as social security and immigration?

Ms Berg: You will understand that, as well as having its component parts, the AJTC worked as a conglomerate whole. It was able to think about what was happening in different parts of the system and to see where the gaps were arising. When the advisory group was first formed, it had no representation from the devolved Administrations. Since then I have become chair. I have successfully invited colleagues from Wales, Scotland and Northern Ireland to join the advisory group—the forum. We are now in a position where we have representatives on the committee not only from the devolved Administrations but also from the new, reincarnated AJTCs in those areas. We are in the process of setting up a small subgroup so that we, the chairs of those committees, can think about the issues across the piece and see where there are any problems. While we do not have the same authority to do that, we have managed in a sensible way to get everybody together so that we as a forum can look at issues across the piece, rather than leave them in different areas.

Q18 Andy McDonald: Does that mean there is sufficient information exchange and co-operation between you?

Ms Berg: We are certainly doing that. There is a lot of co-operation and good will between us all to make sure that we share information, yes.

Q19 John McDonnell: I turn to the social security and child support tribunal. We have had concerns expressed to us about delays within the system. We are aware that a lot of those relate to ESA cases and that action is being taken to try to resolve some of them. Even if that is successful, there is a continuing concern that there may be systematic problems

within the system. What is your view on the efficiency and effectiveness of the processes related to this tribunal?

Ms Berg: First, I should tell you that for many years I was what is called the independent case examiner for the DWP, dealing with complaints about the Child Support Agency, Jobcentre Plus, the Pension Service and so on, so I have a long-term interest in those issues. There have always been problems within the system.

What I would say about the situation today is that, as you know, there is now a mandatory reconsideration within the Department, which is in itself a good thing. In itself, it is part of a proportionate response to resolving issues—complaints and potential appeals—and would potentially be very helpful. The difficulty we have at the moment is that we do not know how long that is taking. There is no set time that it should take. There are a number of issues with that part of the system that we need to keep an eye on. I know that the DWP itself is looking at what is happening within the system—how many cases are going to mandatory reconsideration, how long they are lasting and so on—and will be reporting back by the end of the year. The forum is certainly intent on keeping an eye on that.

As far as the tribunals are concerned, as you may know, there has been a drop-off in the number of appeals that are being received. There could be a whole range of reasons for that. On the positive side, it could be that mandatory reconsideration is doing what it ought to do—resolving complaints and appeals and sorting things out for people at an earlier stage, without their having to go to a tribunal. That would be all to the good. On the other hand, it could be that there are simply delays in the system and there is an avalanche waiting to come. I do not think we know—the jury is out. The forum will certainly be keeping an eye on that.

The tribunal is taking slightly longer to complete cases at the moment. It is taking an average of 21 weeks, compared with around 18 weeks previously. We have the benefit of having on the forum the head of HMCTS, who tells us that they are dealing with the older casework. From my days as an independent case examiner, I know that if you take the old cases they will take you longer because they are more difficult, and, as time has gone on, problems have multiplied. Whatever the problem was at the beginning, it has been exacerbated by what has gone on along the way. Inevitably, those cases are taking the tribunal longer to sort out, but it is dealing with the oldest cases first. As I understand it, the hope is that, once that is done, it will be able to reduce the time to 16 weeks. Again, that is something for the forum to keep an eye on. I do not think we are quite sure what is going on yet.

Q20 John McDonnell: On the mandatory reconsideration issue, in his evidence to the Work and Pensions Select Committee, Robert Martin, the president of the Social Entitlement Chamber, said there could be an unintended consequence of deterring appellants from coming forward. Have you a view on that?

Ms Berg: There are always good and bad things about putting in place what you might think to be helpful ways of resolving complaints and disputes, and making people jump through hoops. In the simplest cases, you might think that the simplest way of resolving things is to get them into the tribunal tomorrow. The answer is obvious; they will give you an obvious answer and that will be the end of it. In reality, we have to welcome the fact that a Department wants to try to sort out its own problems before somebody has to go to external help, either through a tribunal or through an ombudsman, and in the majority of cases that seems to be working at the moment. We have to keep an eye on whether or not

it is a deterrent to make people jump through yet another hoop, because people can give up. There is no doubt that you can get appellant and complainant fatigue if you are made to go through too many processes. I agree with Robert Martin that that is a worry.

Q21 John McDonnell: You will be looking at that.

Ms Berg: Absolutely.

Q22 John McDonnell: One of the issues that came up in a petition that we received and that resulted in a delay was a lack of attendance of presenting officers from the DWP. Has that issue been resolved?

Ms Berg: It is a long-term problem. As far as I am aware, it has not yet been resolved. Again, that is something we will keep an eye on. The senior president of tribunals now attends the forum, which is very helpful. He has the opportunity to talk to us about problems that he and his colleagues are facing within the system and to ask us to take a particular look at certain issues. That is not one he has mentioned at the moment.

Q23 John McDonnell: Is that a staffing resource issue within DWP or the appropriate level of qualification of case officers?

Ms Berg: I really couldn't tell you—I really don't know. It has been a long-term problem in the tribunal, I do know that.

Q24 John McDonnell: Is it something you will be looking at again?

Ms Berg: Absolutely.

Q25 John McDonnell: What is your assessment of the success of the trial for tribunal judges to provide summary reasons to enable the DWP better to understand why decisions are upheld or overturned?

Ms Berg: The first thing to say about that is that I know it is absolutely right for tribunal judges to give summary reasons—or, indeed, reasons. If you are going to come to a judgment, it seems to me to be fair and just—and simply common sense—to tell people why you are coming to that decision. There is very little point in just making the decision if nobody knows why you have reached that view. That is the first thing I would say. That is absolutely the right thing to do, and I know the senior president is of the same view.

The next thing to say is that the forum has had some success in this area. When we had our recent round-table event, which Mr Llwyd attended, the judges who were there—and there were a number of them—were very upset that they had been giving information to the DWP through summary reasons and had had no response.

John McDonnell: No feedback.

Ms Berg: No feedback. Of course, feedback is not just about my telling you—it is about what you say in response to me and how I know that what I have told you has made a difference. The judges were really rather disparaging about that.

We had at the event a representative of the DWP who was heading up that area of work. She was able to reassure them about how seriously the DWP is taking it and to describe the research that it has put into looking at all of the summary reasons that have been provided. She then gave a commitment to feed back in more detail to the judiciary in

response to the summary reasons that are being provided, once the DWP has had a chance to analyse all of that information and to see what systemic issues are arising out of it.

That was a very helpful way of bringing people together so that there was better communication and they understood one another. A lot more confidence was given to the judges about giving their summary reasons, so, hopefully, that will continue. It is absolutely necessary. There was a big problem when the tribunals were not doing that. You will know that ombudsmen and independent complaint reviewers give lengthy reasons as a matter of course, because we want people to learn from the mistakes that are being made. If you do not give reasons, that cannot happen.

Q26 John McDonnell: So will your forum be the conduit for dialogue?

Ms Berg: It has already been a conduit for dialogue, but I cannot tell you that it will be the conduit for dialogue—they ought to be talking to each other.

Q27 Mr Llwyd: Having attended the round-table meeting you referred to earlier, I was there when the judges expressed concerns about nothing happening when they identified not so much complaints as things they were concerned about. You have said that the DWP representative will respond directly to them, which is fine, but, overall, what will be the AJF's response—your response as a body—to what was heard that day?

Ms Berg: As part and parcel of the rounded advice that we are going to give about feedback, we will certainly say not only that the tribunals, ombudsmen and other parts of the system should give information to Departments but that it is equally important that they should respond in a meaningful way, so that everybody understands what action is being taken in response to the lessons that are being learned.

Q28 John McDonnell: Here is an uncontroversial question. Has the AJF done an assessment of the civil legal aid changes and their impact on the tribunal, particularly with regard to the preparation of cases?

Ms Berg: No, we have not.

Q29 John McDonnell: Are you going to?

Ms Berg: We are certainly engaged in thinking about it. How much—

Chair: You are thinking about it.

Ms Berg: We are certainly thinking about it. The legal aid changes are obviously a concern. I said earlier that advice is important. We have on the forum representatives of the advice sector. They are very keen to tell us what difference it makes if people cannot get the help they need up front to explain to them what steps they need to take to get things put right. I think the jury is out. We need to see what differences will be made and to make sure that the forum gets sufficient information so that we can make some sensible comment about that.

Q30 John McDonnell: This has been a controversial area, but the information or comments that we receive relate particularly to the preparation of cases and the importance of legal aid in that process. Will you be looking at that? How will you look at that?

Ms Berg: Advice is certainly important. I would rather say that we will be keen to know what steps are being taken within Departments and by the advice sector to try to meet the needs of users. Where there are gaps, we will certainly be keen to point those out.

Q31 Chair: Isn't the reality that the jury is no longer out? The decision has been taken and the system is there. That has two consequences. You have just referred to one, which is that Departments really need to get their act together and should be making fewer challengeable decisions, to get things right first time. If they do not get things right first time, some of the costs should fall on them, so that the financial incentive is with those who are causing the problem. Secondly—this did not emerge from your previous answer—doesn't the system of administrative justice have to respond to the fact that it will not have legally advised complainants in front of it to the extent that it used to? Doesn't it have to take that into account in the way that it deals with people in the system?

Ms Berg: What has been said is that, if people do not get the right advice, a number of things can flow from that. One of them is that they have a tendency to bring unmeritorious claims, which can clog up the system, because they do not know that what has happened to them might actually be the right thing or they do not know how properly to challenge the system. There are concerns where people are not getting the right advice. The forum is not yet sure what effect those changes have had overall, because we do not have sufficient information to say and do not yet know the outcome for people. We will be keeping an eye on that. We are certainly engaged in the forum in trying to ensure that the right advice is there in the right parts of the system, whether that is legally aided advice or other advice.

Q32 Chair: By that, do you mean court officers giving people more guidance before they bring their cases?

Ms Berg: It is helpful for there to be advice within every part of the system. It is helpful for there to be more advice within Departments and agencies, to help people along the way. It is helpful for there to be more advice within the tribunal service and helpful for more advice to be given by independent complaint reviewers and ombudsmen, to ensure that people understand what their rights are.

Q33 Mr Llwyd: Can I ask one question? It relates to something I have come across time and time again—the quality of the medical evidence presented. I have seen a case involving a young lad who was in the forces, had lost a leg and an arm and allegedly could walk the necessary 100 metres in about world-record time. I have seen so many of these appeals that, literally, I do them in bundles of six. It is not because I like doing them—it is because somebody has to do them, to be honest. It is all to do with the medical officer ticking the inappropriate boxes each time. Have you come across that, because I have seen a lot of it?

Ms Berg: I certainly came across it in my days as an independent case examiner. There was said by complainants to be a lot of unfairness in the system. As the forum, we have not carried out any particular research into that area, but we are certainly aware of the problems that there have been in the past with medical evidence and, indeed, with, I guess, some of the criteria. If you can lift one arm, it does not necessarily mean that you are able to carry out a job of work. Those things always need to be thought about very carefully. That is not particularly an area of work for the forum to get engaged in, as you will understand, but on a personal basis I think those things are very important.

Q34 John McDonnell: I am sorry to take you back to the legal aid issue, but various representations have been made to individual MPs as well as to the Committee about the impact of the changes. A lot of it is anecdotal rather than qualitative or quantitative information. Is this an area where the forum could suggest to the MOJ that it would like research to be commissioned?

Ms Berg: Yes, it is. It is certainly something we can think about. I am happy to take that back, to put it to my colleagues on the forum and to see whether it is one of those areas we might want to advise about.

Q35 John McDonnell: One issue related to that is the increase in the number of litigants in person and the consequences that has for the tribunal process.

Ms Berg: Yes—that is absolutely right. Of course, those cases are more difficult for the tribunal to deal with as well. They take longer. People do not necessarily understand how they are meant to be taking things forward. They do their best, but it is not always good enough, because they do not know what information they need to give to the tribunal to win the day. I agree that advice is an issue.

Q36 John McDonnell: If the forum could venture to provide an independent and objective assessment of those issues, it could play a vital role.

Ms Berg: We will certainly take that away.

Q37 Mr Buckland: Can I move on to the immigration and asylum tribunal situation? We know that the Crime and Courts Act has now removed the bar on the transfer of about 9,000 cases potentially, at the last count, to the upper tribunal. What is your view on the current efficiency of the immigration and asylum tribunal and on the effect of this transfer of a wide range of immigration and asylum judicial reviews?

Ms Berg: Mr Buckland, I am sorry to say that the forum has not concentrated on that area yet and I do not have a particular view on it. It is an area where we know we need to do some work. You all know that we are only a few months old, so it is very early days. It is an area we will be looking at, but I really cannot give you any meaningful answer today.

Q38 Mr Buckland: I see. It is a substantial number. The big arguments about JR and its expansion have been predicated mainly upon the expansion in the number of immigration cases.

Ms Berg: Yes.

Q39 Mr Buckland: I do not know whether you have had a chance to take a view on the change by secondary legislation of the tribunal's requirement to notify appellants of failed asylum appeals. I do not know whether you have formed a view on that. If you have not, is there a role for the forum in doing that?

Ms Berg: We have not formed a view as yet. I know about the change in the legislation and that the Home Office is now informed up front of decisions, and I know the reasons why that change was brought in, but the forum has not yet formed a view on it. It would be unreasonable and unfair of me to give a personal view in those circumstances. Again, I will take that away and come back to you, if you would like me to.

Q40 Mr Buckland: Thank you. The last Lord Chief Justice, Lord Judge, expressed his concerns about what he described as “unmeritorious” applications for immigration and asylum appeal and their impact on the system. Does the forum have a view on those comments and the general impact and efficiency of the tribunal in this area?

Ms Berg: There are two sides of this coin. We certainly have a view on the impact of unmeritorious complaints and appeals on the system, and the fact that they take up time and resource and make it longer for everybody else. On the other hand, we have an

alternative view, which is that they are unmeritorious only when you know that they are unmeritorious. There are in-built rights for people to take issues to tribunals and, indeed, to ombudsmen if they think that they have been mistreated by the system.

As I say, it is two sides of a coin. It is very difficult to know where the balance lies for fairness and justice. We should make sure that people have the opportunity, when they think it is right, to take matters to appeal—and, indeed, to JR, if they need to. On the other hand, I can understand from a system point of view how difficult it is if you feel that the system is clogged up by a number of cases that should not have been there in the first place.

Q41 Mr Buckland: I want to explore the reasons why we are at this stage. You have not come to a view on these particular issues. Is that because there has been a question of priorities that you have been exercising in the forum and you have not yet had the resource to come to these issues?

Ms Berg: That is right.

Mr Buckland: That is simply what it is, is it?

Ms Berg: That is right. We have decided to pick on a number of what I would call big-agenda issues, which are concentrated not, in fairness, on any particular part of the system but on the system as a whole. We thought that our first forays into this field should be about trying to make some real systemic differences. For example, the feedback event was trying to engage with the MOJ and the whole of the system about this issue of feedback—where is it given, what is the response of Departments, how can we make a difference across all Departments, and what should the MOJ be doing with other Departments to make sure that they have got the systems in place to feed back to others? That was a big issue. We are intending to carry that forward. For example, should tribunals automatically give feedback of a systemic nature, and where should that come from? Should it come from the office of the senior president? All of those are big issues.

The next one is the disconnect between the different component parts of the system. Let me give you an example. We have talked about the DWP. If I am a DWP user, I am in receipt of benefit and I have a problem, invariably my problem with the DWP will be multi-faceted. I will not like a decision that has been made. At the same time, I will also be very unhappy with the way I have been treated—with the delays, the problems, the things that have been said to me and the difficulties that have arisen along the way. However, I am not allowed to bring that holistic problem to anyone in particular.

If I want to make an appeal against a decision, I have to get on the appeal route train. If I want to complain about process, I have to get on the ombudsman route. There need to be ways in which the different parts of this system speak to one another—ways in which I as an individual user can have my complaint and appeal dealt with holistically, so that at the end of the day there is not going to be some of it, inevitably, that just has not been addressed. That is another big issue we need to think about.

Q42 Mr Buckland: This all sounds a bit like the crock of gold at the end of the rainbow.

Ms Berg: It is AJTC's agenda as well.

Q43 Mr Buckland: I entirely agree with you, but can your forum help us get there? I absolutely share your view, but will you be able to make the difference? Do you have the power to do that?

Ms Berg: I think we can. We have engagement from the MOJ, from the senior president of tribunals and from HMCTS. I think we can make some inroads into these big questions, yes, and we are intent on doing that.

Mr Buckland: I wish you luck.

Ms Berg: Thank you.

Q44 Chair: Going back to Mr Buckland's earlier question, did the MOJ consult you when it made the change about informing appellants to immigration tribunals?

Ms Berg: No.

Q45 Jeremy Corbyn: When you do an examination of how this system works, could I invite you to start at the beginning of it, rather than at the appeal stage? My experience as a constituency MP dealing with a large number of immigration cases is that, frequently, the Home Office does not bother to turn up for the hearing and then submits an appeal at the last minute, which is then rejected. Then the individual concerned is not given a formal decision for months—if not, in some cases, for years. The misery that comes from that is quite serious. I suspect that some of the problems that we are experiencing further down the scale, which Mr Buckland talked about, emanate from the sheer inefficiency of the Home Office in the first place in presenting its case to immigration appeals.

Ms Berg: I would not argue with that. A lot of the problems that arise within administrative justice generally can and should be avoided. It is all part of the "Right First Time" agenda. Departments and agencies should think more carefully about their role and about helping people. Let me put it this way. If we were more intent on allowing people their rights and making sure that people get what they are entitled to, rather than making sure that the unmeritorious do not get what they are not entitled to, we would be better off.

Q46 Jeremy Corbyn: The other area I invite you to look at is the problems of representation on immigration cases. In my experience—you might care to look into this—because of legal aid changes many get no advice whatsoever. We are seeing a return of overcharging, unqualified immigration advisers, who then misrepresent people at hearings, which then end up—very expensively—at an appeal. That may well be a quite meritorious appeal, but because the whole thing has been so incompetently handled by, in a sense, the lack of representation and the Home Office further back down the line, we end up with a great deal of cost to the public purse in order to rectify a wrong that should never have occurred in the first place. That is an area I really would invite you to examine.

Ms Berg: Again, it is a subject I will take back to the forum, Mr Corbyn.

Chair: We have a final question from Mr McDonnell.

Q47 John McDonnell: I concur completely with Mr Corbyn's remarks. Even though we have introduced the immigration commissioner to supervise this whole area, the abysmal advice at the beginning of a case is leading to very unfortunate consequences. As you are

venturing into immigration and asylum tribunal issues, we and the Home Affairs Committee have received a report from a voluntary organisation—a charity—working with detainees emphasising the issue with regard to appeals around rule 35. Rule 35 is where an assessment is made of whether the detainee is either a victim of torture or should be released from detention on medical grounds. Concerns have been expressed about the number of cases that were referred on rule 35 but where release was not secured. There are issues there about the appeal process. I invite you to look at that matter as you venture into this whole area.

Ms Berg: Thank you, yes; I will take that away.

Q48 Steve Brine: I know that you look at complaints from members of the public in respect of the National Archives.

Ms Berg: Yes—with another hat on entirely.

Steve Brine: With another hat on entirely, because you are the ICR, aren't you?

Ms Berg: That is right.

Q49 Steve Brine: We visited them a couple of weeks ago and had a conversation with them about digital archiving and the coming issue of the right to be forgotten. I wonder whether that has come across your desk.

Ms Berg: No.

Q50 Steve Brine: You are aware of the conversations around Google, googling people and people wanting the right to be forgotten.

Ms Berg: Yes.

Q51 Steve Brine: A number of people in the current reshuffle are currently being forgotten; there are so many in this room, too.

Ms Berg: That is not for me to comment on, Mr Brine.

Steve Brine: No, clearly not. What you are saying is that that has not come across your desk yet.

Ms Berg: No, it has not.

Steve Brine: That is interesting. Thank you—I just wanted to ask.

Q52 Chair: We do not usually send people away with a to-do list such as we have just given to you.

Ms Berg: We have a lot to do—not just the things you have asked us to do, but, indeed, a lot of other things as well. I am very happy to have that list.

Jeremy Corbyn: Chair, could we ask Jodi to come back at a later stage?

Q53 Chair: I was going to say that if, on reflection, there are points you either discover more about when you go back to the office or would like to add to, by all means let us know. It may be that at a later stage we will ask you to come in again.

Ms Berg: I would be very happy to do that. We have a shared interest in the improvement of administrative justice across the piece. The interest that the Committee has shown is also key to helping the forum to have an impact in this important area, so I would be very happy to come back to talk to you again and to tell you about progress as time goes on.

Chair: Thank you very much indeed. That, I am afraid, ends our public session. The Committee has business to do in its private session, which will follow immediately. Ms Berg, thank you very much indeed.