

Confidential Filing

possible transfer of responsibility
for VAT Tribunals from Customs &
Excise to Lord Chancellor.
Departmental Responsibility
for Tribunals.

GOVERNMENTMACHINERYApril 1985

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
3.4.85							
12.4.85							
26.4.85							
13/5/85							
10.1.86							
11.1.86							
24.1.86							
31.1.86							
20.2.86							
4.12.86							

PREM 19/1777

FROM THE PRIVATE SECRETARY



HOUSE OF LORDS,
LONDON SW1A 0PW

4 December 1986

Nigel Wicks Esq
Principal Private Secretary to
the Right Honourable The
Prime Minister
10 Downing Street
LONDON
SW1

nbpm

See Nigel, 5/12

Consultation with the Council on Tribunals

You wrote to me on 14 January 1986 about decisions which had been taken by the Prime Minister concerning departmental responsibility for tribunals.

The Prime Minister's decisions had no bearing on the long-standing arrangements governing the relationship between Departments and the Council on Tribunals, whose statutory and other advisory functions were not affected by the Prime Minister's decisions.

In order to clarify the position, the Council have asked us to re-circulate the Code for Consultation with the Council which appeared as an Appendix to the Council's Annual Report for 1981-82. The Code was agreed by the Lord Chancellor and the Lord Advocate, following consultation with interested Departments, and the Lord Chancellor wrote to the Lord Privy Seal on 3 August 1982 enclosing a copy of the Code.

I am therefore coping this letter to those on the attached list (which reflects the distribution of the Lord Chancellor's letter of 3 August 1982) so that they can again draw the Code to the attention of those in their respective Departments concerned directly with Tribunals, Public Inquiries and other matters in which the Council may have an interest. For convenience, I enclose for this purpose a copy of the Lord Chancellor's letter of 3 August 1982 and of the Code itself.

/I understand

I understand that, following a recent meeting between the Lord Advocate and the Scottish Committee of the Council on Tribunals, officials in the Scottish Courts Administration arranged for the Code to be re-circulated to the Scottish Departments of the Secretary of State and within the Scottish Courts Administration itself. The SCA regard the circulation of the Code to Scottish Offices within UK Departments to be the responsibility of those Departments.

Yours ever,

Richard

Richard Stoate

S W Boys Smith Esq	Principal Private Secretary to the Home Secretary
A C S Allan Esq	Principal Private Secretary to the Chancellor of the Exchequer
A C Galsworthy CMG	Principal Private Secretary to the Secretary of State for Foreign and Commonwealth Affairs
R L Smith Esq	Principal Private Secretary to the Secretary of State for Education and Science
D J Watkins Esq	Private Secretary to the Secretary of State for Northern Ireland
J Howe Esq OBE	Private Secretary to the Secretary of State for Defence
C I Llewelyn Esq	Private Secretary to the Minister of Agriculture, Fisheries and Food
R N Young Esq	Private Secretary to the Secretary of State for the Environment
R C Williams Esq	Private Secretary to the Secretary of State for Wales
T E H Walker Esq	Principal Private Secretary to the Secretary of State for Trade and Industry
R A Allan Esq	Private Secretary to the Secretary of State for Transport
A Lawrence Esq	Principal Private Secretary to the Secretary of State for Social Services
G S Dart Esq	Private Secretary to the Secretary of State for Energy
J Turner Esq	Principal Private Secretary to the Secretary of State for Employment
T Woolley Esq	Private Secretary to the Cabinet Secretary
M Saunders Esq	Legal Secretary to the Attorney General (for information)
A G Maxwell Esq	Private Secretary to the Lord Advocate (for information)



HOUSE OF LORDS,
SW1A 0PW

3 August, 1982

Consultation with the Council on Tribunals

The Council on Tribunals is an independent statutory body whose main function is to supervise the procedures of administrative tribunals and statutory inquiries and you may recall that in 1980 the Council submitted a Special Report on its own Functions (Cmnd.7805) to the Lord Advocate and myself.

Consultation by Government Departments with the Council on proposed primary and subordinate legislation was one of the topics discussed in the Functions Report and the Report recommended that a Code be introduced to regulate such consultation. The Government's response to this proposal was given in a Written Answer to a Parliamentary Question from Lord Tweedsmuir, as follows:-

"The Government also accept that it may often be helpful and appropriate for departments to consult the Council about draft primary legislation affecting matters within their field. Although there is no need for a formal code governing consultation between the Council and departments, the possibility of introducing informal guidelines should be examined."

(Hansard, House of Lords, 27th April 1981, vol.419, cols.1118-9).

The Right Honourable
The Baroness Young,
The Lord Privy Seal,
Management and Personnel Office,
Whitehall,
London, SW1.

/I....

I enclose a copy of the Code for consultation which the Council has now prepared and which has been agreed by Departments at official level. I am happy to commend it to you. It provides a useful reminder of the circumstances in which consultation with the Council is, if not mandatory, at least desirable. You will see that it draws attention (at the instance of the MPO) to the desirability of consulting the Council in relation to proposed legislation which, though not mentioning appeal procedures, should perhaps do so because the rights of the citizen are affected and a system for redress may be needed. The Code then sets out the practical aspects of consultation in a way which will certainly be helpful to officials planning primary and subordinate legislation.

Departments whose responsibilities are such that they are accustomed to seek the Council's advice fairly often will readily appreciate the usefulness of the Code. I am conscious that, in other departments, occasions for consulting the Council may arise only rarely but it is perhaps all the more important that the need for consultation, and how to set about it, should be generally understood. I should be obliged if you and all our colleagues to whom I am sending copies of this letter, would have the Code brought to the attention of those in departments whose responsibilities, whether administrative or legal, mean that they are concerned with matters in which the Council may have an interest.

I am sending copies of this letter and the Code to all Ministers in charge of departments other than the Secretary of State for Scotland, to whom the Lord Advocate will be writing separately. Copies also go to the Attorney General and the Lord Advocate.



Ministers to whom copies of the Lord Chancellor's letter of
3rd August 1982 and the Council on Tribunals' Code for Consultation
have been sent

The Prime Minister (First Lord of the Treasury and Minister for
the Civil Service)

Home Secretary

Chancellor of the Exchequer

Secretary of State, Foreign and Commonwealth Affairs

Secretary of State for Education and Science

Secretary of State for Northern Ireland

Secretary of State for Defence

Ministry of Agriculture, Fisheries and Food

Secretary of State for the Environment

Secretary of State for Wales

Secretary of State for Industry

Secretary of State for Transport

Secretary of State for Social Services

Secretary of State for Energy

Secretary of State for Employment

Secretary of State for Trade

Attorney General

Lord Advocate

Head of the Home Civil Service

Lord Chancellor's Department
House of Lords
Westminster
London SW1

4th August 1982

CODE FOR CONSULTATION WITH THE COUNCIL

Introduction

1. This Code has been prepared by the Council on Tribunals in order to put before Government Departments the considerations which the Council hope Departments will bear in mind when seeking the Council's views on proposals for new primary and subordinate legislation.

Matters for consultation

2. Under section 10 of the Tribunals and Inquiries Act 1971 (as amended) no power of a Minister, the Lord President of the Court of Session, the Commissioners of Inland Revenue or the Commissioners of Customs and Excise to make, approve, confirm or concur in procedural rules for certain tribunals is exercisable except after consultation with the Council; such rules usually state that such consultation has taken place. The tribunals concerned are referred to in this Code as "scheduled tribunals" (see paragraph 8 below for an explanation). Similarly, the Lord Chancellor and the Lord Advocate are under a statutory obligation to consult the Council with regard to procedural rules for statutory inquiries.

3. Consultation on proposals for primary legislation affecting scheduled tribunals or statutory inquiries, or on other rules for statutory inquiries, is not mandatory, but usually takes place and is welcomed by the Council. Consultation is also desirable about any proposals for legislation affecting the rights of the citizen, where the need for an appeals procedure may need consideration.

Time allowed for consultation

4. The Council expect that Departments consulting them will always allow them as much time as possible to prepare and submit their comments. This is particularly important when consultation is mandatory and the instrument will mention that such consultation has taken place. The Council suggest that the following should be regarded as the *optimum* times for consultation:

- (a) where proposals are of a routine kind and do not raise major questions of principle: 2 months;
- (b) where proposals involve major issues of principle: 4 months.

5. Where, for unavoidable reasons, consultation has to be completed in a shorter time, the *minimum* periods which will enable the Council to give proper consideration to proposals may be taken to be 4 weeks and 6 weeks respectively. If, in cases of emergency, these minima cannot be adhered to

and an explanation is made to the Council, the Council will certainly use their best endeavours to complete the consultation process in such shorter time as may be necessary.

6. The Council are very conscious of the constraints imposed on Departments by, for example, the Parliamentary time-table. They feel however that, if difficulty is foreseen about meeting these minima, consultation need not be delayed until a full draft of the new legislation has been produced but in suitable cases may be initiated at an earlier stage, perhaps with regard to specific provisions. Indeed, particularly with regard to non-mandatory consultations, it is thought that the best time for consultation is as soon as proposals have taken reasonably firm shape but before Ministers are committed; the Council may be able to suggest means of solving an adjudication problem which may not have occurred to the Department, e.g. by amending the powers of an existing tribunal to enable it to undertake the work.

7. The Council meet monthly and Departments will understand that if a considered decision by the Council is required on any important matter of principle 6 weeks must be regarded as the minimum period for consultation. Where, however, proposals are of a routine nature the views of members of the Council, or of a committee of the Council, may be sought by post; for such consultation 4 weeks must be regarded as the minimum. In cases of real emergency, the Council do not preclude other means of consultation (e.g. by convening a special Council meeting) but they would take into account the cost involved.

What are the "scheduled tribunals"?

8. The tribunals which come within the purview of the Council (referred to in this paper as "scheduled tribunals") are (i) those which are listed in Schedule 1 to the Tribunals and Inquiries Act 1971 (as amended) and (ii) those tribunals which have been named in orders made under section 15 of that Act, directing that Schedule 1 to the Act should have effect as if the Schedule applied to them. The Council will be able to give a view in any case of doubt.

Process of consultation

9. Departments can help the Council to deal more expeditiously with draft rules by supplying 20 copies of them and 20 copies of an explanatory statement. Where proposals for head legislation are concerned, a letter (with, if available, material such as draft clauses or instructions to Parliamentary Counsel or to the Draftsman) will usually suffice.

10. The Council's comments will be submitted in writing. This may be supplemented, if necessary, by further correspondence or in oral discussion with members of the Council or of their staff.

Reporting the results of consultation

11. It is usual for the outcome of consultations between Departments and the Council to be reported in the Council's Annual Report, but in every case

the accuracy of such reports is cleared with the Departments concerned before publication. Where consultation has taken place on a confidential basis, that confidence is of course respected.

12. Where the Council have expressed views on an important question of principle, and if it is intended to make public the fact that the Council have been consulted (especially by a Minister to Parliament), the Council trust that regard will be had to their view that the general tenor of their advice should be stated at that time.

Summary

13. It will be seen from the above that the Council attach great importance to the following points:—

- (a) the allowance of adequate time to formulate advice in each case (paragraphs 4 to 7);
- (b) the provision of information and background necessary for full consideration of the issues (paragraph 9);
- (c) the discussion of points of difference in appropriate cases (paragraph 10); and
- (d) the disclosure of the Council's views on important questions of principle (paragraph 12).

FROM THE PRIVATE SECRETARY



HOUSE OF LORDS.

LONDON SW1A 0PW

20th February, 1986

MANAGEMENT IN CONFIDENCE

Sir Robin Ibbs,
70 Whitehall,
London,
SW1.

CP *all*
- paper please.
Met 28/2

NBPM

Dear Sir Robin,

Departmental Responsibility for Tribunals

Mark Addison wrote to me on 31st January suggesting that the Efficiency Unit and the Lord Chancellor's Department should consider the way forward in the light of the suggestion that a decision on any scrutiny of tribunals management should be deferred but that meanwhile some targets for unit costs per case might be drawn up.

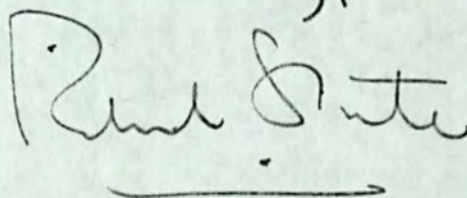
Officials here are unclear about the form of the targets you have apparently proposed, or their application. Your suggestion seems to apply to tribunals other than those administered by the Lord Chancellor. Is it the intention therefore to suggest that a general formula be devised for use in all tribunals, or would you envisage separate arrangements on a tribunal-by-tribunal basis? Certainly any information available about, say, Industrial Tribunals is unlikely to be instructive if compared directly with similar unit cost information from another Tribunal since the kinds of work involved in cases in the two tribunals will be of a different order. This point was recognised in paragraph 22 of the paper prepared by MPO's Machinery of Government Division.

In any event, while it should be possible to devise a general indicator to reflect a unit cost in each tribunal operation, the information likely to be required to provide a sensible target figure for that indicator would probably only be available in each of the tribunals' sponsoring Departments - and it is not certain that such information is collected in all cases. Of course, as is recognised in the MPO paper, tribunals are NDPB's subject to regular reviews which should include such considerations as unit costs and specific targets. But we are not clear how the targets you are now proposing would relate to these reviews, nor what arrangements for monitoring are envisaged.

/...

We would find it helpful, therefore, if you could elaborate in these respects on the suggestion, to which Mark Addison referred, of drawing up targets for unit costs per case. In the light of that information a meeting, perhaps also drawing in MPO interests, might be fruitful. I suggest, however, that detailed consideration of this might best be carried forward at official level, keeping No.10 informed as appropriate. If you agree, perhaps one of your people could respond in the first instance to David Staff who is our contact point on tribunal matters and who incidentally was involved in the preparation of the MPO paper on Departmental responsibility. He is based in Neville House, Page Street, London, SW1 4LS.

I am copying this letter to Mark Addison (No.10) and to Michael Stark (MPO).

Yours sincerely,


Richard Stoa

Transfer of resp. for VAT Tribunals:
Gov MAch. April 85.

MANAGEMENT IN CONFIDENCE



SLHA12

cc CO
Sir R. Ibbs.

10 DOWNING STREET

From the Private Secretary

31 January 1986

DEPARTMENTAL RESPONSIBILITY FOR TRIBUNALS

You copied your letter to Sir Robin Ibbs of 27 January to Nigel Wicks here.

Sir Robin Ibbs has subsequently written to us noting the heavy workload facing the Efficiency Unit at present, and drawing attention in particular to the two major scrutinies now under way, in conjunction with your own department, on escorting prisoners and legal aid. Sir Robin suggests that a decision on a scrutiny should not be taken until the middle of this year. Meanwhile he suggests that some targets for unit costs per case might be drawn up.

BF | In view of Sir Robin's comments, and of the points you make in your letter, I think the best course would be for you and the Efficiency Unit to consider the right way forward, and to let me know the conclusions you reach.

I am copying this letter to Sir Robin Ibbs and Michael Stark (Cabinet Office).

MARK ADDISON

Richard Stoate, Esq.,
Lord Chancellor's Office

MANAGEMENT IN CONFIDENCE

SRW

Transfer of resp. for VAT Tribunals:
Gov MAch. April 85.

MANAGEMENT IN CONFIDENCE



SLHAIZ

cc CO
Sir R. Ibbs.

10 DOWNING STREET

From the Private Secretary

31 January 1986

DEPARTMENTAL RESPONSIBILITY FOR TRIBUNALS

You copied your letter to Sir Robin Ibbs of 27 January to Nigel Wicks here.

Sir Robin Ibbs has subsequently written to us noting the heavy workload facing the Efficiency Unit at present, and drawing attention in particular to the two major scrutinies now under way, in conjunction with your own department, on escorting prisoners and legal aid. Sir Robin suggests that a decision on a scrutiny should not be taken until the middle of this year. Meanwhile he suggests that some targets for unit costs per case might be drawn up.

BF | In view of Sir Robin's comments, and of the points you make in your letter, I think the best course would be for you and the Efficiency Unit to consider the right way forward, and to let me know the conclusions you reach.

I am copying this letter to Sir Robin Ibbs and Michael Stark (Cabinet Office).

MARK ADDISON

Richard Stoate, Esq.,
Lord Chancellor's Office

MANAGEMENT IN CONFIDENCE

SRW

JS10RI22

MR WICKS

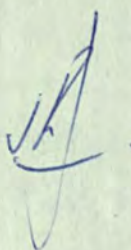
DEPARTMENTAL RESPONSIBILITY FOR TRIBUNALS

Your minute of 14 January asked for my views on the suggestion for a comparative study of Tribunal management. It may be possible to improve the speed with which cases are handled. The figures in the paper suggest that there is scope for improvement in the cost per case handled though the absolute level of savings will probably be small.

The practical question is the priority such a study should be given. My immediate concern is the current heavy demand on the very limited resources of the Efficiency Unit. In addition to a great deal of other work we are already engaged with the Lord Chancellor's Department on two much larger and politically sensitive topics on which scrutinies are just starting: escorting prisoners between prisons and courts, and what can be done to control the rapidly growing costs of legal aid. Until these are completed neither we, nor, I believe, they could find proper resources for a comparative study of Tribunal management.

I recommend that a decision on whether to mount such a study should be deferred until mid-year. In the meantime the Lord Chancellor's Department should arrange to set the management of the various Tribunals targets to get down the unit cost per case handled. This seems to me to be something they might do under normal management arrangements now that you have given them responsibility for the central co-ordination of Tribunals. The Efficiency Unit would be pleased to give some guidance on the setting of these targets.

I am sending a copy of this minute to Robert Armstrong.



ROBIN IBBS

30 January 1986

Mr. Wicks o.r.
R. A. Adams

GOVT MACH: VAT Tribunda: April 85.



FROM THE PRIVATE SECRETARY



W Addini

HOUSE OF LORDS.

LONDON SW1A 0PW

27th January, 1986

MANAGEMENT IN CONFIDENCE

Sir Robin Ibbs,
70 Whitehall,
London,
SW1.

nbpm

Dear Sir Robin,

Departmental Responsibility for Tribunals

The Lord Chancellor has seen a copy of Nigel Wicks' minute to you of 14th January seeking your views on the suggestion that there should be a comparative study of tribunal management under the auspices of the Efficiency Unit.

The Lord Chancellor has asked me to let you know that, while he understands the point made in the MPO paper, he would prefer that before any decision is taken on the possible scrutiny his officials should first have an opportunity to consider, in consultation with other Departments as necessary, the implications of the Report's proposals for tribunal transfers, having regard, among other things, to any perceived efficiency considerations for the transfer of a particular tribunal. His experience of the four tribunals for which he presently has administrative responsibility, and the four reviews so far undertaken (all of which have considered the scope for improvements in efficiency and effectiveness) is that circumstances vary to such an extent that at this stage at least early and detailed reviews by his officials of the working methods of each, and of such indicators of efficiency as the relative cost per case in different tribunals, is preferable to a wider-ranging and thus less specifically directed scrutiny.

I am copying this letter to Nigel Wicks (No.10) and Michael Stark (MPO).

Yours Sincerely,
Richard Stoa

Richard Stoa

FROM THE PRIVATE SECRETARY

RU Adelin



HOUSE OF LORDS,
LONDON SW1A 0PW

MANAGEMENT-IN CONFIDENCE

24th January, 1986

Nigel Wicks Esq.,
Principal Private Secretary to
The Right Honourable
The Prime Minister,
10 Downing Street,
London,
SW1.

MSX

Dear Nigel,

Departmental Responsibility for Tribunals

Thank you for your letter of 14th January.

We have noted the Prime Minister's decisions.

Yours sincerely,
Richard

Richard Stoate

GOVT MACH 4/85

HOUSE OF LORDS
LONDON SW1Y 0AH

VAT TRIBUNAL





10 DOWNING STREET

From the Principal Private Secretary

14 January 1986

DEPARTMENTAL RESPONSIBILITY FOR TRIBUNALS

The Prime Minister has decided that the Lord Chancellor should take further responsibility for central co-ordination of tribunal questions in England and Wales, and that his Department should develop its role of providing advice and guidance to other Departments and considering all proposals to create new tribunals (in line with the Guide for Departments on non-Departmental Public Bodies). Corresponding responsibilities for Scotland should be exercised by the Lord Advocate and the Secretary of State for Scotland, acting in conjunction and in association with the Lord Chancellor.

The Prime Minister will continue to decide the allocation of administrative responsibility for individual tribunals on a case by case basis. She has asked that your Department in liaison with MPO should keep under review the extent to which there is likely to be benefit in transferring administrative responsibility for particular tribunals to LCD (as has been done for the Social Security Commissioners, Special Commissioners of Income Tax and VAT Tribunals), in consultation with other Departments as appropriate. She has suggested that the general line in response to any questions on your Department's responsibility for tribunals might be as follows:

"The Lord Chancellor has responsibility within Government for developing central co-ordination of tribunal questions in England and Wales, and in association with him the Lord Advocate and Secretary of State exercise corresponding responsibility in Scotland. Where in particular cases there are good reasons for doing so, the Lord Chancellor's Department also exercises administrative responsibilities in relation to individual tribunals."

I am copying this letter to Robert Gordon (Scottish Office) and Iain Jack (Lord Advocate's Office); also to Private

Secretaries to all Ministerial Heads of Departments, in order that their Departments are aware of the need to consult yours on tribunal issues, and to Michael Stark (Cabinet Office).

(N. L. WICKS)

R. C. Stoate, Esq.,
Lord Chancellor's Office.

cc Cab off
Lord
Chancellor
✓

10 DOWNING STREET

*From the Principal Private Secretary*SIR ROBIN IBBS

DEPARTMENTAL RESPONSIBILITY FOR TRIBUNALS

BF | I attach copies of a paper on this topic recently considered by the Prime Minister, and of my letter to Departments recording her decisions on it. She would be grateful for your views on the suggestion at paragraph 25 of the paper that there should be a comparative study of tribunal management, perhaps under Efficiency Unit auspices. This might consider tribunal management in more than one Department, and seek to identify best practice for general application.

I am copying this minute to Mr. Stark (Cabinet Office) and to Mr. Stoate (Lord Chancellor's Office).

N. L. WICKS

14 January 1986

PRIME MINISTER

GR
PL type up letters on
drafted.

Nov 14/1

DEPARTMENTAL RESPONSIBILITY FOR TRIBUNALS

You have over the last year or so agreed a number of transfers of responsibility for tribunals from Departments to the Lord Chancellor's Department (viz the Social Security Commissioners, the Special Commissioners of Income Tax and the VAT Tribunals). On the last occasion you asked that a general look should now be given to the question of where administrative responsibility of tribunals should lie.

The Cabinet Office report is at Flag A. Sir Robert Armstrong's covering minute, which summarises the report and recommendations, is at Flag B.

Sir Robert recommends that the Lord Chancellor's Department should gradually take on administrative responsibility for a much wider range of tribunals, and that the Efficiency Unit should have a comparative look at tribunal management, with a view to improving it across the board. The Lord Chancellor and Sir Robin Ibbs are content with the recommendations.

Content with Sir Robert's recommendations and in particular with the line he suggests might be taken in public (paragraph 4 of his minute)? And with the draft Private Secretary minutes to put these recommendations into effect, attached to his covering minute?

MLEA

Mark Addison

10 January 1986

Yes mr

JALAIL

C9 BG

Ref. A086/51

PRIME MINISTER

MS to check that RI is
correct before we submit. PI
check this, there have not been
pub, or 10/1
+ Lord Chancellor's Dept also
commenting.

Departmental Responsibility for Tribunals

In May 1985 you agreed that administrative responsibility for the VAT Tribunals should be transferred from Customs and Excise to the Lord Chancellor's Department (LCD). You asked, however, that before any further transfers of this kind were contemplated, LCD and Machinery of Government Division here should examine the general question of administrative responsibility for tribunals.

--- 2. That work has now been completed, and I attach a paper produced here in consultation with LCD, the Scottish Office and Scottish Courts Administration, and the Treasury. The conclusions at the end of the paper summarise its findings, which in essence are that:

- i. there should be a general presumption in favour of further transfers of administrative responsibility for tribunals to LCD (along the lines of the three approved in the last two years) with a view to increasing tribunals' perceived independence and encouraging efficient management;
- ii. some categories of tribunals are, however, unlikely to be suitable for transfer to LCD; and within the group of potential candidates for transfer there is much to be said in practical terms for a gradual, case by case approach;
- iii. in particular the many policy Departments currently holding responsibilities for tribunals will have



views which will need to be considered case by case, as will the implications for Scotland, where transfers may have less tidy consequences given that there is no Ministerial equivalent to the Lord Chancellor;

- iv. in parallel with specific transfers of responsibility for individual tribunals which may result from such an approach, LCD should develop its role as central co-ordinator on tribunal questions generally - the Council of Tribunals fills this role to a limited extent at present, and the option of extending its powers does not appear attractive.

3. I agree with the general thrust of these findings, which I hope will provide a starting point for your consideration of any future proposals for transfer. I understand that one such proposal - in respect of the immigration Appeal Tribunal and Adjudicators - may come forward from the Home Office before very long. The immigration appeal authorities would be a more substantial block of work for LCD to assimilate than any of the three transfers already approved. If you were to approve that transfer, LCD's capacity to absorb additional tribunal work would probably be fully committed for the next two years (given that the transfer of the VAT Tribunals, effective from 1 April 1986, has also to be assimilated in that period).

4. If you are content with the paper, you may wish Mr Wicks to --- minute along the lines of the attached draft. In line with the paper's recommendation this does not mention a general presumption in favour of transfers to LCD - to do so, certainly in public, would risk pressure for a much more rapid and extensive stream of transfers than the paper suggests would be sensible. The Government will, however, wish to respond if asked about its policy on responsibility for tribunals; I suggest the general line might be:

has responsibility within Government for developing

"The Lord Chancellor ~~is responsible for~~ central co-ordination of tribunal questions in England and Wales, and in association with him the Lord Advocate and Secretary of State exercise corresponding responsibility in Scotland. Where in particular cases there are good reasons for doing so, the Lord Chancellor's Department also exercises administrative responsibilities for individual tribunals."

5. You may also wish Mr Wicks to minute Sir Robin Ibbs along --- the lines of the attached draft, so that the Efficiency Unit can consider the suggestion of a comparative study of tribunal management (paragraph 25 of the paper). Scope for improved management is likely to be one factor in proposals for possible future transfers, and a comparative examination of tribunal management across a number of Departments may also assist the spread of best practice in the considerable numbers of cases where, for the near future at least, changes in Ministerial responsibility appear unlikely.

6. I am sending copies of this minute to the Lord Chancellor, the Secretary of State for Scotland, the Chief Secretary, Treasury and the Lord Advocate.

*RTA's office copy
Sir Robin Ibbs content.*

RA

ROBERT ARMSTRONG

6 January 1986

A

JAN 17 1974

DRAFT
MANAGEMENT - IN CONFIDENCE

R C Stoate, Esq.,
Private Secretary to the Lord Chancellor

DEPARTMENTAL RESPONSIBILITY FOR TRIBUNALS

The Prime Minister has decided that the Lord Chancellor should ^{take further responsibility} ~~be responsible~~ for central co-ordination of tribunal questions in England and Wales, and that his Department should develop its role of providing advice and guidance to other Departments and considering all proposals to create new tribunals (in line with the Guide for Departments on non-Departmental Public Bodies). Corresponding responsibilities for Scotland should be exercised by the Lord Advocate and the Secretary of State for Scotland, acting in conjunction and in association with the Lord Chancellor.

The Prime Minister will continue to decide the allocation of administrative responsibility for individual tribunals on a case by case basis. She has asked that your Department ^{in liaison with MPO should} keep under review the extent to which there is likely to be benefit in transferring administrative responsibility for particular tribunals to LCD (as has been done for the Social Security Commissioners, Special Commissioners of Income Tax and VAT Tribunals), in consultation with other Departments as appropriate. She has suggested that the general line in response to any questions on your Department's responsibility for tribunals might be as follows:

^{has responsibility within Government for developing}

"The Lord Chancellor ~~is responsible for~~ central co-ordination of tribunal questions in England and Wales, and in association with him the Lord Advocate and Secretary of State exercise corresponding responsibility in Scotland. Where in particular cases there are good reasons for doing so, the Lord Chancellor's Department also exercises administrative responsibilities in relation to individual tribunals."

MANAGEMENT - IN CONFIDENCE

I am copying this letter to John Graham (Scottish Office) and Iain Jack (Lord Advocate's Office); also to Private Secretaries to all Ministerial Heads of Departments, in order that their Departments are aware of the need to consult yours on tribunal issues, and to Michael Stark (Cabinet Office).

N L WICKS

ms

DRAFT
MANAGEMENT - IN CONFIDENCE

THANK

Sir Robin Ibbs

letter?

DEPARTMENTAL RESPONSIBILITY FOR TRIBUNALS

I attach copies of a paper on this topic recently considered by the Prime Minister, and of my minute to Departments recording her decisions on it. She would be grateful for your views on the suggestion at paragraph 25 of the paper that there should be a comparative study of tribunal management, perhaps under Efficiency Unit auspices. This might consider tribunal management in more than one Department, and seek to identify best practice for general application.

I am copying this minute to Michael Stark (in Sir Robert Armstrong's office) *and to Richard Stooks (with LC office)*

mr

N L WICKS

MANAGEMENT IN CONFIDENCE

(WP: tribunal)

DEPARTMENTAL RESPONSIBILITIES FOR TRIBUNALS

This paper looks at the case for changes in the present allocation of Departmental responsibilities for tribunals. It covers England, Wales and Scotland but not Northern Ireland, and has been prepared in consultation with officials in the Lord Chancellor's Department (LCD), Scottish Office (SO) and Scottish Courts Administration (SCA), and Treasury.

DEFINITION OF "TRIBUNAL"

2. The term "tribunal" is used here to refer to a range of public bodies (other than the courts themselves) exercising adjudicative functions within the sphere of public administration. The paper covers all tribunals under the supervision of the Council on Tribunals (see paragraph 8 below) plus a few others, such as the Employment Appeal Tribunal, with similar characteristics. It does not cover bodies sometimes referred to as tribunals whose function

- is to advise on the exercise of quasi judicial powers vested not in the body itself but in Ministers (such as persons appointed under the Banking Act 1979, Police Act 1964, Estate Agents Act 1979 or Consumer Credit Act 1974)
- is professional, to regulate and discipline the members of a particular professional or occupational group (such as the General Medical Council or the Solicitors' Disciplinary Tribunal)

MANAGEMENT IN CONFIDENCE

- might be considered part of the executive process (such as DHSS Adjudication Officers, and the Foreign Compensation Commission).

BASIC FACTS AND FIGURES

3. Adjudication by tribunal has increased steadily in recent decades, meeting a need for decision taking processes which are independent of Government but more specialised and usually intended to be cheaper, quicker and less formal than is generally true of the courts. There are some 70 tribunals at present, of which 5 were set up in the last two years - those for Data Protection, Dairy Produce Quotas, Insolvency, Interception of Communications, and Telecommunications. Tribunals disposed of some 325,000 cases in 1983, 99% of them handled by 22 tribunals. The largest single group of cases involved disputes between the citizen and the State, but tribunals also adjudicate on issues where the State is less directly involved and on disputes between individuals. Annexes 1-3 show how the caseloads break down and Annex 4 groups the 22 larger tribunals (those handling more than 1000 cases a year) by type of case. Estimates suggest that tribunals cost about £55m a year to run and use around 2000 staff (Annexes 5 and 6).

4. Tribunals come in various shapes and sizes. Some tribunals have a major workload (the Social Security Appeal Tribunals handle nearly 100,000 cases a year), others have only a handful of cases and some have never even met. Some have UK jurisdiction, others are confined to Great Britain, or to England and Wales or to Scotland. Some tribunals are organised on a UK basis with a single President, others have separate organisations in England and Wales and in Scotland, each with its own President but identical jurisdiction, others still are set up separately in England and Wales and in Scotland and have similar but not identical jurisdiction. Some tribunals have a regional

MANAGEMENT IN CONFIDENCE

structure, others do not. Where there is a regional structure, its form varies from tribunal to tribunal. Procedures and working methods differ also. Some bodies which are treated as tribunals in the Tribunals and Inquiries Act 1971 have in fact a substantial non-tribunal role (eg the Civil Aviation Authority or the Crofters Commission, responsible for general crofting administration in Scotland and the giving of grants and loans, as well as the exercise of tribunal functions). Some tribunal members must be legally qualified, some represent professional or sectional interest, some are appointed at large.

PRESENT RESPONSIBILITIES

5. Present administrative responsibilities for tribunals fall into three categories:

- (i) appointment of tribunal members
- (ii) provision of administrative support (staff, finance and accommodation)
- (iii) the making of rules governing tribunal procedure.

6. In England and Wales these responsibilities are allocated as follows:

- (i) appointments. For Ministerial appointments there are three main types of arrangement. In many cases the Lord Chancellor (or Her Majesty on his advice) makes appointments, but the policy Minister appoints members in a significant number of cases, and for a third group responsibility is shared (typically with the Lord Chancellor appointing Chairmen and/or legally-qualified members and the policy Minister appointing other members).

MANAGEMENT IN CONFIDENCE

In a few cases members are appointed by persons other than Ministers. Annex 7 analyses appointments to tribunals disposing of over 1000 cases a year.

(ii) administrative support. For the vast majority of tribunals, including all those with the largest caseloads, administrative staff are appointed either by the tribunal itself with the consent of the policy Minister (and sometimes the Treasury) or by the policy Minister direct. In practice such staff are usually seconded from and paid by the policy Department. The Lord Chancellor staffs a small group of tribunals and another small group is staffed without direct Ministerial involvement or consent (eg by local authorities). Annex 8 analyses staffing arrangements for tribunals disposing of over 1000 cases a year.

(iii) rules. For the majority of tribunals, including all those with the largest caseloads, the Minister with policy responsibility for the area under adjudication is responsible for procedural rules. In a number of cases however the Lord Chancellor has this responsibility or is required to concur in rules made by another Minister; and his Department has a watching brief where the Council on Tribunals offers advice to policy departments on their own procedural rules. Annex 9 groups tribunals disposing of over 1000 cases a year according to responsibility for procedural rules.

7. In Scotland responsibilities are allocated differently, reflecting the absence of a Scottish equivalent of the Lord Chancellor. Annexes 7-9 note Scottish variations including instances where powers exercised in England and Wales by a Minister, the Lord Chancellor, are exercised in Scotland by a member of the judiciary, the Lord President of the Court of Session.

MANAGEMENT IN CONFIDENCE

8. The Council on Tribunals operates in the UK as a whole, and has a Scottish Committee. The Council was created in response to recommendations in the Franks report on "Administrative Tribunals and Enquiries" (Cmnd 218) of 1957. As proposed by Franks the Council would have had executive as well as advisory powers, for example to appoint tribunal members (not Chairmen), to review remuneration, to advise on the regulation of tribunal clerks' duties and conduct, and to formulate procedural rules. Any proposal to create a new tribunal would have been referred to the Council.

9. In the event the Council was given more limited consultative and advisory powers and no executive role: it has no direct responsibility for appointments, staffing or rules, but has statutory duties to "keep under review the constitution and working" of tribunals, to consider and report on matters referred to it, and to make general recommendations to the appropriate Minister on appointments. It also has a statutory right to be consulted on procedural rules for tribunals.

10. The Council is a quango sponsored by the Lord Chancellor's Department. Its members are appointed by the Lord Chancellor and the Lord Advocate, who also appoints the Council's Scottish Committee. Some but not all of the members are lawyers; the Parliamentary Commissioner for Administration is an ex-officio member of both Council and Committee. The Council's remit extends only to tribunals listed in Schedule 1 to the Tribunals and Inquiries Act 1971; this covers most but not all tribunals - for example Mental Health Review Tribunals are under Council supervision but the corresponding Mental Welfare Commission for Scotland is not, nor is the Employment Appeal Tribunal.

ENGLAND AND WALES

11. Although the Lord Chancellor has carried a number of tribunal

MANAGEMENT IN CONFIDENCE

responsibilities, Government practice has been to allocate the majority of Ministerial responsibilities for tribunals to the policy Minister concerned. In particular policy Ministers have generally been responsible for administrative staffing and procedural rules. Until the end of 1984 LCD had complete administrative charge of only two medium sized tribunals, the Lands Tribunal and Pensions Appeal Tribunals. (Although it can be traced back to 1919, LCD responsibility for the Pensions Appeal Tribunals appears anomalous in relation to the practice of placing Ministerial responsibility with the policy Minister, since the Lord Chancellor does not have policy responsibility for war pensions.)

12. However three machinery of government decisions in the last 18 months have run counter to this approach, by allocating complete administrative charge of the following tribunals to LCD:

- the Social Security Commissioners and the VAT Tribunals, adding responsibility for staffing and procedural rules to the Lord Chancellor's existing responsibility for legal appointments.
- the Special Commissioners of Income Tax, for whom LCD previously had no responsibility but are from 1 January 1985 responsible for legal appointments, staffing and procedural rules.

13. These developments raise the question of whether there is a case for a more general reallocation of responsibilities from policy Ministers to the Lord Chancellor.

CASE FOR CHANGE

14. Three criticisms are made of existing arrangements:

MANAGEMENT IN CONFIDENCE

- (i) the independence of tribunals from Departments with policy responsibility for the matters under adjudication can be called into question where the same Departments appoint tribunal members, make the procedural rules, and provide administrative staff and finance;
- (ii) tribunals are less likely to be efficiently managed where responsibilities for appointments, procedural rules and staffing are split between different Ministers, where tribunal administration is a relatively minor part of the work of a large number of different Departments, and where policy Departments hesitate to manage positively for fear of appearing to interfere in judicial matters; and
- (iii) there is no central focus for policy towards tribunals, resulting for example in no coordination of training for tribunal members.

15. Independence. The Franks report noted that the practice of providing administrative staff from policy Departments was partly responsible for raising doubts about the independence of tribunals from those Departments. Franks rejected the idea of providing all administrative staff from LCD on the grounds that staff would have inadequate career prospects, that LCD (then a very small Department) did not have a sufficient personnel management capacity, and that it would no longer be possible for the social service Departments to give some members of their staff a period of service as clerks of tribunals. The first two arguments have since been overtaken by the creation of the unified courts service under LCD management, containing nearly 10,000 staff under an overall Grade 2 command.

16. Instead Franks sought to reinforce the independence of

MANAGEMENT IN CONFIDENCE

tribunals by a recommendation that when tribunal members retire to reach a decision, administrative staff should join them only if asked to advise on a specific point. This recommendation was accepted in principle subject to consideration of its application to particular cases by the Council on Tribunals.

17. However, concern that tribunals should be seen to be independent of policy Departments has not been entirely allayed by the Franks recommendation. The Annual Reports of the Council on Tribunals frequently refer to the importance of independence. The Home Affairs Committee in its report this June on "Immigration and Nationality" recommended that immigration Adjudicators should be appointed by the Lord Chancellor rather than by the Home Secretary. The committee also noted that the Home Office had had a considerable role in determining the order in which appeals were heard (though the impact of this had reduced with a recent speeding up of appeals generally), and suggested that

"it is undesirable that the Home Office should appear to be so involved in the administration of the appeal system."

18. Independence has been a primary factor in the three recent transfers of responsibility to LCD. In proposing the transfer relating to the Special Commissioners the Chancellor of the Exchequer noted that "there has always been pressure for the Special Commissioners to be seen to be totally independent of the Inland Revenue." Customs and Excise were "uneasy about public acceptance of the independence of the VAT tribunals". Mr Fowler noted that a transfer to LCD would "put beyond doubt" the independence of the Social Security Commissioners from DHSS.

19. The relevance of the independence argument depends on the degree to which the policy Department has or may be perceived as having an interest in cases under adjudication. Annex 4

MANAGEMENT IN CONFIDENCE

indicates that most tribunal cases involve disputes between the citizen and the State where the policy Department is usually a party to the proceedings; in this case the argument for independence from the policy Department is clearest. But where tribunals hear licensing or disciplinary appeals or deal with disputes between one citizen and another, the policy Department does not necessarily have a stake in the outcome of individual cases; to this extent the argument for independence has less force.

20. Efficient Management. In many cases the responsibilities for different aspects of a particular tribunal are divided amongst different Ministers. This inhibits unified management of the resources deployed - chairmen, members, staff and accommodation - so as to achieve a satisfactory service at least cost. The case of the Social Security Commissioners, recently transferred to the Lord Chancellor, bears this out. The Commissioners had been criticised for several years for the excessive time taken to determine appeals, and DHSS' attempts to improve the situation had been hampered because the need to respect the judicial independence of the Commissioners "acted as a barrier to the effective and accountable management of their office." Where a policy Department has administrative responsibilities for a tribunal there can thus be an apparent conflict between efficiency and independence: action by DHSS to improve efficiency might have been perceived as an attempt to influence the Commissioners for policy reasons.

21. The work LCD has done on the tribunals they have already taken over has indicated some scope for improved management. Initial assessment suggested some overmanning and overgrading and poor arrangements for basic administration. LCD's experience in running courts will assist in establishing the scope for improvements in tribunal case handling. And because LCD is familiar with the constitutional position of the judiciary and

MANAGEMENT IN CONFIDENCE

has no policy interest in the matters under adjudication, it will be better placed to act to improve efficiency without being suspected of attempting to influence the outcome of cases, or of having insufficient regard to the need to maintain the quality of adjudication.

22. Annexes 5 and 6 give details of expenditure and staffing for a number of tribunals, and it is clear that there is no simple relationship between the cost of running a tribunal and the number of cases which it handles. Different tribunals hear cases of different complexity. (The Employment Appeal and Transport Tribunals, at the bottom of the cases per staff member column in Annex 6, are both courts of record so might be expected to employ more labour intensive procedures.) And too tight a restraint on resources could impair the ability of tribunals to be seen to provide impartial and competent adjudication. But the wide variations in cost per case and cases per staff member suggested by the Annexes raise a question as to whether tribunal management currently achieves consistent standards of efficiency.

23. The present spread of tribunal responsibilities across a wide number of Departments may also prevent potential economies of scale. In each of the four instances in Annex 5 where two Departments report expenditure on the same kind of tribunal (and the type of case handled can therefore be assumed to be similar) the Department with the smaller number of cases incurred higher expenditure per case. For example DOE spent £205 per Rent Assessment case in England, while the Welsh Office with far fewer cases spent £451 per case. If the 434 Welsh cases could be handled at the same cost per case as cases in England, this would save over £100,000 a year.

24. These four instances involve tribunals with a regional split of expenditure, and there may be wider considerations which justify a regional approach even at some additional cost. But

MANAGEMENT IN CONFIDENCE

they also suggest more generally that there could be economies of scale in rationalising the many small tribunal jurisdictions which currently exist. Some rationalisation occurs at present: in 1984 DHSS merged two existing tribunals to form the new Social Security Appeal Tribunals. But the existence of some 70 different tribunals, over 20 of which have no current workload, raises a question as to whether the existing split of responsibilities facilitates action in all cases where rationalisation would yield benefits.

25. Without further work it is not possible to assess the extent to which the variations suggested by Annexes 5 and 6 reflect

- (i) different levels of efficiency,
- (ii) economies of scale, or
- (iii) differences arising naturally from different types of work done.

This might be analysed by a comparative study of two or three different tribunals under Efficiency Unit or external consultancy auspices. It need not be a wholly additional exercise: as Non-Departmental Public Bodies, tribunals are already subject to reviews following the Prime Minister's announcement of 19 November 1984, and reviews of several tribunals could be combined under comparative terms of reference.

26. No Central Policy Focus. The Council on Tribunals has some opportunity to act as a policy focus on procedural rules by virtue of its statutory right to be consulted on these. However the Council lacks any power to oblige Departments to accept its comment on proposed rules. Indeed the Council's 1983/84 Report repeated its complaint that the statement that it had been consulted was often taken to indicate that it had agreed

MANAGEMENT IN CONFIDENCE

particular rules when in fact it had sought changes, but these had been rejected by the Department concerned. Furthermore in all other areas of policy towards tribunals the Council lacks even a statutory right to be consulted, and its statutory duties (mentioned in para 9 above) are too narrow to give it an effective executive role in policy and management.

27. This means that there has been a lack of coordination on matters such as the creation of new tribunals, and the training of tribunal members. LCD is happy to advise on the creation of new tribunals, but in the past was usually consulted only after the policy Department had decided the issue. The risk is that tribunals may be created without sufficient consideration of what they are to do, the degree of formality appropriate to their work, or whether an existing tribunal or the Courts might be suitable for the job. The new Guide on Non-Departmental Public Bodies reflects this by urging consultation with LCD, as well as the obligatory consultation with the Treasury and MPO, whenever Departments propose to create or extend a tribunal jurisdiction. As regards training, the remit of the Judicial Studies Board has recently been extended to cover all legal tribunal appointments made by the Lord Chancellor, including those where he does not have administrative responsibilities for the tribunal, but there are no similar arrangements for non-legal members.

OPTIONS FOR CHANGE

28. The criticisms of independence, efficiency and lack of policy focus levelled at existing arrangements make a case for change in general terms, while not precluding the possibility that for a particular tribunal other arguments may favour retention of the status quo. The options for change in England and Wales appear to be:

MANAGEMENT IN CONFIDENCE

(a) LCD to take on the role of central coordinator and focal point on tribunal questions, including the further development of its role in scrutinising proposals to create new tribunals;

(b) LCD to take over administrative responsibilities for individual tribunals currently held by policy Departments, plus the central role envisaged in option (a);

(c) policy Departments to take over tribunal responsibilities currently held by LCD, where responsibilities for particular tribunals are at present split between the Lord Chancellor and a policy Minister.

OPTION (a)

29. Option (a), under which LCD would become the central coordinator and focal point on tribunal questions, would have the following advantages:

(i) LCD would be better able to examine proposals to create new tribunals (running at 3 or 4 a year). The new Treasury /MPO Guide on Non-Departmental Public Bodies now calls on Departments to consult LCD on proposals to create new tribunals; giving LCD a coordinating role on tribunal policy should help establish such consultation as standard practice, and strengthen quango scrutiny accordingly.

(ii) LCD would be more clearly established as a central source of information and advice on tribunals, which over time might indirectly yield some gains in consistency and improved management and training;

MANAGEMENT IN CONFIDENCE

(iii) it could be implemented by administrative action, with no requirement for primary or secondary legislation.

30. However, two serious disadvantages would remain:-

(i) because policy Ministers would retain their present responsibilities for appointments, rules and provision of staff, option (a) would do nothing to increase tribunals' perceived independence from policy Departments;

(ii) at best it would have only a limited and indirect effect on management standards, and would not remove the constraint on effective management which results from the divided Ministerial responsibilities for particular tribunals;

31. Other disadvantages of option (a) would be:

(i) some duplication with the consultative role of the Council on Tribunals. This could theoretically be overcome in various ways, but all are open to objection. Abolition of the Council on Tribunals would require primary legislation and would attract widespread opposition, especially as the Council's responsibilities extend beyond tribunals to statutory inquiries. Giving LCD the responsibility to consult the Council might not meet the requirements of Section 10(1) of the Tribunals and Inquiries Act 1971 for consultation between the responsible Department and the Council. The more radical alternative of giving the coordinating responsibility envisaged under option (a) to the Council instead of to LCD would involve the Council, a non-Government body, in consideration of proposals to create new tribunals, and without considerably increased resources the Council is unlikely to be well equipped to tackle wider questions of policy.

(ii) a few additional staff would be required in LCD HQ. LCD would endeavour to look for the number of staff required from efficiencies within its existing tribunals; to the extent that it succeeded the overall increase in numbers would be reduced.

32. The major shortcomings of option (a), that it does nothing to meet the independence criticism and little to enhance management, result from legal constraints on what could be achieved by administrative action alone. Extending option (a) so that it began to address these criticisms, for example by including a requirement for Departments to obtain LCD approval for appointments or procedural rules, would run counter to the doctrine that a statutory power cannot be fettered by an extra-statutory requirement. This could be overcome only by amending the original statutory powers in each case.

OPTION (b)

Advantages

33. Option (b), the transfer of tribunal responsibilities from policy Departments to LCD, would tackle the two main disadvantages of option (a): by placing administrative tribunal responsibilities under the Lord Chancellor it would meet the demand, most recently voiced by the Home Affairs Committee, that tribunals be seen to be independent of policy Departments, and by concentrating administrative responsibilities for particular tribunals under a single Minister it would promote coherent management.

34. Option (b) would also place LCD in a position to take an overview of the existing range of tribunals, and where

MANAGEMENT IN CONFIDENCE

appropriate to seek in consultation with policy Departments to rationalise jurisdictions. LCD would be able to promote the interchange of best management practice between tribunals and its existing courts service, reinforcing this by interchanging personnel. It could build on the existing regional structure of the courts service to manage tribunals operating on a regional basis (though the geographical division of individual tribunals' work does not at present necessarily match that of the courts service).

Scope

35. Three groups of tribunals might sensibly be excluded at least initially from any programme of transfers of responsibility to LCD under option (b):

(i) those where the powers of appointment are currently vested in a non-Ministerial body. An example is the Education Appeal Committees whose members are appointed by local education authorities or governors of special schools. Whereas it would be possible to transfer powers vested in another Minister to the Lord Chancellor by a Transfer of Functions Order subject to negative resolution procedure (subject to the details of each particular case), primary legislation would be required to transfer powers vested in non-Ministerial holders; such transfers also appear more likely to raise knock-on effects on wider policies towards the area in question.

(ii) those bodies whose tribunal function is only one part of wider responsibilities. Examples are the Civil Aviation Authority, the Director General of Fair Trading, and the Comptroller-General of patents, designs and trade marks. To transfer the relevant powers of appointment to the Lord

MANAGEMENT IN CONFIDENCE

Chancellor because of the relatively minor tribunal role would be a case of the tail wagging the dog.

(iii) those which are currently dormant (see Annex 3). Where a tribunal at present has no caseload criticisms of independence and management are likely to be academic; LCD's role might sensibly be confined to reviewing with policy Departments the scope for rationalisation.

36. These exclusions would leave a group of some 20-25 tribunals which, subject to consultation with individual policy Departments, might be suitable at some stage for transfer to LCD.

Implementation

37. Option (b) would involve a number of individual transfers of functions to LCD. Each transfer of administrative responsibility would involve a transfer of resources and staff - not only those directly supporting the tribunal but also headquarters staff engaged on personnel, policy or administrative work, and each transfer of statutory functions a Transfer of Functions Order subject to negative resolution procedure (depending on the detail of individual cases there could be a few instances where primary legislation would be required).

38. In theory all these transfers could take place together. But in practice there would be much to be said for a gradual approach:

(i) there is a resource constraint on LCD's capacity to absorb new work efficiently. Although LCD would take over the resources associated with each tribunal transferred to it, the handling of proposals for transfers and preparation to receive tribunals approved for transfer themselves require resources. Within existing resource

MANAGEMENT IN CONFIDENCE

levels LCD considers that it could at most absorb two small or medium sized tribunals a year. This would require intervening periods for assimilation and consolidation, and larger tribunals, particularly those with significant regional/local networks, could not readily be assimilated at the same rate. LCD themselves do not therefore favour a transfer of all potential candidate tribunals en bloc.

(ii) while some policy Departments could be expected to welcome a transfer of responsibilities to LCD (in the light of the Home Affairs Committee's Report the Home Office has proposed that LCD take over responsibility for the Immigration Appeal Tribunal and Adjudicators), others may have reasons for resisting an immediate transfer. A gradual approach would assist thorough assessment of policy Departments' views, and provide flexibility of timing to accommodate any desire to transfer some tribunals in the near future while deferring others.

(iii) a gradual approach would permit the implications for Scotland to be considered case by case. Some possible transfers of responsibilities in England and Wales are likely to require changes in Scotland also; others may not. Where there are implications for Scotland the different Ministerial structure in Scotland will need to be taken into account, as in the three tribunal transfers recently approved.

(iv) finally a gradual approach would permit case by case consideration of any implications for the manpower count. LCD counts its tribunal staff towards manpower and running cost totals. For many tribunal staff who might be transferred to LCD this would be no change: they already count towards their Departmental totals. (The two largest

MANAGEMENT IN CONFIDENCE

groups of staff, serving Social Security Appeal and Industrial Tribunals, fall into this category.) But in some cases policy Departments have sought to increase a tribunal's perceived independence by funding it through a grant in aid, and in consequence have excluded the tribunal staff from Departmental totals. Here transfer to LCD would bring within overall Government totals staff who at present are not included.

39. Option (b) would therefore be a long-term process, and LCD would be responsible for overseeing it to ensure that transfers do not occur on a piecemeal basis but reflect ground rules as to priorities and timing. (The usual Machinery of Government Division involvement in proposed transfers would of course continue, together with Treasury participation in resource issues.) Such ground rules might cover:

- (i) LCD's capacity at the time to take on a particular tribunal,
- (ii) the relative need to increase a tribunal's perceived independence,
- (iii) the extent to which there appeared to be scope for improved management (reaching a view on this would be facilitated by the comparative study of tribunals suggested in paragraph 25) and the balance of cost and benefit likely to flow from a transfer,
- (iv) the extent to which the policy Department would, if it retained administrative responsibilities, be able to secure management improvements without being perceived as interfering in the judicial process. (All tribunals would of course continue to be subject to the programme of reviews for Non-Departmental Public Bodies).

MANAGEMENT IN CONFIDENCE

LCD might also need to consider in particular cases whether potential economies would justify a request for additional resources to receive several tribunals at once: for example it could be that a common LCD regional framework could serve a number of tribunals more efficiently than their existing separate networks, in which case the potential benefits would need to be weighed against the costs of implementing a combined transfer.

Criticisms

40. Three potential criticisms might be made of option (b). First, policy Departments would lose the opportunity to give staff working in the areas under adjudication a period of experience with the adjudicating tribunal, and tribunals would lose the specialist knowledge such staff bring. This was a consideration which influenced Franks. More recently however the argument has not commanded unanimous support: Mr Fowler's request that the Prime Minister approve the transfer of responsibility for the Social Security Commissioners noted in relation to administrative staff that

"The bulk of support work is of a procedural nature and particular knowledge of social security is not essential"

It can also be argued that tribunals should derive any necessary specialist knowledge from the expertise of tribunal members and the evidence presented to them.

41. Secondly, the Council on Tribunals has expressed some concern that if LCD managed more tribunals, interchanging tribunal and courts service staff and using the courts service's regional capability, there would be an undesirable tendency for tribunals to become more formal. Against this however it can be argued that courts service staff already work more with the public than

MANAGEMENT IN CONFIDENCE

in the courtroom, that the work of administrative staff reflects, rather than conditions, procedure, and that unified responsibility for tribunals would create the opportunity to develop policies specifically aimed at striking a balance between those characteristics which courts and tribunals share and those on which they differ.

42. A particular aspect of the point is that if tribunals were perceived to become more formal, or otherwise more closely identified with the courts, increased pressure could be expected to provide legal aid. At present legal aid is available for only four tribunals, each of which can be justified as a special case and which together account for fewer than 2% of all tribunal cases. The legal aid costs are relatively small - about £0.75m in 1985/86. However there is already considerable pressure from MPs, the public, the legal profession and advice agencies to make legally aided representation more widely available, and the Royal Commission on Legal Services and the Lord Chancellor's Legal Aid Advisory Committee have given some support to this view. Conceding the point would be expensive, and this year's Survey has already had to make substantial additional provision for the legal aid programme. So far LCD has managed to resist any general change, and although prepared to consider minor relaxations for special circumstances it intends to continue to do so. This line would be more difficult to maintain if there were an increase in the legalism of tribunals' workings. But in logic and in practice the position on legal aid should not be affected by a gradual transfer of certain tribunal responsibilities to LCD.

43. Thirdly, transferring administrative responsibilities for tribunals to the Lord Chancellor would still leave some element of divided responsibilities, in that

MANAGEMENT IN CONFIDENCE

(i) policy Departments would of course retain responsibility for the substantive law and policy on the subject matter under adjudication. Policy Departments' decisions on these matters would affect the tribunal's jurisdiction, workload and resource costs. There would therefore need to be consultation between LCD and policy Departments to ensure that the latter's policy deliberations took into account consequences for tribunals. But this would not be unparalleled: the Home Secretary's exercise of his responsibility for the criminal law already has consequences for the Courts.

(ii) in the case of non-legal tribunal members, particularly those who need to have a specialist background, LCD would generally be less well placed than the policy Department to identify suitable potential candidates. In such cases it may therefore be sensible for the policy Minister to continue to make those appointments (as the Chancellor of the Exchequer will continue to do in relation to VAT tribunals). Again this does not seem an insuperable objection: the tribunal's independence from the policy Department should be adequately signalled by the Lord Chancellor's responsibility for all other aspects of its administration, including the appointment of Chairmen and legal members.

The Council on Tribunals under option (b)

44. By gradually combining more administrative responsibilities for tribunals under LCD, option (b) would over time have some effect on the Council on Tribunal's role. The effect would be limited: because of the exclusions from the transfer process envisaged in para 35, the Council's remit would even in the longer term continue to extend beyond LCD responsibilities.

MANAGEMENT IN CONFIDENCE

45. A variant on option (b), avoiding any overlap, would be to expand the Council's role to take on the responsibilities envisaged for LCD in option (b). But this would mean transferring to it responsibilities currently held by Ministers: the Council would acquire a substantial area of "patronage" in tribunal appointments and an executive role far larger than that recommended by Franks but rejected by Government in the 1950s. The Council's own review of its functions in 1980 (Cmnd 7805), while recommending some widening of its advisory powers, did not propose that the Council should assume any executive role. Primary legislation would be required to expand the Council's role, and the Council would undoubtedly seek greatly increased resources (it considers its existing resources inadequate for its present role).

46. While these arguments all point against giving the Council increased powers, it would of course be desirable to carry the Council's support for LCD's enhanced role under option (b). A courtesy which might help secure a positive attitude, by addressing one of the Council's current dissatisfactions, would be for LCD to ensure that all future proposals to transfer tribunal responsibilities seek the Prime Minister's approval for the Council to be given advance notification of the decision.

OPTION (c)

47. Finally option (c), unifying all responsibilities for particular tribunals under the policy Ministers concerned, would also remove the impediment to best management created by divided responsibility. If combined with option (a) there would also be a clear policy focus.

48. But option (c) suffers from the major disadvantage that it would not only fail to meet criticisms that present arrangements

MANAGEMENT IN CONFIDENCE

do not ensure tribunals' independence from policy Departments, but would even appear a retrograde step in that respect - responsibilities currently vested in the Lord Chancellor would pass to policy Ministers. This would reverse the pattern of the three recent transfers to LCD, and would fly in the face of the Home Affairs Committee's criticisms. In addition, by continuing the present spread of tribunal responsibilities across a wide range of Departments option (c) would not secure potential advantages of economies of scale, and flexibility in moving resources between tribunals. Transfer of Functions Orders subject to negative resolution procedure would be required to assign the Lord Chancellor's present functions to policy Ministers, and policy Ministers without any particular links with the legal profession would become responsible for appointing large numbers of tribunal chairmen and members required to be legally qualified. It would be necessary to exclude at least initially tribunals in relation to which functions are at present conferred on non-Ministerial bodies.

SCOTLAND

49. In Scotland there is at present no Minister whose functions parallel those of the Lord Chancellor: present responsibilities for tribunals are split between the Lord Advocate (generally responsible for rule making and appointments), the Secretary of State (generally responsible for administrative staffing) and the Lord President of the Court of Session (responsible for some appointments). Unlike the Lord Chancellor, the Lord Advocate is not responsible for the administration of the courts system -this is a matter for the Secretary of State, acting through the Scottish Courts Administration and some 750 staff in the Scottish Court Service.

50. The three recent transfers of Ministerial responsibility (mentioned in paragraph 12 above) have been of tribunals with uniform jurisdiction throughout the United Kingdom, constituted and run on a UK basis. Transfer of responsibility for such tribunals to the Lord Chancellor in England and Wales has meant splitting Scottish Ministerial responsibilities between two Ministers (the Lord Advocate and the Secretary of State for Scotland), or arranging for the Lord Chancellor to consult a Scottish Minister on certain matters. The President, or other chief tribunal member, generally retains responsibility for the tribunals on a UK basis; the Scottish based tribunals and their members continue to be administered by him. Annex 1 includes a number of other UK or GB based tribunals whose transfer would be likely to require similar arrangements in Scotland, and the Scottish Industrial Tribunals could not in practice be managed without reference to the management of Industrial Tribunals in England and Wales.

51. Three possible options for change in England and Wales are set out in paragraph 28 above. The implications for Scotland of each of these are considered below.

52. (a) LCD as Central Co-Ordinator on Tribunal Questions

SCA is already associated with LCD in that Department's existing functions, particularly with regard to policy on primary or secondary legislation (notably on tribunal procedural rules) which involves existing or new tribunals and affects Scotland. An extension of LCD's current role would require increased liaison both between LCD and SCA and between SCA and Scottish tribunals. It is likely that these increased responsibilities would require a few further staff in SCA, as well as in LCD. The more radical alternative discussed in paragraph 31 (i) of giving coordinating

MANAGEMENT IN CONFIDENCE

responsibility to the Council on Tribunals would necessitate a re-examination of the role of the Scottish Committee of the Council and of the extent to which it would operate independently of the Council as a whole.

53. (b) Lord Chancellor to take on Tribunals responsibilities currently held by policy Ministers

In the absence of a single Minister equivalent to the Lord Chancellor, these responsibilities would need to be transferred to the Lord Advocate and to the Secretary of State for Scotland. But it is not envisaged that staff for tribunals would come from the Scottish Court Service; they would come from the Scottish Office on loan. The gain in efficiency foreseen in a transfer to the Lord Chancellor in England and Wales would not necessarily be obtained to the same extent in Scotland where there is not the same potential for economies of scale. At the judicial level, it can be expected, for various reasons including the comparable salary levels, to be difficult to persuade Judges (such as Sheriffs) to serve as Scottish tribunal Chairmen or members.

54. (c) Policy departments to take on responsibilities currently held by LCD

The disadvantages discussed in paragraph 48 above would apply also in Scotland.

CONCLUSION

55. In the past responsibilities for individual tribunals have been shared between the Minister responsible for the policy area under adjudication and the Lord Chancellor/Scottish Ministers. However, these arrangements are open to criticism on the grounds that tribunals appear insufficiently independent of the policy

MANAGEMENT IN CONFIDENCE

Departments with an interest in the cases being heard, and that divided Ministerial responsibility is not conducive to the efficient management of tribunals.

56. More recently in three instances (the Social Security Commissioners, Special Commissioners of Income Tax, and VAT tribunals) sole administrative responsibility has been given to the Lord Chancellor (and Scottish Ministers). But before considering further proposals for individual transfers of responsibility the Prime Minister may wish to take a general view on the relative merits of these two approaches.

57. Having examined various options, we recommend that the general policy presumption should be in favour of a gradual series of transfers of responsibility for tribunals from policy Departments to the Lord Chancellor and Scottish Ministers (option b). At the same time there should be a development of LCD's incipient role as coordinator and focal point on tribunal questions, involving the provision of advice and guidance on general issues to other Departments still retaining responsibilities for tribunals.

58. Generally such an approach appears likely to be welcomed both inside and outside Parliament. There could however be concern that LCD would run tribunals too much like courts; to guard against this and any consequential pressure to make legal aid more widely available LCD should where appropriate develop distinct policies for tribunal administration, designed to preserve the qualities which differentiate tribunals from courts while reflecting the essential similarities.

59. Proposals for individual transfers to LCD should still be subject to the full process of Prime Ministerial approval: we have not consulted all the many policy Departments with tribunal

MANAGEMENT IN CONFIDENCE

responsibilities, and in relation to any individual tribunal a Department may have specific arguments which should be considered alongside the general ones analysed in this paper. For the immediate future it appears that transfers likely to be volunteered by policy Departments would, if approved by the Prime Minister, match LCD's ability to take on new work in a planned and controlled fashion. It would be for LCD to keep the rate of transfers under review and where necessary propose priorities amongst the group of potential candidates for transfer, in the light of the ground rules suggested in paragraph 39.

60. In Scotland there is little pressure for change to increase perceived independence, and it seems less likely that transfers of responsibility could be expected generally to lead to more efficient or cost effective management. Both the split in responsibility between the Lord Advocate, the Secretary of State for Scotland and the Lord President of the Court of Session and the difficulties in securing comparable staffing and membership interchangeability between tribunals and the Scottish Court Service will impede the achievement of some of the benefits foreseen in relation to England and Wales. To this extent the status quo would be an acceptable option in Scotland. Nevertheless the independence argument is not without force in Scotland as elsewhere, particularly where a tribunal is constituted on a UK or GB basis. For such tribunals changes of responsibility in England and Wales are likely to mean that a change has to be made for Scotland also. Where, however, tribunals are constituted separately on each side of the Border, a transfer of responsibilities for the English tribunal would not necessarily imply that responsibilities for the Scottish tribunal should also be transferred. If option (b) were adopted the implications for Scotland should therefore be considered case by case.

MANAGEMENT IN CONFIDENCE

61. The other main options considered would be to leave formal responsibilities as now, but give LCD a coordinating role on tribunal policy, or to concentrate all responsibilities with policy Departments. But neither addresses sufficiently the criticism noted in paragraph 55.

62. If the Prime Minister agrees the recommendation in paragraph 57 she may wish to indicate to Departments that the Lord Chancellor is to be responsible for central coordination of tribunal questions in England and Wales, and that his Department will develop its role of providing advice and guidance to other Departments and considering all proposals to create new tribunals. Corresponding responsibilities would be exercised for Scotland by the Lord Advocate and the Secretary of State for Scotland, acting in conjunction and in association with the Lord Chancellor.

63. It seems best not to publicise a general presumption in favour of further transfers of administrative responsibility to the Lord Chancellor/Scottish Ministers: this might produce pressure for the immediate transfer of large numbers of tribunals without regard to suitability, priorities, policy Departments' views on specific tribunals, or LCD's ability to take on further responsibilities in an efficient manner. Instead individual transfers might continue to be announced as and when approved, taking credit where appropriate for benefits of independence and/or efficiency in specific terms which do not cast doubt on the adequacy of arrangements for other tribunals remaining with policy Departments.

MACHINERY OF GOVERNMENT DIVISION

2 JANUARY 1986

ANNEX 1

TRIBUNAL CASELOADS: TRIBUNALS DISPOSING OF OVER 1000 CASES A YEAR

<u>Tribunal</u>	<u>Jurisdiction</u>	<u>Cases disposed of</u> <u>in 1983</u> (to nearest one hundred)
Social Security Appeal Tribunals	GB	92,500
Local Valuation Courts	E&W	39,000
Industrial Tribunals	E&W	37,200
General Commissioners of Income Tax	GB	30,600 (1)
Children's Panels (Scotland)	S	"some 30,000"
Rent Assessment Committees and Tribunals	E&W	18,700
Medical Appeal Tribunals	GB	14,200
Immigration Appeal Tribunal and Adjudicators	UK	10,600
Education Appeal Committees	E&W	"some 10,000"
Traffic Commissioners	GB	9,800
Comptroller - General of patents designs and trademarks	UK	5,800
Industrial Tribunals for Scotland	S	4,200
Social Security Commissioners	GB	3,700
Valuation Appeal Committees (Scotland)	S	3,300
Pensions Appeal Tribunals	UK	2,900
Licensing Authorities (Transport Act 1968)	GB	2,300
Mental Health Review Tribunal	E&W	2,000
Civil Aviation Authority	UK	1,400
NHS Family Practitioner and Service Committees	E&W	1,400
Rent Assessment Committees (Scotland)	S	1,300
Lands Tribunal	E&W	1,300
Special Commissioners of Income Tax	UK	1,200
		<u>323,400</u>

Source: Annual Report of the Council on Tribunals, 1983/84

Notes:

- (1) Excluding "delay" cases, of which there were over 600,000

ANNEX 2

TRIBUNAL CASELOADS: TRIBUNALS DISPOSING OF FEWER THAN 1000 CASES A YEAR

<u>Tribunal</u>	<u>Jurisdiction</u>	<u>Cases disposed of</u> <u>in 1983</u>
Value Added Tax Tribunals	GB	891
Employment Appeal Tribunal	GB	793 (1) (2)
Commons Commissioners	E&W	471
Agricultural Land Tribunal	E&W	410
Lands Tribunal for Scotland	S	322
Director General of Fair Trading	UK	279
Crofters Commission	S	161
Arbitrators, Agricultural Holdings Act 1948	E&W	161
Health Boards and Service Committees (Scotland)	S	112
Appeal Committees, Education (Scotland) Act 1980	S	85
Tribunal, Vaccine Damage Payments Act 1979	UK	76
Transport Tribunal	UK	23
Tribunal, Betting, Gaming and Lotteries Act 1963	GB	17
Arbiters, Agricultural Holdings (Scotland) Act 1949	S	6
Tribunal, Income and Corporation Taxes Act 1970	GB	5
Misuse of Drugs Tribunal	GB	3
Referees, Industrial Training Act 1982	GB	2
Independents Schools Tribunal	E&W	1
Performing Right Tribunal	UK	1
Total to nearest one hundred		<u>3,800</u>

Mental Welfare Commission for Scotland*

not available (2)

Source: Annual Report of the Council on Tribunals, 1983/84

Notes:

- (1) 1983/84 figure, Source: "Public Bodies 1984"
- (2) Not under the general supervision of the Council on Tribunals

ANNEX 3

TRIBUNAL CASELOADS: TRIBUNALS DISPOSING OF NIL CASES IN 1983

<u>Tribunal</u>	<u>Jurisdiction</u>	<u>Notes on caseload</u>
Tribunal, section 46 NHS Act 1977	E&W	4 cases set down
Appeal tribunals, Child Care Act 1980	E&W	Nil cases disposed of
Independents Schools Tribunal (Scotland)	S	"
Committees, Forestry Act 1967	GB	"
Appointees, Justices of the Peace Act 1979 (indemnification)	E&W	"
Arbitration Tribunal, Industry Act 1975	UK	"
Tribunal, London Building Acts (Amendment) Act 1939	E&W	" (1)
Tribunals, Food and Drugs Act 1955 (milk and dairies)	E&W	"
Tribunals, Milk (Special Designations) Act 1949	S	"
Tribunals, section 29 NHS (Scotland) Act 1978	S	"
Occupational Pensions Board	UK	"
Reinstatement Committees, National Service Act 1948	UK	"
Umpires and deputies, National Service Act 1948	UK	"
Controller of Plant Variety Rights	GB	"
Plant Varieties and Seeds Tribunal	GB	"
Tribunal, Prevention of Fraud (Investments) Act 1978	GB	"
Aircraft and Shipbuilding Industries Arbitration Tribunal	UK	Future cases unlikely
Tribunal, Police Pensions Act 1976	UK)	No tribunal convened since
Appeal tribunals, Fire Services Act 1947 (pensions)	GB)	at least 1974
Iron and Steel Arbitration Tribunal	GB	Never convened
Tribunals, Mines and Quarries Act 1954	GB	"
Appeal tribunal, Social Work (Scotland) Act 1968	S	"
Tribunal, Wireless Telegraphy Act 1949	UK	"

Source: Annual Report of the Council on Tribunals, 1983/84

Notes:

(1) To be wound up on the abolition of the GLC

TRIBUNALS DISPOSING OF OVER 1000 CASES A YEAR BY TYPE OF CASE

I CASES BETWEEN CITIZEN AND STATE

Cases disposed of
in 1983

Social Security Appeal Tribunals	92,500
Local Valuation Courts	39,000
General Commissioners of Income Tax	30,600
Children's Panels (Scotland)	"some 30,000"
Medical Appeal Tribunals	14,200
Immigration Appeal Tribunal and Adjudicators	10,600
Education Appeal Committees	"some 10,000"
Social Security Commissions	3,700
Valuation Appeal Committees (Scotland)	3,300
Pensions Appeal Tribunals	2,900
Mental Health Review Tribunals	2,000
Special Commissioners of Income Tax	1,200
	<u>240,000</u>

II INTERMEDIATE CATEGORIES

a. Some cases between citizen and state, some between citizens

Industrial Tribunals	37,200
Industrial Tribunals for Scotland	4,200
Lands Tribunal	1,300
NHS Family Practitioner and Service Committees (?)	1,400

b. Licensing or Disciplinary appeals

Traffic Commissioners	9,800
Comptroller General of patents, designs and trademarks	5,800
Licensing authorities (Transport Act 1968)	2,300
Civil Aviation Authority	1,400
	<u>53,400</u>

III CASES BETWEEN CITIZENS

Rent Assessment Committees and Tribunals	18,700
Rent Assessment Committees (Scotland)	1,300
	<u>20,000</u>

Note:

There are other tribunals hearing cases between citizens just below the 1,000 cases a year cut-off point - the Commons Commissioners (471), Agricultural Land Tribunal (410) and Arbitrators under the Agricultural Holdings Act 1948 (161). However VAT tribunals, disposing of 891 cases in 1983, hear cases between the citizen and the State.

EXPENDITURE ON TRIBUNALS

Tribunal	Cases Heard 1983/84(1)	Sponsoring Dept's Expenditure (£000)(2)	Expenditure per case (£)
I. EXPENDITURE BY TWO DEPARTMENTS			
Rent Assessment Cmtes & Tribunals (DOE)	17,235	3,535	205
(Welsh Office)	434	196	451
Local Valuation Courts (DOE)	36,480	2,393(3)	66
(Welsh Office)	2,272	301(3)	132
Pensions Appeal Tribunals (LCD)	2,234	588	263
(SCA)	192	61	318
Mental Health Review Tribunals (DHSS)	2,150	924	430
(Welsh Office)	41	51	1,244
II. EXPENDITURE BY SINGLE DEPARTMENT			
Social Security Appeal Tribunals (DHSS)	91,035	10,767	118
Rent Assessment Committees (Scottish Office)	1,361	255	187
Industrial Tribunals (GB) (DEmp)	40,357	10,225	253
Medical Appeal Tribunals (DHSS)	9,975	4,077	409
Lands Tribunal (LCD)	855	830	970
	204,621	34,203	167

Source: "Public Bodies 1984"

Notes: (1) "Cases Heard" as recorded in Public Bodies in some cases differ from "Cases disposed of" as recorded in the Annual Reports of the Council on Tribunals. These differences are likely to reflect the different definitions employed and the different time periods (Financial years for Public Bodies, calendar years for the Council on Tribunals).

(2) No definition is available of the categories of expenditure included.

(3) Includes Government funded expenditure on directly employed staff

Extrapolation gives an estimate of total Departmental expenditure of

$$\frac{327,200}{204,621} \times £34.203 \text{ m} = £54.7 \text{ m}$$

NB: This is no more than a broad estimate.

TRIBUNAL STAFF NUMBERS: AVAILABLE INFORMATION

<u>Tribunal</u>	<u>Staff</u>	<u>Cases per annum</u>	<u>Cases per staff member</u>
Pensions Appeal Tribunal (E&W)	13 (2)	2,900(3)	223
Social Security Appeal Tribunals	435 (4)	92,500(3)	213
Local Valuation Courts (England)	190 (1)	36,480(1)	192
Immigration Appeal Tribunal & Adjudicators	78 (2)	10,600(3)	136
Local Valuation Courts (Wales)	19 (1)	2,272(1)	120
Industrial Tribunals (GB)	396 (4)	41,400(3)	105
Social Security Commissioners	37 (2)	3,700(3)	100
Pensions Appeal Tribunal (Scotland)	3½ (2)	294(3)	84
Special Commissioners of Income Tax	19 (2)	1,200(3)	63
Lands Tribunal	25 (2)	1,300(3)	52
VAT Tribunals	28 (2)	891(3)	32
Employment Appeal Tribunal	25 (4)	793(1)	32
Transport Tribunal	2 (2)	23(3)	12
	<u>1,270½</u>	<u>194,353</u>	

Total tribunal cases 1983 (Annex 1 and Annex 2) 327,200

Extrapolation gives an estimate of total staff numbers of

$$\frac{327,200}{194,353} \times 1,270\frac{1}{2} = 2,139$$

NB: This is no more than a broad estimate.

Sources: (1) "Public Bodies 1984"
 (2) Internal correspondence
 (3) Annual Report of Council on Tribunals, 1983/84
 (4) 1985/86 Vote

ANNEX 7

TRIBUNALS DISPOSING OF OVER 1000 CASES A YEAR: APPOINTMENT OF MEMBERS

Cases disposed of
in 1983

I APPOINTMENTS FOR WHICH LORD CHANCELLOR RESPONSIBLE

Social Security Appeal Tribunals (Lord Chancellor appoints President, consulting	92,500
Lord Advocate, Lord Chancellor or Lord President in Scotland appoint panel of Chairman, Tribunal President appoints other panels)	
General Commissioners of Income Tax (in Scotland, Secretary of State appoints)	30,600
Immigration Appeal Tribunal (but not Adjudicators)	600
Social Security Commissioners (Lord Chancellor advises Her Majesty)	3,700
Pensions Appeal Tribunal (in Scotland, Lord President appoints)	2,900
Mental Health Review Tribunals (consulting policy Minister on non-legal members)	2,000
Lands Tribunal (consulting RICS on surveyor members)	1,300
Special Commissioners of Income Tax (consulting Lord Advocate)	1,200
	<u>134,800</u>

II APPOINTMENTS FOR WHICH POLICY MINISTER RESPONSIBLE

Local Valuation Courts (Minister approves local authority proposals)	39,000
Children's Panels (Scotland)	"some 30,000"
Medical Appeal Tribunals	14,200
Immigration Adjudicators	10,000
Traffic Commissioners	9,800
Comptroller - General of patents, designs and trademarks	5,800
Licensing Authorities (Transport Act 1968)	2,300
Civil Aviation Authority	1,400
Rent Assessment Committees (Scotland)	1,300
	<u>113,800</u>

III SPLIT RESPONSIBILITY FOR APPOINTMENTS

Industrial Tribunals (Lord Chancellor and Secretary of State each appoint)	37,200
Rent Assessment Committees and Tribunals (ditto)	18,700
Industrial Tribunals for Scotland (Lord President and Secretary of State each appoint)	4,200
	<u>60,100</u>

IV NON-MINISTERIAL APPOINTMENTS

Education Appeal Committees (Local authorities and governors appoint)	"some 10,000"
Valuation Appeal Committees (Scotland) (Sheriff Principal appoints panel)	3,300
NHS Family Practitioner and Service Committees (FPC members appointed by Secretary of State, but Service Committee members appointed partly by FPC, partly by local professional bodies)	1,400
	<u>14,700</u>

323,400

ANNEX 8

TRIBUNALS DISPOSING OF OVER 1000 CASES A YEAR: RESPONSIBILITY FOR ADMINISTRATIVE STAFFING

Cases disposed of in 1983

I TRIBUNAL APPOINTS STAFF WITH MINISTERIAL/TREASURY CONSENT

Social Security Appeal Tribunals	(DHSS)	92,500
Local Valuation Courts	(DoE)	39,000
General Commissioners of Income Tax	(IR)*	30,600
Rent Assessment Committees and Tribunals	(DoE)	18,700
Civil Aviation Authority	(DTp)	1,400
Rent Assessment Committees (Scotland)	(SDD)	1,300

*Lord Chancellor can dismiss clerks and assistant clerks (Secretary of State in Scotland)		<u>183,500</u>
--	--	----------------

II POLICY MINISTER PROVIDES STAFF

Industrial Tribunals	(DEmp)	37,200
Medical Appeal Tribunals	(DHSS)	14,200
Immigration Appeal Tribunal and Adjudicators	(Home Office)	10,600
Traffic Commissioners	(DTp)	9,800
Comptroller - General of patents, designs and trademarks	(DTI)	5,800
Industrial Tribunals for Scotland	(DEmp)	4,200
Licensing Authorities (Transport Act 1968)	(DTp)	2,300
Mental Health Review Tribunals	(DHSS)	2,000
		<u>86,100</u>

III LORD CHANCELLOR PROVIDES STAFF

Social Security Commissioners (in Scotland the Sec of State staffs)		3,700
Pensions Appeal Tribunals (ditto)		2,900
Lands Tribunal		1,300
Special Commissioners of Income Tax		1,200
		<u>9,100</u>

IV NON-MINISTERIAL RESPONSIBILITY

Children's Panels (Scotland)	"some 30,000"
Education Appeal Committees	"some 10,000"
Valuation Appeal Committees (Scotland)	3,300
NHS Family Practitioner and Service Committees	1,400
	<u>44,700</u>
	<u>323,400</u>

TRIBUNALS DISPOSING OF OVER 1000 CASES A YEAR: RESPONSIBILITY FOR PROCEDURAL RULES

Cases disposed of in 1983

I POLICY MINISTER RESPONSIBLE FOR RULES

Social Security Appeal Tribunals	92,500
Local Valuation Courts	39,000
Industrial Tribunals	37,200
General Commissioners of Income Tax (statutory procedures plus power for Board of Inland Revenue to make regulations)	30,600
Children's Panels (Scotland)	"some 30,000"
Rent Assessment Committees and Tribunals	18,700
Medical Appeal Tribunals	14,200
Immigration Appeal Tribunals and Adjudicators	10,600
Traffic Commissioners	9,800
Comptroller - General of patents, designs and trademarks	5,800
Industrial Tribunals for Scotland	4,200
Valuation Appeal Committees (Scotland)	3,300
Licensing Authorities (Transport Act 1968)	2,300
Civil Aviation Authority	1,400
NHS Family Practitioner and Service Committees	1,400
Rent Assessment Committees (Scotland)	1,300
	302,300

II LORD CHANCELLOR RESPONSIBLE FOR RULES

Social Security Commissioners (consulting Lord Advocate)	3,700
Pensions Appeal Tribunals (in Scotland, Lord President responsible)	2,900
Mental Health Review Tribunal	2,000
Lands Tribunal	1,300
Special Commissioners of Income Tax (with consent of Lord Advocate)	1,200
	11,100

III NON-MINISTERIAL RESPONSIBILITY

Education Appeal Committees	"some 10,000"
	323,400

GOVT MACTH
VAT TRIBUNALS
4/85

MISS ROCHE

VAT Tribunals: Transport of
Responsibility

I have now been in touch with Barney Hayhoe's office, and agreed that we should arrange for the Question to be tabled on Wednesday, and the Answer to be give on Thursday.

I think you already have a copy of the draft Question and Answer.

13 May 1985



JVCRAFT
C Nicky Roche

10 DOWNING STREET

From the Private Secretary

9 May 1985

Tech - Wad
Ann - Th.

Bills Office

VAT TRIBUNALS: TRANSFER OF RESPONSIBILITY

The Prime Minister has agreed that administrative responsibility for the VAT Tribunals should be transferred from Customs and Excise to the Lord Chancellor's Department (your letter of 3 May refers). She also agreed the draft Written Reply you provided, and we shall arrange for this to be tabled.

The Prime Minister has, however, suggested that, before any further transfers of this kind are contemplated, the Lord Chancellor's Department should get together with the Cabinet Office's Machinery of Government Division to examine the general question of administrative responsibility for tribunals.

I am copying this letter to Rachel Lomax (HM Treasury), Richard Stoate (Lord Chancellor's Office), John Graham (Scottish Office), Iain Jack (Lord Advocate's Office) and Richard Hatfield (Cabinet Office).

MARK ADDISON

M W Norgrove Esq
HM Treasury

PRIME MINISTER

VAT Tribunals: Transfer of Responsibility

The attached minute from Sir Robert Armstrong sets out the Chancellor of the Exchequer's proposal that administrative responsibility for VAT Tribunals should be transferred from Customs and Excise to the Lord Chancellor's Department. We held on to this until a draft written reply had been provided by the Treasury.

Content to accept Sir Robert's advice that the transfer be agreed, subject to the qualification he sets out in paragraph 4 of his minute? Content also with the terms of the draft reply, which needs to come from you?

Mark Addison

8 May 1985



Treasury Chambers, Parliament Street, SW1P 3AG

M Addison Esq
Private Secretary to
The Rt Hon Margaret Thatcher MP
10 Downing Street
LONDON SW1

7 May 1985

Dear Mr Addison,

VAT TRIBUNALS: TRANSFER OF RESPONSIBILITY

Further to Mr Norgrove's letter to you of 3 May, I enclose with apologies the draft PQ and Press Notice which were not attached to the earlier letter. I am copying this to the Private Secretaries to the Lord Chancellor, the Secretary of State for Scotland, the Lord Advocate and Sir Robert Armstrong.

*Yours sincerely,
Debbie McCambridge*

MISS D C McCAMBRIDGE
Assistant Private Secretary



PRESS NOTICE

Administrative responsibility for the Value Added Tax Tribunals in England and Wales and Northern Ireland is to be transferred from Customs and Excise to the Lord Chancellor. Responsibility for the Tribunals in Scotland will be transferred to the Secretary of State. As part of this transfer, the Lord Chancellor in consultation with the Lord Advocate would also assume responsibility currently resting with Customs and Excise for making rules of procedure for the Tribunals.

Announcing these proposals in answer to a Parliamentary written question in the House of Commons today the Prime Minister said:

"I have decided to transfer responsibility for administering the VAT Tribunals to the Lord Chancellor in relation to England and Wales and Northern Ireland, and for Scotland to the Secretary of State for Scotland, with effect from 1 April 1986. The responsibilities of the Secretary of State for Scotland will be discharged on his behalf by the Scottish Courts Administration.

Consequential provisions will be introduced into the current Finance Bill".

Notes to Editors

The VAT Tribunals were originally set up at the same time as the introduction of VAT in 1973 to provide an independent body to decide appeals against the decisions and assessments of tax made by Customs and Excise. Further grounds for appeal are proposed in certain of the Finance Bill provisions, to implement the recommendations of the Keith Committee.

[-7 MAY 1965]

11 12 1
10 2
9 3
8 4
7 5
6



Treasury Chambers, Parliament Street, SW1P 3AG

M Addison Esq
Private Secretary to
The Rt Hon Margaret Thatcher MP
10 Downing Street
LONDON SW1

3 May 1985

Dear Mr. Addison,

VAT TRIBUNALS: TRANSFER OF RESPONSIBILITY

The Prime Minister will have seen that, by their letters of 1 April, 12 April and 26 April, the Chancellor of the Exchequer, the Lord Chancellor and the Secretary of State for Scotland, have agreed that it would be desirable to transfer the administrative responsibility for VAT Tribunals from Customs and Excise to the Lord Chancellor's Department for England and Wales and Northern Ireland and for Scotland to the Secretary of State for Scotland. Both the Lord Chancellor and the Secretary of State for Scotland made their agreement conditional on outstanding points relating to resources and I understand that satisfactory arrangements have now been agreed between officials. In the exercise of certain of his powers, such as the making of procedural rules, the Lord Chancellor will consult the Lord Advocate. As the Chancellor indicated, the Prime Minister's agreement is required to a proposed transfer of functions between Ministers.

VAT Tribunals were originally set up at the same time as the introduction of VAT in 1973 to provide an independent body to decide appeals against the decisions and assessments for tax of Customs and Excise. The Chancellor considers that the time is appropriate for the transfer in view of Customs and Excise being uneasy about public acceptance of the independence of the Tribunals when their Department is cast in the joint role of respondent and paymaster. The proposed implementation of the Keith Committee proposals affecting VAT provides an ideal opportunity to introduce the transfer in order to reinforce public confidence in the Tribunal system at a time when the number of appeals is bound to increase.

The proposal is in line with the recent acceptance by the Lord Chancellor of administrative responsibility for the Inland Revenue Special Commissioners and the Social Security Commissioners; in the latter case the Secretary of State for Scotland assumed responsibility for Scotland.

The Prime Minister is now invited to agree to the proposed transfer of functions. The consequential legislation changes can then be introduced by way of a short Government New Clause at the Committee Stage of the Finance Bill.

In addition, the drafts of an arranged PQ for answer by the Prime Minister (in accordance with past precedents cf Hansard 25 October 1984 Col 654) and a Press Notice (to be issued by Customs and Excise) are attached. | x

If the transfer is approved, the PQ should not be put down until the Lord Chancellor has told Lord Grantchester, President of the Tribunals: I should be grateful if you could inform the Lord Chancellor's office once the Prime Minister has given her agreement. |

Copies of this letter go to the Private Secretaries of the Lord Chancellor, the Secretary of State for Scotland, the Lord Advocate and Sir Robert Armstrong.

Yours sincerely,

Debbie McCambridge

P.P. M W NORGROVE
Private Secretary

Cent Mach : VAT Tribunal 4/85

23 MAY 1985





NEW ST. ANDREWS HOUSE
ST. JAMES CENTRE
EDINBURGH EH1 3SX

CEXO

NBlin.

The Right Hon Nigel Lawson MP
Chancellor of the Exchequer
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

26 April 1985

Dear Nigel,

VAT TRIBUNALS: TRANSFER OF RESPONSIBILITIES

Kenny Cameron has kindly shown me a copy of your letter of 1 April to Quintin Hailsham about the transfer of administrative responsibility for VAT Tribunals. I have also seen Quintin Hailsham's letter of 12 April and am grateful to him for keeping me in the picture.

I have an interest in this matter as I also have had in the earlier transfer affecting the Office of Social Security Commissioners. There are Tribunal staff based in Scotland and for various reasons I do not think it would be appropriate for them to be transferred to the Lord Chancellor's Department.

Kenny Cameron and I have had an opportunity to consider our respective responsibilities and we have reached agreement on what these should be, if a transfer of responsibility takes place in England and Wales. The position can be summarised as follows:-

- (1) the Secretary of State for Scotland should assume responsibility for the Office of VAT Tribunals in Scotland;
- (2) the Lord Advocate should be consulted about the appointment of the President;
- (3) the Lord President of the Court of Session should continue to be responsible for the appointment of the panel of Chairmen in Scotland; and
- (4) procedural rules should be made by the Lord Chancellor with the consent of the Lord Advocate.

My agreement on (1) above is conditional on agreement about a suitable transfer of resources, an issue on which your letter is completely silent. My officials in the Scottish Courts Administration (SCA) are pursuing this with LCD and Customs and Excise officials. It is to SCA that the resources would be transferred, although after any transitional arrangements had expired the staff in practice would come from the Scottish

Office on loan to SCA. I should also want my officials to be involved closely in the preparation of the New Clause for the Finance Bill. I have no objection to the date of 1 April 1986 for the actual transfer of responsibility, provided the necessary administrative and financial arrangements can be made satisfactorily.

I am copying this letter to the Prime Minister, Quintin Hailsham and Kenny Cameron with whose agreement I am writing.

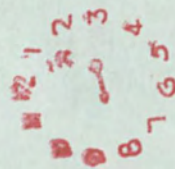
Yours sincerely,

George

Govt Mach 4/85

VAT TRIBUNALS

26 APR 1985



Prime Minister.

Accept Sir Robert's advice

that the transfer be agreed, subject

to the specification in para 4?

MEN 30/4

Ref. A085/1200

PRIME MINISTER

PS. This proposal is designed to
increase public acceptance of the
Keith proposals on late payment of VAT
AT.

VAT Tribunals: Transfer of Responsibility

attached.

The Chancellor of the Exchequer's letter of 1 April to the Lord Chancellor seeks your approval of the transfer from Customs and Excise to the Lord Chancellor's Department of administrative responsibility for the VAT Tribunals.

2. The Chancellor considers that the transfer will enhance public acceptance of the independence of the VAT Tribunals; administration of the Tribunals by Customs staff might appear to call into question the Tribunals' impartiality in reviewing the decision of other Customs staff. The Chancellor considers the transfer timely, since an extension of the Tribunals' jurisdiction is expected to lead to a significant increase in their work.
3. The Chancellor cites the transfer to the Lord Chancellor last year of administrative responsibility for the Inland Revenue Special Commissioners and the Social Security Commissioners in support of his proposal. In recommending that you approve those transfers I pointed out that they represented a departure from the general rule that the Department responsible for a tribunal's area of operation should also administer it, and suggested that you would want to look more carefully at the balance of argument if there were proposals for a wholesale transfer of tribunals to the Lord Chancellor's Department.
4. So far as this particular transfer is concerned, I should not wish to question the Chancellor's judgment about the specific advantages or to advise you to resist the transfer. It can be regarded as fitting into the same package as the two earlier transfers. But I suggest that the time has come to look at the question in the round of whether the Lord Chancellor's



Department should take on a wider role in administering tribunals or whether this administrative responsibility should in general rest with Departments. I recommend that you approve this transfer but suggest to the Lord Chancellor that before any further transfers of this sort are contemplated his Department should get together with the Cabinet Office's Machinery of Government Division to examine the general question of administrative responsibility for tribunals.

5. On a minor aspect of the proposed transfer, I understand that it is proposed that a handful of staff who support the VAT tribunal in Scotland should be transferred not to the Lord Chancellor's Department but to the Scottish Courts Administration. Your office might suggest to the Chancellor's Office that they confirm with the Secretary of State for Scotland that he is content with this; the Chancellor's letter was not copied to him.

cleared.

REA

ROBERT ARMSTRONG

26 April 1985



HOUSE OF LORDS.
LONDON SW1A 0PW

12 April 1985

My dear Nigel,

VALUE ADDED TAX TRIBUNALS

Thank you for your letter dated 1 April. I am glad to say that, subject to agreement regarding the transfer of the necessary resources, I am prepared to assume administrative responsibility for the VAT Tribunals in England and Wales. At the same time, it seems to me that it would make good sense for me to assume administrative responsibility for the Tribunals in Northern Ireland, which, I gather, are currently run from your office in Scotland. I would be content to leave the arrangements for the Tribunals in Scotland to the Secretary of State and the Lord Advocate, if that is their wish.

I hope that these arrangements will lay to rest the worries which you indicate have existed, albeit wrongly, about the independence of the VAT Tribunals. One of my primary roles is, of course, to preserve judicial independence and confidence in the administration of justice. I believe, like you, that for the VAT Tribunals I am therefore well placed to provide for a fully effective and accountable administration by integrating them into my Department (as I have done with the other Tribunals which I run) whilst at the same time underlining their complete independence from Customs & Excise.

On the question of resources, I understand that our respective officials have agreed that the resources necessary to run the Tribunals now, and any additional staff required to deal with the expected increase in work as a result of the implementation of the Keith Recommendations, will be transferred to my Department. There are, I believe, some matters of detail still outstanding but these should cause no difficulties and on that basis I am, as I have said, prepared to proceed.

I note that you envisage proposing the necessary legislation as a New Clause for this year's Finance Bill. Our officials have already discussed the relevant provisions but, again, there are one or two matters still to be resolved. Assuming that these matters can be dealt with in time, as I believe to be the case, I would be content for the

/legislation to

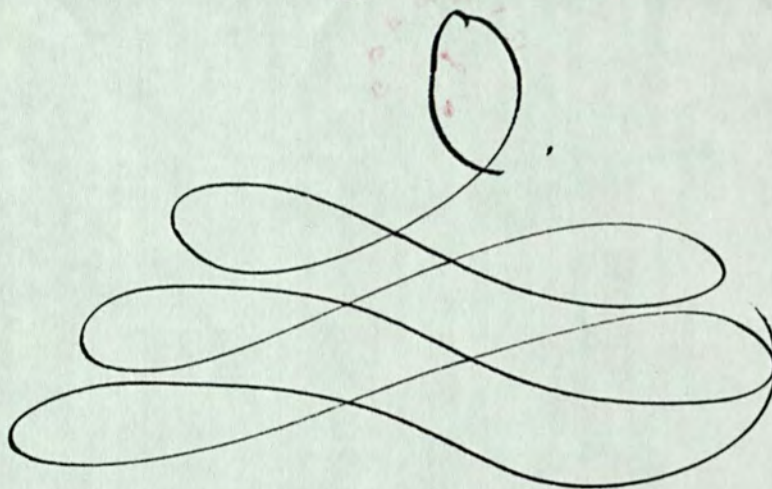
The Right Honourable
the Chancellor of the Exchequer
Treasury Chambers
Parliament Street
London SW1P 3AG

*an NBPM
Can we check
with RFA office pl
before it enters the
will speak. Next 15/4*

legislation to proceed as you suggest. I envisage that the actual transfer of responsibility would take place on 1 April 1986, thus allowing adequate time for the necessary administrative and financial arrangements to be made.

I am copying this letter to the Prime Minister and to the Lord Advocate. I am also sending a copy of the correspondence to the Secretary of State for Scotland so that he is fully in the picture.

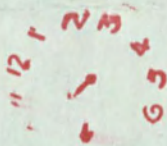
YRS;



GOVT MACHINERY. VAT Tribunals:

April 85.

15061 21





10 DOWNING STREET

From the Private Secretary

MR. HATFIELD
CABINET OFFICE

I should be grateful for any comments you may wish to give us on the attached letter from the Chancellor to the Lord Chancellor, seeking agreement for the transfer of administrative responsibility for VAT tribunals from Customs and Excise to the Lord Chancellor's Department.

Mark Addison
3 April 1985

RM



Treasury Chambers, Parliament Street, SW1P 3AG
01-233-3000

1 April 1985

The Rt. Hon. The Lord Hailsham of St Marylebone CH FRS DL
Lord Chancellor
House of Lords
LONDON
SW1

John G. Quinn

Officials of Customs and Excise have been discussing with your officials the possibility of transferring to your Department the administrative responsibility for the VAT Tribunals which at present lies within Customs and Excise. I am writing to seek your agreement to such an arrangement.

Customs and Excise have for some time been uneasy about public acceptance of the independence of the VAT Tribunals when their Department is cast in the joint roles of respondent and paymaster. This problem has been brought into focus by the forthcoming implementation of the Keith Committee proposals affecting VAT which, amongst other things, will transform a wide range of offences currently dealt with as part of the criminal code into civil offences. The Committee were naturally very concerned that adequate protection should be provided as part of the package via the appeals system. Although they did not consider this particular proposal, it would nevertheless make sense to introduce it at the same time as the Keith measures, in order to reinforce public acceptance of the Tribunal system at a time when appeals are bound to increase. I would be prepared to propose the necessary legislation as a New Clause for this year's Finance Bill.

You have recently taken responsibility for administrative control of the Inland Revenue Special Commissioners and the Social Security Commissioners. There seems to be a direct parallel here for the VAT Tribunals. Such a transfer would be a logical step in line with the Financial Management Initiative and the new arrangements recently announced for the control and review of Non-Departmental Public Bodies.

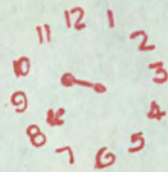
If you agree, and provided that the Prime Minister is also content, the two Departments can put the necessary wheels in motion.

I am copying this letter to the Prime Minister, and in view of his interest in the Tribunals in Scotland, to the Lord Advocate.

NIGEL LAWSON

Nigel Lawson

02 APR 1985



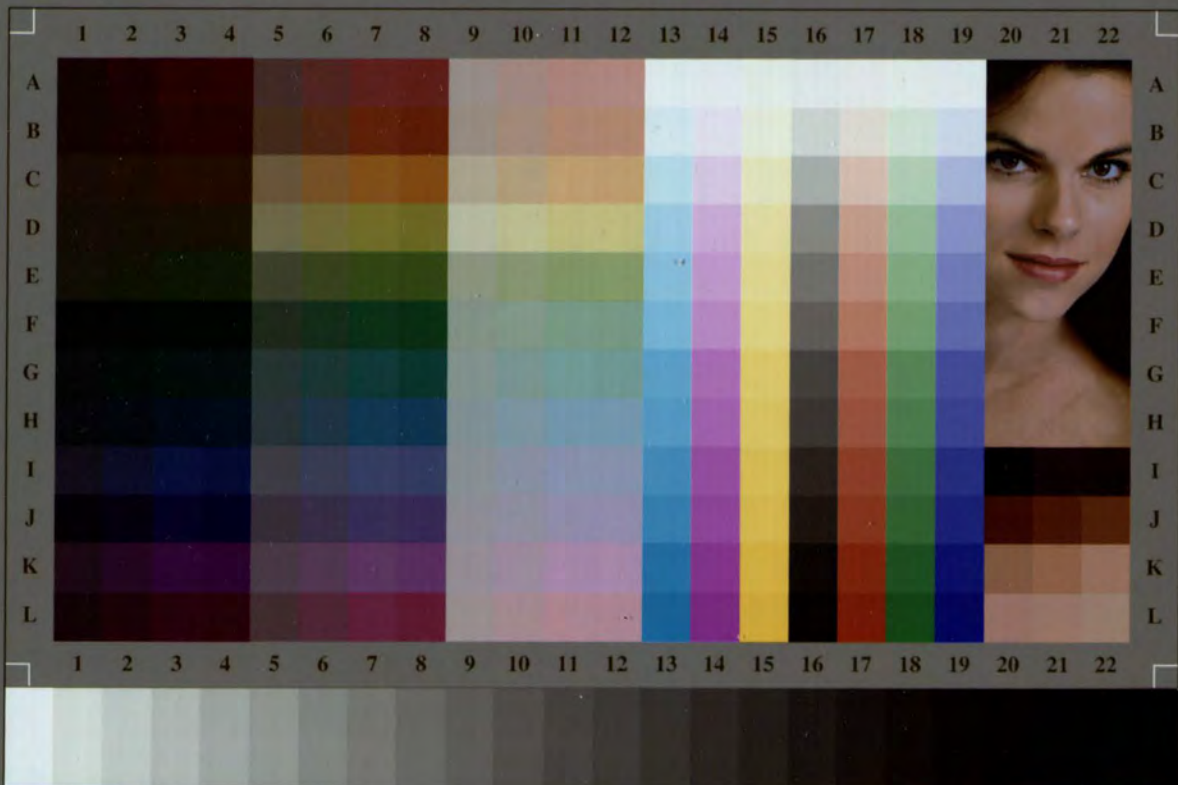


- Q. To ask the Prime Minister whether she will consider changing the arrangements for administering Value Added Tax Tribunals.
- A. I have decided to transfer responsibility for administering the VAT Tribunals to the Lord Chancellor in relation to England and Wales and Northern Ireland, and for Scotland to the Secretary of State for Scotland with effect from 1 April 1986. The responsibilities of the Secretary of State for Scotland will be discharged on his behalf by the Scottish Courts Administration.

Consequential provisions will be introduced into the current Finance Bill.

KODAK Q-60 Color Input Target

C M Y



IT8.7/2-1993
2007:03

[FTP://FTP.KODAK.COM/GASTDS/Q60DATA](http://FTP.KODAK.COM/GASTDS/Q60DATA)

Q-60R2 Target for
KODAK
Professional Papers

