CONSULTATION PAPER

REFORM OF NON-COURT ADJUDICATIVE BODIES AND APPEALS TO COURTS

Consultation Paper

Reform of Non-Court Adjudicative Bodies and Appeals to Courts

(LRC CP 70 - 2025)

Styne House, Upper Hatch Street, Dublin 2, D02 DY27

E. info@lawreform.ie

W: http://www.lawreform.ie

L: https://www.linkedin.com/company/law-reform-commission/

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Our purpose is to review Irish law and make proposals for reform. We also work on modernising the law to make it easier to access and understand. Our proposals are developed in a process which starts with a Consultation Paper. Consultation Papers examine the law and set out questions on possible changes to the law.

Once a Consultation Paper is published, we invite submissions on possible changes to the law. The Commission consults widely, considers the submissions received and then publishes a Report setting out the Commission's analysis and recommendations. These reports inform public debate and many of the Commission's proposals have led to changes in Irish law.

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Commissioner (part-time):
Dr Oonagh Breen, Professor of Law at University College Dublin, and Barrister-at-Law

Commissioner (part-time):
Mr Owen O'Sullivan, Solicitor

Commission Staff

Law Reform Research

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Siobhán Ní Chúlacháin, Barrister-at-Law, LL.M, BCL, TEG (NUI)

Deputy Directors of Research:
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Matthew Doncel, BCL (UCD), LLM (UCC)

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Marianne Joyce, BCL (NUIG), LLM (UCC)

Caoilin Young, LL.B (Dubl). LL.M (Maastricht)

James Clarke, BA (DCU), LL.M (UCC)

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Steven Marren, BA, LL.B (Lim)

Jenny McDonnell, BCL (UCC)

Cameron Moss, LL.B (NUI), LL.M (EALT)

Amy Sloane, LL.B (NUI)

Research Team for this Consultation Paper

Coordinating Commissioner:
Richard Barrett

Research Manager:
Siobhán Ní Chúlacháin

Principal Legal Researchers:
Fiachra Ó Cochláin, Caoilin Young, and Aoife Enright.

Scholar-in-residence: **Professor Paul Daly**

This consultation paper was prepared with the assistance and guidance of our scholar-in-residence, Professor Paul Daly of University of Ottawa and formerly of the universities of Cambridge and Montréal, to whom the LRC is very grateful.

The Commission would also like to acknowledge the research work of Eunice Collins, Ivan Gramatikov, Louise Kennedy, Emily Kelly, Molly Kinder, Ciara O'Brien, and Suzanne Scott, all of whom also worked on this Paper at various stages.

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Seeking your views

A Consultation Paper contains an analysis of issues that the Law Reform Commission considers arise in a particular law reform project, together with a series of questions intended to assist consultees. A Consultation Paper does not usually contain any settled view of the Commission.

Consultation is a central feature of the Commission's work and this Paper is intended to provide consultees with an opportunity to consider relevant issues, express their views and make submissions on the questions that arise in the Consultation Paper. Consultees need not answer all questions and are invited to add any additional comments they consider relevant.

The Commission intends to publish online any written submissions or commentary received but reserves the right to redact material which it deems unsuitable for publication (abusive or defamatory material, for example).

We endeavour to conduct our analysis of consultation responses in a way which preserves transparency. This permits stakeholders to see the reasoning which underlies our policymaking and leads to our recommendations, including an explanation as to why a particular avenue of law reform is or is not suggested. Any comments or views provided in written responses may be included and discussed in the Commission's final report.

Respondents to this consultation may be identified by name in the Commission's report unless they expressly advise the Commission to keep their names confidential. Where a consultee does not want information provided to be disclosed, a specific request for confidentiality must be made identifying the information which is to be kept confidential and explaining why. Any person may make a submission saying that he or she is making it on a confidential basis, especially if it contains personal information, and that information will be treated as confidential as far as possible, but the Commission cannot guarantee that confidentiality will be maintained in all circumstances. Please note that such submissions will still be subject to requests under the Freedom of Information Act 2014. If we receive a request for any material to be disclosed under FOI, we will, before releasing the information, contact the person concerned for their views.

It is intended to post written submissions on the LRC's website one month after the publication of its report on this topic along with a list of respondents' names (other than those that have requested anonymity).

Submissions can be sent in either of the following ways:

(a) You can email your submission—in whichever format is most convenient to you—to the Commission at NCABS@lawreform.ie.

or

(b) You can post your submission to:

Law Reform Commission,
Styne House,
Upper Hatch Street,
Dublin 2,
Ireland.

We would like to receive submissions on this Consultation Paper no later than close of business on 23rd June 2026.

OVERVIEW AND EXECUTIVE SUMMARY

1. **This Consultation Paper** forms part of the Commission's Fifth Programme of Law Reform.[1] It discusses whether there is a need to reform non-court adjudicative bodies in Ireland. Many of those adjudicative bodies operate under different procedures and appeal mechanisms, giving rise to inconsistencies in decision-making procedures and practices as well as contributing to legal uncertainty.

2. In this Paper, the Commission examines the possibility of standardising, simplifying, and clarifying the decision-making processes of non-court adjudicative bodies. This is intended to improve the quality of decision-making and enable decision-makers to make more structured and better-reasoned decisions. In the Commission's view, a properly tailored reform project can respond to the public interest in a more accessible, transparent and accountable system of administrative justice.

3. In this Consultation Paper, the concept of adjudication is considered to be the application of law to facts as found after the consideration of evidence, in order to resolve legal disputes relating to rights and obligations.

4. In this Consultation Paper, an adjudicative body includes administrative bodies but only those that exercise an adjudicative function. A non-court adjudicative body is "a body, independent of the Government or any other entity but at the same time not a court, which takes decisions affecting individual rights, according to some fairly precise (and usually legal) guidelines and by following a regular and fairly formal procedure". Many bodies exercise adjudicative functions that are ancillary to their primary statutory tasks. These are, nonetheless, adjudicative functions and are treated as such. This Paper distinguishes adjudication from other forms of administrative decision-making.

5. While this project aims to improve first instance decision-making and make justice more accessible to the public, it also presents an opportunity to address the variety and complexity of existing appeal processes and the challenges they present. The Commission therefore also considers potential reforms to the judicial oversight of decisions made by adjudicative bodies, by way of appeals and judicial review, with the aim of creating a more consistent and coherent system of appellate review.

[1] *Report on Fifth Programme for Law Reform* (LRC 120-2019).

6. However, the Commission is aware that a careful balance must be struck, as differences often serve a precise function. Standardisation must not come at the expense of losing the expertise developed by specialist bodies performing targeted functions.

7. Finally, this project does not consider regulatory bodies as the Commission has already made significant recommendations relating to regulatory bodies in its *Report on Regulatory Powers and Corporate Offences*.

8. **Chapter 1 Identifying the Problem** defines 'non-court adjudicative body' for the purposes of this Consultation Paper and provides an overview of the administrative system in Ireland. It situates this Paper within the constitutional context following the Supreme Court decision in *Zalewski*.

9. **Chapter 2 Adjudicative Bodies and Functions** discusses adjudication as a concept. It distinguishes *inter partes* adjudication from adjudication on issues arising between individuals and the state and examines the various adjudicative functions exercised by bodies in Ireland. It also addresses the administrative law framework as set out by *Zalewski* and previous decisions, including the distinctions between acting fairly, acting judicially and administering justice.

10. **Chapter 3 Responding to the Problem** sets out a number of possible reform options. These include unifying separate tribunals into a super tribunal structure; enacting a framework statute to provide a standard set of powers and procedures for non-court adjudicative bodies; and creating a new statutory body, such as an administrative justice council, to oversee functions and provide support services. However, this is not an exhaustive list of solutions, nor do these solutions need to be mutually exclusive. The Commission welcomes views on proposed alternatives.

11. **Chapter 4 Procedural Requirements** discusses the procedures used by non-court adjudicative bodies and suggests that procedures can be more or less formal depending on the nature of the decision being taken, the nature of the individual interests engaged and other contextual considerations. The Chapter suggests there might be a distinction drawn between the relatively informal procedures attached to adjudicators who are required to act fairly and the more formal procedures required when administering justice. It examines the possibility of enshrining key procedural duties in a framework statute, outlines the basic procedural duties that should apply to all bodies and considers the oversight role an administrative justice council might play in relation to procedures.

12. **Chapter 5 Powers of Adjudicative Bodies** identifies the powers adjudicative bodies require to perform their functions effectively and discusses the possible inclusion of these powers within a framework statute. While

adjudicative bodies consider a wide variety of issues, they all exercise a similar function, namely they adjudicate on issues and they need a range of powers to support the exercise of this function. The powers considered include the power to make procedural rules; case management powers; the power to hold hearings; the power to refer questions of law; the power to give directions; and the power to manage proceedings and hearings. These powers complement the procedures that are suggested in Chapter 4.

13. **Chapter 6 Composition of Adjudicative Bodies** discusses the requirements of competence and independence in an adjudicative setting and considers the potential benefits of clustering and shared services. It teases out the implications of these requirements in an adjudicative setting. The Chapter discusses whether a framework statute or an administrative justice council could help achieve consistency on matters such as composition, independence and competence.

14. **Chapter 7 Judicial Oversight** discusses the current model of judicial oversight of adjudicative bodies in the context of appeals and judicial review. It discusses common issues arising in the different types of oversight, where they may overlap and diverge, the array of remedies available as well as their suitability, and the difficulties with the current system of judicial oversight. This oversight exists in addition to internal review and appeal mechanisms. The second part of this Chapter examines the complexity of the current system and the practical consequences of that complexity for parties, adjudicative bodies, and the courts. The Commission considers it essential to develop a more streamlined, clear and coherent approach to judicial oversight of adjudicative bodies and review of adjudicative decisions. The Chapter suggests various options for improving and standardising aspects of judicial oversight of adjudicative decisions.

15. Please note that in this Paper's discussion, some suggestions are expressed as positive proposals of the Commission. That does not exclude the possibility of the Commission departing from such suggestions or proposals in a subsequent report on this topic.

CHAPTER 1
IDENTIFYING THE PROBLEM

1. Explaining the Objectives

[1.1] This Consultation Paper forms part of the Commission's Fifth Programme of Law Reform.[2] It discusses whether there is a need to reform public law, non-court adjudicative bodies in Ireland, given the large number of such bodies, many of which operate different procedures and appeal mechanisms which may give rise to inconsistencies and legal uncertainty.[3] In this paper, the Commission examines the need to streamline and standardise these practices and the possibilities for setting out a clear framework for procedures, along with guidelines and criteria for decision-making.

[1.2] The Commission's aim in this project is to consider possibilities for standardising, simplifying, and clarifying the decision-making processes of public law adjudicative bodies. This is intended to improve the quality of first instance decision-making and allow decision-makers to make more structured and better reasoned decisions. However, the Commission is aware that a careful balance must be struck as procedural differences often serve a precise function. Standardisation must not come at the expense of losing expertise developed by specialist bodies performing targeted functions.

[1.3] The Commission also considers potential reforms to the judicial oversight of decisions made by adjudicative bodies, with the aim of creating a more consistent and coherent system of appellate review. As this project aims to improve first instance decision-making and make justice more accessible to the public, it presents an opportunity to address the variety and complexity of existing appeal processes and the challenges they present. The Chapter on Judicial Oversight discusses the challenges presented by the current appeal and judicial review structures with a view to suggesting workable reforms. Given the scale and complexity of non-court adjudication in Ireland, the Commission has adopted a more directive approach in this Consultation Paper to the identification of potential options for reform.

(a) Defining Adjudicative Bodies

[1.4] In this Consultation Paper, the terms "adjudicative body" and "non-court adjudicative body" are used interchangeably with the term "tribunal". The term "tribunal" appears in the name of several non-court adjudicative bodies in

[2] Law Reform Commission, *Fifth Programme of Law Reform* (LRC 120-2019).

[3] Law Reform Commission, *Fifth Programme of Law Reform* (LRC 120-2019) at para 1.03.

Ireland, such as the International Protection Appeals Tribunal. "Adjudicative body" includes administrative bodies but only those that exercise an adjudicative function. These bodies are public in character, established through an exercise of state power to address an issue of public concern.

[1.5] An adjudicative body or non-court adjudicative body can be defined as "a body, independent of the Government or any other entity but at the same time not a court, which takes decisions affecting individual rights, according to some fairly precise (and usually legal) guidelines and by following a regular and fairly formal procedure".[4] This project does not consider regulatory bodies as the Commission has already made significant recommendations relating to regulatory bodies in its *Report on Regulatory Powers and Corporate Offences*.[5]

(b) Emergence of Adjudicative Bodies

[1.6] The 19th century marked an important period of development in non-court adjudication. The mid-19th century has been described as the "formative period" for adjudicative bodies, which were mainly composed of "lay adjudicators, hearing and determining appeals arising from administrative action in specialised fields of human activity".[6] This growth accelerated in the early to mid-20th century across the common law world, as social and economic reforms required the creation of administrative and adjudicative structures on a much larger scale.[7] This rapid growth in the number of non-court adjudicative bodies has continued into the 21st century.[8]

[1.7] These bodies are usually established by legislation and have the power to make legally binding decisions. However, they are often created to address specific issues with little consideration of how those problems fit into the broader network of bodies or overarching objectives.[9]

[1.8] These bodies have been set up over time without a consistent approach to procedure or to their relationship with the courts. In Britain, for example, many of

[4] Independence here does not necessarily mean the independence a superior court enjoys, but protection from outside interference in an administrative tribunal's operations, especially but not limited to its adjudicative functions.

[5] Law Reform Commission, *Report on Regulatory Powers and Corporate Offences* (LRC 119-2018).

[6] Stebbings, *Legal Foundations of Tribunals in Nineteenth-Century England* (Cambridge University Press, 2006) at page 3.

[7] Craig, *Administrative Law* 8th ed (Sweet and Maxwell, 2016) at para 2-017.

[8] For example, Coimisiún na Meán, an Coimisiún Toghcháin, the Land Development Agency, the Legal Service Regulatory Authority.

[9] Law Reform Commission, *Report on Regulatory Powers and Corporate Offences Volume 1* (LRC 119-2018) at para 6.01.

the adjudicative bodies that were established during the Industrial Revolution were "self-contained", *ad hoc* bodies designed to implement specific legislation, often combining administrative, policy and limited adjudicative functions.[10] A 1957 British government inquiry highlighted that their functions, procedures and structures lack uniformity, and attributed their variety more to political and historical factors than to the application of any general principles.[11]

[1.9] While many jurisdictions have undertaken reform efforts,[12] Ireland has yet to carry out any sustained review of the *ad hoc* nature of non-court adjudication. An effort was made in the 1994 Programme for Government, which included a commitment to introduce an Administrative Procedures Act. The Programme proposed assigning monitoring and regulatory functions to the Office of the Ombudsman to ensure "maximum compliance with the tenets of good administration".[13] It also aimed to set minimum standards for response times, the level of guidance provided to the public, and the way decisions are communicated – specifically requiring the basis for decisions, the right of appeal, the right to access all relevant information and the right to confer with decision-makers.[14]

[1.10] While the proposals from the Programme never made it onto the statute book, elements of the Programme were later included in the Ombudsman (Amendment) Act 2012. The 2012 Act inserted section 4A into the Ombudsman Act 1980. This section requires reviewable agencies (State departments and publicly funded higher education institutions for example) to give reasonable assistance and guidance to individuals in their dealings with agencies, with particular regard to the needs of people with disabilities. Agencies must also ensure that individuals are treated properly, fairly, impartially, and in a timely manner, and inform them of any rights of appeal or review, including the procedures for, and any time limits applying to the exercise of those rights.[15] The Commission is unsure about the practical impact of this legislation and invites views on this matter. Additionally, section 8 of the Freedom of Information Act

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[10] Stebbings, "*Comment: A Victorian Legal Legacy – the Bespoke Tribunal*" (2007) Adjust at page 3.

[11] Franks Committee, *Report of the Committee on Administrative Tribunals and Enquiries* (Cmnd. 218 1957) at para 128.

[12] The Chapter on Responding to the Problem discusses the reforms undertaken by other jurisdictions.

[13] Government of Ireland, *A Government of Renewal; A Policy Agreement between Fine Gael, The Labour Party, Democratic Left* (1994) at page 43.

[14] Government of Ireland, *A Government of Renewal; A Policy Agreement between Fine Gael, The Labour Party, Democratic Left* (1994) at pages 43 and 44.

[15] Section 7 of the Ombudsman (Amendment) Act 2012; See also <https://www.oireachtas.ie/en/debates/debate/select_committee_on_finance_and_the_public_service/2009-03-25/2/> accessed 5 December 2025.

2014 requires all public bodies to publish a scheme including rules, procedures, interpretations and precedents used in making decisions. A more recent effort at reform was the Fair Procedures and Administrative Justice Bill 2024, which provided for fair procedures in decision-making by quasi-judicial bodies.[16] While it was expected that this reform would have been beneficial to Irish administrative law, the Bill lapsed with the dissolution of the Dáil in 2024.

(c) Potential for Reform

[1.11] In the specific context of the rules of evidence, the Commission commented in an Appendix to its 2016 *Report on Consolidation and Reform of Aspects of the Law of Evidence* that the "proliferation" of adjudicative bodies and the "significance of the decisions and determinations they are empowered to make necessitate a more rigorous examination of the procedures they apply".[17] One commentator has stated that a fragmented system of administrative organisations can make it more difficult for them to work together on shared objectives and complex public policy issues that do not clearly fall within any one body's remit.[18]

[1.12] At the Law Reform Commission's Annual Conference in 2017, the then Chief Justice noted that unnecessarily complex systems and frequent amendments of the legislation governing adjudication can create "unwieldy" legislation that is difficult for non-legal parties to understand.[19] He warned that the current decision-making structures "often give rise to disputes about whether parties are going about issues in the right way, rather than focusing on the merits of the issue",[20] and that the term "appeal" can have a variety of meanings. His view that non-court adjudication in Ireland needs to be streamlined and simplified reflects a general consensus that the current system is over-complicated.

[1.13] Fundamental matters such as appointment and removal of adjudicators, the formality of hearings, and appeal mechanisms vary greatly across the

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[16] Houses of the Oireachtas, "Fair Procedures in the Administration of Justice Bill 2024" <https://www.oireachtas.ie/en/bills/bill/2024/24/?tab=bill-text> accessed 5 December 2025.

[17] Law Reform Commission, *Report on Consolidation and Reform of Aspects of the Law of Evidence* (LRC 117-2016) at page 463.

[18] Sigma, *Drafting A Concept Paper On The Organisational Structure Of The Executive's Public Administration* (OECD, SIGMA, EU 2008). <https://www.sigmaweb.org/content/dam/sigma/en/documents/2008/Organisational-Structure-of-the-Executive-Public-Administration.pdf > accessed 3 November 2025. Greater use of coordination, both across government agencies and internationally, was also called for in OECD, *OECD Regulatory Policy Outlook 2018* (2018).

[19] Address of the Honourable Frank Clarke, Chief Justice of Ireland to the Law Reform Commission Annual Conference (2017) at page 9.

[20] Address of the Honourable Frank Clarke, Chief Justice of Ireland to the Law Reform Commission Annual Conference (2017) at page 9.

administrative justice system.[21] This variation can lead to a lack of uniform standards and may undermine the perceived fairness and impartiality of administrative adjudication. The process for appointing and removing adjudicators can significantly influence the consistency and impartiality of decisions, both within individual bodies and as between different bodies. Different adjudicative bodies have different criteria and processes for appointing adjudicators. Some might require specific qualifications for appointment, while others do not.[22] At the other end of the process, some permit removal only for misconduct, while others allow removal at the discretion of higher authorities. The formality of hearings across administrative bodies also differs. Some bodies conduct hearings similar to court proceedings, with strict adherence to procedural rules and legal representation. Others adopt a more informal approach, aiming at reducing cost, improving accessibility and increasing efficiency, though at the expense of procedural rigour.[23] This divergence can lead to confusion and unpredictability for those engaging with administrative proceedings, as the expectations and requirements can differ depending on the body involved.

[1.14] Appeal mechanisms also vary considerably across different administrative bodies. In some cases, decisions are subject to multiple levels of appeal, with clearly defined processes and standards of review. In other cases, appeal options are limited or absent, leaving judicial review as the primary recourse.[24] The absence of a uniform appeal process can lead to differences in how easily individuals can challenge administrative decisions, which in turn affects the fairness and accountability of the administrative system. Other aspects of procedure, such as timelines for decision-making, the availability of decisions to the public, evidential requirements, and the availability of legal aid, also vary significantly across administrative bodies.

[1.15] The Commission is aware that there may be good reasons for the application of different procedures across various bodies. Different procedures may be appropriate depending on the nature of the issues involved and the nature of the adjudicative process – whether it is *inter partes* (involves opposing parties), like the Workplace Relations Commission, or not, as with the Social Welfare Appeals

[21] Donson, O'Donovan, and Ryan, "Ireland's Distinct Constitutional Vision: The 'Administration of Justice in Quasi-Judicial Bodies" in Thompson, Groves, and Weeks, (eds), *Administrative Tribunals in the Common Law World* (Bloomsbury Publishing 2024) at page 355.

[22] Donson, O'Donovan, and Ryan, "Ireland's Distinct Constitutional Vision: The 'Administration of Justice in Quasi-Judicial Bodies" in Thompson, Groves, and Weeks, (eds), *Administrative Tribunals in the Common Law World* (Bloomsbury Publishing 2024) at page 364.

[23] McCabe, "Perspectives on Economy and Efficiency in Tribunal Decision-Making" (2016) 85 Australian Institute of Administrative Law Forum 40.

[24] Donson, O'Donovan, and Ryan, "Ireland's Distinct Constitutional Vision: The 'Administration of Justice in Quasi-Judicial Bodies" in Thompson, Groves, and Weeks, (eds), *Administrative Tribunals in the Common Law World* (Bloomsbury Publishing 2024) at page 372.

Tribunal. While procedural flexibility is necessary to grant a particular adjudicative function to an adjudicative body,[25] procedural variation can impact the accessibility and effectiveness of administrative justice. Some standardisation is therefore desirable, and any departure from the usual procedure should be explained.

[1.16] It has been argued that inconsistencies in procedure can lead to an overreliance on judicial review as a means of ensuring fairness and correcting errors in administrative decisions.[26] Judicial review serves as a crucial check on administrative power, but it is not a substitute for robust and consistent decision-making at the first instance. The Commission believes that the emphasis should be on improving the quality and consistency of initial decisions to reduce the need for judicial intervention. Strengthening the quality and consistency of first instance decisions requires balancing the need for procedural flexibility across organisations with the need for clearer procedural baselines. Decisions can also be strengthened by ensuring adequate adjudicator training and transparent and accountable processes for their appointment and removal. Reviews of decisions which are overturned on appeal could improve the quality of first instance decisions.[27] By addressing these foundational issues, the administrative state can support fairer outcomes, reduce unnecessary reliance on judicial review, and enhance public confidence in the administrative justice system.

2. An Overview of the Administrative State

[1.17] The Irish State Administration Database provides a valuable overview of Ireland's contemporary administrative state.[28] It records information about the formal development and composition of national-level Government and public administration organisational structures since 1922. The database consists of two interlinked datasets: the first ('units') records the names of all national-level public organisations, and the second ('events') tracks key developments in each organisation's history, including their establishment and any changes to their form, role or function.

[25] *Zalewski v Workplace Relations Commission* [2021] IESC 24, [2022] 1 IR 421.

[26] Nason, "Oversight of Administrative Justice Systems" in Hertogh, Kirkham, Thomas, and Tomilson (eds) *The Oxford Handbook of Administrative Justice* (Oxford University Press, 2021) at pages 155 to 176.

[27] Comptroller and Auditor General of Ireland, "Chapter 10: Management of Social Security Appeals" in *Report on the Accounts of Public Services* (2020) at Recommendation 10.4 at page 137.

[28] The Irish State Administration Database accessed <http://www.isad.ie> accessed 13 November 2025. It should be noted that this database is an elaborate list of all national-level public organisations and extends beyond just non-court adjudicative bodies.

[1.18] For the purposes of the database, a unit is a national-level organisation that performs a public function under public authority. Units include central Government and ministerial departments, commercial state-owned enterprises and non-commercial state agencies, and other relevant public bodies and institutions in Ireland. The database does not contain a comprehensive list of divisions within Government Departments or bodies with a purely local or regional remit.

[1.19] The database records up to 11 attributes for each unit. One of the recorded attributes is the **function** of the unit, which covers a broad range of activities:

(a) adjudication/grievance handling;
(b) advisory/consultative/representation/advocacy;
(c) contracting;
(d) delivery;
(e) information-providing;
(f) policy formation and execution;
(g) regulatory;
(h) taxing;
(i) trading; and
(j) transfer.

[1.20] Another attribute recorded is the **policy domain**, which is the principal policy field in which the unit is active. These are:

(a) Agriculture, fisheries and forestry
(b) Communications
(c) Defence
(d) Education and Training
(e) Employment
(f) Enterprise and Economic Development
(g) Environmental Protection
(h) General Public Services
(i) Health
(j) Housing and Community Amenities
(k) International Services
(l) Public Order and Safety
(m) Recreation, Culture and Religion
(n) Social Protection
(o) Transport
(p) Science and Technology.

[1.21] **Accountability** is also recorded as an attribute. Units may be subject to one or more forms of oversight other than the courts and Oireachtas. Units may be accountable to the Office of the Information Commissioner, various

Ombudsman's offices, the Office of the Comptroller and Auditor General and a wide variety of regulators.

[1.22] The overview provided by the database illustrates the scale of Ireland's administrative state and situates this Consultation Paper within that broader context. A comprehensive review of all decision-making mechanisms in Ireland would not be practical. Instead, this Consultation Paper focuses on a specific subset of categories identified in the Irish State Administration Database.

[1.23] Another one of the attributes recorded on the database is **legal form** (for example, statutory corporation or company limited by guarantee). This helps to situate adjudication within the contemporary administrative state in Ireland. Legal form encompasses a broad spectrum of options.[29] The legal form of public organisations ranges from Government ministries, established and governed by legislation, to some non-government organisations. While privately owned, these bodies are considered public due to their substantial public funding, exercise of statutory powers or because they are subject to public accountability mechanisms. The legal form of organisations can also vary from statutory corporations to different types of Companies Acts companies, such as public companies, private companies, and companies limited by guarantee, as well as associations which are rooted in contract.[30]

[1.24] Adjudicative bodies created by statute like the Workplace Relations Commission, and those created by non-statutory means such as circulars, like the Criminal Injuries Compensation Tribunal and the Milk Quota Appeals Tribunal, are the bodies of greatest interest for the purposes of this Consultation Paper.

[1.25] However, other public bodies also have adjudicative functions. Ministries, Government departments and executive agencies (units within ministerial departments that are presented as separate from the typical structures of the office) often make determinations about individuals' legal rights and obligations. Some statutory corporations,[31] statutory non-departmental[32] bodies and non-statutory non-departmental bodies also exercise adjudicative functions as part of their role.

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[29] Hardiman, MacCarthaigh and Scott, *The Irish State Administration Database Codebook and Data description* (2014) at page 6.

[30] Scott, "Understanding Variety in Public Agencies" (2008) Geary WP/4/2008 at page 4. <https://www.ucd.ie/geary/static/publications/workingpapers/gearywp200804.pdf> accessed 13 November 2025.

[31] These include Horse Racing Ireland, Córas Iompair Éireann, the Electricity Supply Board and VHI Healthcare.

[32] *T.N. v Minister for Justice, Equality and Law Reform* [2007] IEHC 257.

[1.26] Although this Consultation Paper is primarily concerned with bodies solely established for adjudicative purposes, all bodies exercising adjudicative functions fall within its scope.[33] The Commission takes a functional approach, focusing on adjudication itself regardless of the legal form of the body in question or whether adjudication is its primary purpose or ancillary to its normal function.

3. The Constitutional Context

[1.27] Between the publication of the Programme for Law Reform and the publication of this Consultation Paper, there has been a major development in Irish constitutional law in relation to administrative adjudication, the decision of the Supreme Court in *Zalewski v The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* ("*Zalewski*").[34] The key point emerging from *Zalewski* is that some adjudicative bodies are engaged in the administration of justice and must therefore, whilst retaining flexibility, act and be structured similarly to the courts to some extent. This means that some form of measure is required to make provision for non-court adjudicative bodies that are, in effect, administering justice within the meaning of Article 34 of the Constitution.

(a) Contextual Background

[1.28] Following the 20th-century expansion of the role of the State, a pattern of legal reform began to confer new functions on non-court bodies. The Land Commission is an early example of this. Article 64 of the 1922 Constitution made the judicial power and the administration of justice exclusive to courts, reflecting the importance of maintaining the separation of powers.[35] The judicial power was exclusive to courts and consisted of adjudication and final determination of criminal and civil disputes. In *Lynham v Butler*, the High Court found that the Land Commission was exercising administrative functions in a judicial manner, but that this was not an exercise of judicial power and did not intrude on the power reserved for judges.[36] Administrative bodies were established specifically

[33] See the Chapter on Adjudicative Bodies and Functions for discussion.

[34] *Zalewski vs The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421.

[35] Article 64 of the Constitution of Ireland: 'The judicial power of the Irish Free State (Saorstát Eireann) shall be exercised and justice administered in the public Courts established by the Oireachtas by judges appointed in manner hereinafter provided. These Courts shall comprise Courts of First Instance and a Court of Final Appeal to be called the Supreme Court. The Courts of First Instance shall include a High Court invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal, and also Courts of local and limited jurisdiction, with a right of appeal as determined by law.'

[36] *Lynham v Butler (No 2)* [1933] IR 74.

to make decisions and it was understood these determinations were not exercising judicial power.

[1.29] The 1937 Constitution clarified the position of non-court adjudicative bodies by inserting Articles 34 and 37. Article 34 confirmed that the administration of justice is for the courts, but Article 37 permits the vesting of "limited functions and powers of a judicial nature" in non-court bodies, in areas other than criminal matters.[37] The discussion in *Zalewski* suggests that Article 37 of Bunreacht na hÉireann was included because of concerns that certain bodies – such as the Land Commissioners and the Tax Appeal Commissioners – would otherwise be open to challenge for exercising functions reserved for the courts. Article 37 was seen as creating a "safety net" for administrative bodies engaged in adjudication.[38]

[1.30] In *McDonald v Bord na gCon*,[39] Kenny J formulated a five-limb test characterising the administration of justice. The five features are:

(a) a dispute or controversy as to the existence of legal rights or a violation of the law;
(b) the determination or ascertainment of the rights of parties or the imposition of liabilities or the infliction of a penalty;
(c) the final determination (subject to appeal) of legal rights or liabilities or the imposition of penalties;
(d) the enforcement of those rights or liabilities or the imposition of a penalty by the Court or by the executive power of the State which is called in by the Court to enforce its judgment;
(e) the making of an order by the Court which as a matter of history is an order characteristic of Courts in this country.[40]

[1.31] In subsequent caselaw, the test was applied as a definitive checklist. Prior to *Zalewski*, each of the five criteria had to be satisfied for an adjudication to amount to the administration of justice. Only where all five criteria were met would a court then consider whether a body was exercising a limited use of that judicial power as permitted under Article 37.

[37] Article 37 of the Constitution of Ireland.

[38] Article 37 of the Constitution of Ireland. "Nothing in this Constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorised by law to exercise such functions and powers, notwithstanding that such person or such body of persons is not a judge or a court appointed or established as such under this Constitution.'

[39] *McDonald v Bord na gCon* [1965] 1 IR 217.

[40] *McDonald v Bord na gCon* [1965] 1 IR 217, Kenny J at page 231.

[1.32] *Re Solicitors Act* was one of the few cases prior to *Zalewski* to focus on Article 37 and the meaning of "limited".[41] The Supreme Court found that the test for determining whether the use of judicial power and/or function is "limited" is by reviewing whether, by exercising that power or function, the body is exercising powers of far-reaching effect and importance. On this basis, the power to strike a solicitor off the roll could not be considered "limited" within the meaning of Article 37 and thus, it was an exercise of judicial power which was required by the Constitution to be done by the courts. This has been regarded as a broad approach to what may be considered the exercise of judicial power, and by contrast, a very narrow reading of Article 37.[42]

[1.33] From the reverse perspective, in order to avoid constitutional challenge, the legislature has used this five-part test to guide it in its creation of new administrative bodies with adjudicative powers; avoiding even one of the criteria would keep the newly-formed body within constitutional limits. When *McDonald* was appealed to the Supreme Court, the Court accepted the *McDonald* test but did not agree with its application to the facts.[43]

(b) Zalewski v Workplace Relations Commission

[1.34] In *Zalewski*, the issue before the Supreme Court was whether the Workplace Relations Commission's adjudication process amounted to the administration of justice, and, if so, whether it should be exercised by the courts. The Supreme Court expressed concern about an overly formalistic interpretation and application of the *McDonald* test. O'Donnell J's majority decision favoured a broader and more flexible approach than the checklist approach that had been taken by courts subsequent to the decision in *McDonald v Bord na gCon*.

[1.35] A broader interpretation of the terms of Article 37 would acknowledge that there are matters which must be addressed by a court under Article 34, and matters that must not necessarily be considered by a court but which require similar adjudicative standards. O'Donnell J set out a list of reasons for preferring a broader interpretation:

a) the majority viewed Article 37 as a "saver", allowing for the exercise of judicial power by non-court bodies;
b) it was probably the intention of the drafters for Article 37 to be interpreted broadly;
c) the "far-reaching" test was relativist and impressionistic; and

[41] *Re Solicitors Act 1954* [1960] 1 IR 239.

[42] *Zalewski vs The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421, O'Donnell J at para 74.

[43] *McDonald v Bord na gCon* [1965] 1 IR 217.

d) the limitations on the jurisdiction of local and limited courts under Article 34.3.4° may provide some insight as to the type of limitation required by Article 37.[44]

[1.36] The Supreme Court found that the Workplace Relations Commission was administering justice but that the administration of justice does not necessarily have to be done by the courts, as Article 37 had to be considered. The Court then turned to whether the exercise of judicial power by the Workplace Relations Commission could be considered limited, and therefore, permitted under Article 37. According to the majority, factors relevant to the determination of a 'limited' exercise of judicial power include:

(a) the subject matter;
(b) the awards that body could grant;
(c) enforceability;
(d) the availability of an appeal; and
(e) the existence of judicial review.

[1.37] Thus, under Article 37, a non-court adjudicative body may administer justice as long as its powers and functions are limited. This was held to be the case in respect of the Workplace Relations Commission. In *Zalewski,* the Supreme Court departed from the *McDonald* test (as it later came to be applied) by not attaching any decisive weight to the fact that Workplace Relations Commission or Labour Court determinations were not self-executing and required enforcement by a court order. The judgment reflected a shift toward a more structured understanding of how adjudicative functions may be distributed between courts and non-court bodies under Article 37 and acknowledged that different types of adjudicative bodies may exercise limited judicial functions without being considered courts.

[1.38] Three considerations emerge from *Zalewski* that merit particular note. First, *Zalewski* provokes discussion around the need for reform in this area. In the case itself, the Supreme Court held that the legislation establishing the Workplace Relations Commission was constitutionally deficient by failing to provide for the taking of evidence on oath and by legislating for a blanket ban on public hearings. It was the Court's view that, as the Workplace Relations Commission was administering justice within the meaning of Article 34, even in the "limited" sense permitted by Article 37, its procedures, powers and structure had to approximate those of a court. This required targeted changes to the Workplace Relations Act 2015.[45] There is likely to be only a limited number of additional

[44] *Zalewski vs The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421, O'Donnell J at paras 112 to 115.

[45] The Workplace Relations (Miscellaneous Provisions) Act 2021 amended the 2015 Act and implemented these changes.

bodies exercising adjudicative functions who are also administering justice,[46] and would therefore require suitable procedures, powers and structure. For example, the Residential Tenancies Board, an Article 37 body, already has powers to administer oaths and hold hearings in public under sections 105 and 106 of the Residential Tenancies Act 2004, unlike the WRC prior to *Zalewski*.

[1.39] Second, *Zalewski* distinguishes different types of adjudicative functions. The categorisation challenge is discussed later in the Consultation Paper,[47] but it should be emphasised at this early stage that ultimate categorisation remains a judicial function. As O'Donnell CJ put it in *Zalewski*, it is "emphatically the function of the court under the Constitution to determine, in any given case, how a particular jurisdiction is to be analysed and categorised".[48] A body exercising adjudicative functions might have to form its own view about whether it is administering justice, but how it is categorised is ultimately a legal question to be answered by the courts. Nonetheless, legislation overseen by the courts could provide useful clarification by setting out distinct procedures, powers and structure for bodies engaged in the "administration of justice" and those which are carrying out adjudicative functions at a lower level of procedural formality.

[1.40] Third, the implications of *Zalewski* are somewhat uncertain. The Supreme Court relied on a range of contextual factors, both in terms of setting the ambit of the "administration of justice" under Article 34 and defining the scope of permissible 'limited' functions for the purposes of Article 37. Contextual analysis has many advantages, but one disadvantage in this context is that it can be difficult to say with certainty whether a body is engaged in the "administration of justice" or exercising "limited" functions. The Commission's view is that it is possible for the Oireachtas to work within this contextual framework. However, the reliance on contextual factors may make clear-cut legislative reform difficult, as the constitutional classification of a body may hinge on its powers and not simply the way those powers are exercised.

[46] Cahillane, "Defining the Administration of Justice in Ireland after the Zalewski Decision" (2023) 69 Irish Jurist 164.

[47] This is discussed in the Chapter on Adjudicative Bodies and Functions, under the heading "The Administrative Law Structure".

[48] *Zalewski v The Workplace Relations Commission* [2021] IESC 24, [2022] 1 IR 421 at para 128.

4. Request for Views

Q 1.1	The Commission invites views on whether standardisation across all adjudicative bodies is required, and how to accommodate the expertise of specific bodies.
Q 1.2	The Commission invites views on the impact of the model used in the Ombudsman (Amendment) Act 2012.
Q 1.3	The Commission is interested in hearing any other views on the contents of this Chapter.

CHAPTER 2
ADJUDICATIVE BODIES AND FUNCTIONS

[2.1] The term 'adjudicative body' is defined in this Consultation Paper as "a body, independent of the Government or any other entity but at the same time not a court, which takes decisions affecting individual rights, according to some fairly precise (and usually legal) guidelines and by following a regular and fairly formal procedure".[1] The Commission acknowledges that there are bodies operating in the private sphere that make decisions which impact on people's rights but this Consultation Paper deals only with public law bodies.

[2.2] Adjudicative bodies may take many legal forms and can be created by statute, regulation, circular, or otherwise. Some bodies adjudicate between the State and the individual and some, like the Workplace Relations Commission and Residential Tenancies Board, adjudicate between private bodies and the individual or between individuals. It is useful to examine the different types of adjudicative functions as well as some other functions often exercised by bodies involved in adjudication.

1. The Concept of "Adjudication"

[2.3] This Consultation Paper defines the concept of 'adjudication' as the application of law to facts as found after the consideration of evidence in order to resolve legal disputes relating to rights and obligations.

[2.4] The New Zealand Law Commission's Issues Paper "Tribunals in New Zealand"[2] contains an instructive discussion of the concept of adjudication. Its starting point is provided by academic definitions. Richardson and Genn observe that adjudication covers "all administrative decisions which require judgement in

[1] Hogan, Morgan and Daly, Administrative Law in Ireland 5th ed (Roundhall, 2019) at para 6-11. See also the Chapter Identifying the Problem under the heading "Defining Adjudicative Bodies".

[2] New Zealand Law Commission, *Tribunals in New Zealand* (NZLC IP6 2008).

applying standards to facts".[3] Fuller also defines adjudication in his well-known, posthumously published article, "The Forms and Limits of Adjudication", as "a process of decision in which the affected party's participation consists in an opportunity to present proofs and reasoned arguments".[4] It then follows according to this definition, that any decision based on reasoned argument must itself be reasoned.

[2.5] The essence of reasoned decision-making involves, in turn, applying principles or rules to factual scenarios in order to determine legal rights and obligations. Adjudication "generally" involves:

(a) the finding of facts based on the presentation of evidence,
(b) deciding cases by applying settled rules or principles to facts,
(c) resolving something in the nature of a legal dispute between parties, and
(d) determining legal rights and obligations.[5]

[2.6] There is a further layer to the definition of adjudication in the administrative context. Unlike courts, administrative bodies are creatures of statute (or some other form of state action). Adjudicative functions were conferred upon them. The general assumption is that their creator intends adjudicative functions to be exercised by expert administrative bodies with greater expedition, informality and flexibility than judicial functions. This has traditionally been seen as the core purpose of administrative tribunals. The proliferation of tribunals is due in part to the public interest in having expert decision-makers adjudicate on contentious issues in a less formal, quicker, and cheaper setting.

[2.7] Many bodies exercise adjudicative functions that are ancillary to their primary statutory tasks. These are, nonetheless, adjudicative functions and in the interests of simplicity and clarity, should be treated as such. The following subsections tease out the principal forms of adjudication – adversarial and inquisitorial – and distinguish adjudication from other forms of administrative decision-making.

[3] Richardson and Genn, "Tribunals in transition: resolution or adjudication?" (2007) 1 Public Law 116 at page 119. Also referenced by D. Galligan, *Due Process and Fair Procedures* (Clarendon Press, Oxford, 1996) at page 241.

[4] Fuller, "The Forms and Limits of Adjudication" (1978) 92 (2) Harvard Law Review 353 at page 365.

[5] New Zealand Law Commission, Tribunals in New Zealand (NZLC IP6 2008) at para 2.20.

(a) Adjudication between Parties versus Adjudication between the Individual and the State

[2.8] An important distinction can be drawn between adjudicative bodies that adjudicate on disputes between parties and those that adjudicate on disputes between individuals and the State.

(i) Adjudication between Parties

[2.9] Most obviously, the definition of adjudication adopted for this Consultation Paper captures disputes between parties. Adjudicative bodies which hear matters involving two parties include the Workplace Relations Commission, the Labour Court and the Residential Tenancies Board. In exercising their adjudicative functions, these bodies act as independent and impartial arbiters between two competing parties, making this process adversarial in nature.

[2.10] One of the Labour Court's statutory functions is an adjudicative function to hear appeals against the decision of an adjudication officer of the Workplace Relations Commission.[6] When performing this function, the Labour Court sits in four divisions. The conduct of the hearing is regulated by the chairperson of the division hearing the appeal. Hearings are usually held in public but they may be held in private where special circumstances exist.[7] Parties and their representatives are required to be present and conduct themselves in a manner suitable to a courtroom setting.[8] Either party to the proceedings may be represented by a trade union representative, an official of a body that represents the interests of employers, a solicitor or barrister, or any other person that has been approved by the Labour Court.[9]

(ii) Adjudicating between the Individual and the State

[2.11] The definition of adjudication adopted includes bodies that decide between individuals and the State, for example, in disputes regarding entitlement to a social welfare benefit or a licence.

[2.12] The International Protection Appeals Tribunal is one such example.[10] The International Protection Appeals Tribunal determines appeals from decisions of

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[6] Both the Labour Court and the Workplace Relations Commission also have functions that are not adjudicative or adversarial, for instance, industrial relations functions.

[7] Rule 65 of the Labour Court Rules 2024. A party seeking a private hearing due to special circumstances must notify the Labour Court and the other party in writing in advance of the hearing, outlining the special circumstances on which their request is based.

[8] Rule 67 of the Labour Court Rules 2024.

[9] Section 44(9) of the Workplace Relations Act 2015. Rule 46 of the Labour Court Rules 2024.

[10] The International Protection Appeals Tribunal was established by section 61 of the International Protection Act 2015.

the International Protection Office, providing a remedy in respect of recommendations made under Part 10 of the 2015 Act.[11] Applicants may appeal to the Tribunal against decisions not to grant refugee status or a subsidiary protection declaration.[12] The Tribunal conducts oral hearings for appeals when requested by the applicant or when deemed necessary in the interests of justice.[13] These hearings are private,[14] with permission for the presence and participation of the applicant (in person or through a legal representative),[15] and the Minister for Justice's officer or nominee (in person or through a legal representative).[16]

[2.13] Interpreter services may be provided if required.[17] The Tribunal may allow for witness examination and cross-examination during an oral hearing.[18] The Tribunal may direct witnesses to attend and to submit evidence or documents under oath[19] ensuring confidentiality in sensitive cases.[20] The process emphasises informality, fairness and expedition.[21]

(b) Adjudicative Functions

(i) Adversarial and Inquisitorial Functions

[2.14] Adjudicative processes fall on a spectrum between adversarial and inquisitorial.[22] The definition of adjudicative bodies captures a wide variety of bodies, some of which exercise their adjudicative functions adversarially and some, inquisitorially.

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[11] Section 61(1) of the International Protection Act 2015. The International Protection Act 2015 was supplemented by the European Union (Dublin System) Regulations 2018 (SI No 62 of 2018), in respect of appeals concerning transfer decisions made by an international protection officer under the Dublin III Regulation (Regulation 604/2013). Since 1 July 2018, the Tribunal has also determined appeals pursuant to the European Communities (Reception Conditions) Regulations 2018-2021 in relation to labour market access.

[12] Section 41(1) of the International Protection Act 2015.

[13] Section 42(1) of the International Protection Act 2015.

[14] Section 42(4) of the International Protection Act 2015.

[15] Section 42(6)(a) of the International Protection Act 2015.

[16] Section 42(6)(b) of the International Protection Act 2015.

[17] Section 42(6)(c) of the International Protection Act 2015.

[18] Section 42(6)(f) of the International Protection Act 2015.

[19] Section 42(8) of the International Protection Act 2015.

[20] Section 42(11) of the International Protection Act 2015.

[21] Sections 42(6)(d) and 42(6)(e) of the International Protection Act 2015.

[22] The "very dominance of the adversary model" undermines the idea that these are mutually exclusive definitions, Robardet, "Should We Abandon the Adversarial Model in Favour of the Inquisitorial Model in Commissions of Inquiry" (1989) 12 Dalhousie Law Journal 111 at page

[2.15] **Adversarial processes** usually involve the decision-maker listening to the arguments of two parties and may involve cross-examination of witnesses, legal representation and the making of submissions. In this setting, the decision-maker is passive and above the fray. Hence, the view that an adjudicator should not "descend into the forensic arena".[23]

[2.16] **Inquisitorial processes** are typically more informal and the decision-makers play a greater role in seeking out information and questioning parties.[24] In inquisitorial processes, the decision-maker has a more active role in assisting a party to make his or her case,[25] and when there is no oral hearing, the decision-maker may have a greater burden in respect of the organisation of evidence.[26]

[2.17] The Commission is of the view that the distinction between inquisitorial and adversarial approaches should not be given too much importance. As noted, both satisfy the definition of adjudication set out above. As various techniques used in one model bleed into, or are appropriated by the other, the importance of the distinction between adversarial and inquisitorial models of adjudication loses significance. As conceptual categories, they cannot be said to be watertight or clearly defined or demarcated. Regardless, both models are simply different forms of adjudication which fall under the definition adopted in this Consultation Paper.

(ii) Regulatory Functions

[2.18] There are many administrative bodies that exercise adjudicative functions, despite the fact that adjudication may not be their dominant function. For example, the Commission for Communications Regulation ('ComReg') regulates telecommunications, radio, broadcasting transmission, premium rate services, and the postal sector. Much of ComReg's work involves making policy decisions about these important parts of the economy. These decisions are often 'polycentric' in nature, as they involve many interlocking considerations. For example, determining the parameters of access to physical infrastructure owned

119. In *AAL (Nigeria) v Mental Health Tribunal* [2018] IEHC 792, Humphreys J at para 19 said that there "is a spectrum of types of inquisitorial process".

[23] *Kiely v Minister for Social Welfare (No. 2)* [1977] IESC 2, [1977] IR 267 at para 23.

[24] De Villiers, "The State Administrative Tribunal of Western Australia - Time to End the Inquisitional/Accusatorial Conundrum" (2014) 37 University of Western Australia Law Review 182 at pages 183-196. De Villiers suggests at page 183 that the inquisitional label may apply to a body which has "the ability to inform itself and make use of the knowledge of its members", "an obligation to come to the 'correct and preferable decision'", "is not bound by the rules of evidence", uses "unique and informal case management processes" and ""members" often play an active role during hearings."

[25] Cane, *Administrative Tribunals and Adjudication* (Hart Publishing, 2009) at page 239.

[26] Cane, *Administrative Tribunals and Adjudication* (Hart Publishing, 2009) at page 242.

by companies that are active in a particular market may require striking a balance between technical considerations about the use of infrastructure by third parties and the likely consequences on the behaviour of regulated entities.[27] It is not usually appropriate to have such decisions made by adjudication, "as these types of decision have wide-ranging effects and are not confined to deciding questions involving individual rights through the application of standards to facts".[28] These types of regulatory decisions do not come under this Consultation Paper's definition of adjudication.

[2.19] However, where ComReg does exercise adjudicative functions, for example in determining breaches of the Electronic Communication Code[29], those functions would fall within the definition.

[2.20] It is worth considering Coimisiún na Meán under this heading. The Online Safety and Media Regulation Act 2022 established Coimisiún na Meán as a new multi-person media commission in place of the existing Broadcasting Authority of Ireland. This Act transposed the revised EU Audio-Visual Media Services Directive[30] with regard to video-sharing platforms, into Irish law. Coimisiún na Meán has both regulatory and investigative/enforcement functions. In terms of its regulatory functions, Coimisiún na Meán has powers in relation to online harms. It makes binding online safety codes which tackle the availability of the categories of harmful online content by addressing a wide range of issues from standards which must be met, and measures and practices which must be followed for content moderation, content delivery, service provider risk assessments, service provider reporting systems, user complaints handling, and advertising.[31] When preparing an online safety code, Coimisiún na Meán must have regard to various criteria such as desirability of a transparent decision-making process in content moderation, the impact of automated decision-making, the need for proportionate provisions, levels of availability of harmful online content, levels of risk of exposure, levels of risk of harm, rights of

[27] See, for example, An Coimisiún um Rialáil Cumarsáide-Commission for Communications Regulation, *Market Review - Physical Infrastructure Access (PIA) Market Review* (D03/24 ComReg 24/05 2024).

[28] New Zealand Law Commission, *Tribunals in New Zealand* (NZLC IP6 2008) at para 2.21.

[29] European Union (Electronic Communications Code) Regulations 2022 (SI No 444 of 2022).

[30] Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.

[31] Section 139K of the Broadcasting Act 2009 as inserted by section 45 of the Online Safety and Media Regulation Act 2022.

providers, and the eCommerce compliance strategy.[32] These are, plainly, *regulatory* functions, not adjudicative functions.

[2.21] However, Coimisiún na Meán also exercises adjudicative functions, as it may punish those who are in breach of its rules. Failure to comply with an online safety code may be investigated by an authorised officer.[33] Authorised officers may conduct oral hearings.[34] Once an investigation is concluded, the authorised officer creates a draft report and gives it to the provider.[35] The provider has 28 days to submit a response.[36] The authorised officer must consider the submissions and finalise the report which is furnished to the provider and to Coimisiún na Meán. Coimisiún na Meán will hold an oral hearing if it considers it necessary to do so for the purpose of fair procedure.[37] To resolve any issue of fact or otherwise enable it to make a decision, Coimisiún na Meán can request the provider or any other person to furnish further information, provide a redacted copy of the report to a person, or conduct an oral hearing.[38] Having heard the matter, Coimisiún na Meán decides on the balance of probabilities whether it is satisfied the provider committed the relevant contravention, whether to impose an administrative financial sanction,[39] and the amount of the sanction to be imposed.[40] This is clearly an adjudicative function.

(iii) Investigative Functions

[2.22] Bodies will sometimes exercise functions that are investigative in nature prior to exercising an adjudicative function. A useful example is provided by the Legal Services Regulation Act 2015. Here, a variety of bodies are empowered to

[32] Section 139M of the Broadcasting Act 2009 as inserted by section 45 of the Online Safety and Media Regulation Act 2022.

[33] Section 139Q of the Broadcasting Act 2009 as inserted by section 45 of the Online Safety and Media Regulation Act 2022.

[34] Section 139ZK(3) of the Broadcasting Act 2009 as amended by section 47 of the Online Safety and Media Regulation Act 2022 and section 19 of the Digital Services Act 2024.

[35] Section 139ZM(1) and (3) of the Broadcasting Act 2009 as amended by section 47 of the Online Safety and Media Regulation Act 2022 and sections 22 and 26 of the Digital Services Act 2024.

[36] Section 139ZM(3)(d) of the Broadcasting Act 2009 as inserted by section 47 of the Online Safety and Media Regulation Act 2022.

[37] Section 139ZR(3) of the Broadcasting Act 2009 as inserted by section 47 of the Online Safety and Media Regulation Act 2022.

[38] Section 139ZR(4) of the Broadcasting Act 2009 as inserted by section 47 of the Online Safety and Media Regulation Act 2022.

[39] Section 139ZS(1) of the Broadcasting Act 2009 as inserted by section 47 of the Online Safety and Media Regulation Act 2022 and sections 27(a), (b) of the Digital Services Act 2024.

[40] Section 139ZW of the Broadcasting Act 2009 as amended by section 47 of the Online Safety and Media Regulation Act 2022 and sections 32 of the Digital Services Act 2024.

investigate complaints about specified misconduct. These investigative functions do not necessarily lead to an adjudicative process before the Legal Practitioners Disciplinary Tribunal, but it is possible. Where a matter does come before the Tribunal, its adjudicative functions – carried out through an adversarial process – would be captured by the definition of adjudication. The steps taken up to that point would not fall within the category of adjudication.

[2.23] The same is true of Coimisiún na Meán as set out in detail above. Coimisiún na Meán can create binding codes of conduct and sanction breaches of the code. Investigative powers have been provided for accordingly. Coimisiún na Meán may appoint a person to be an authorised officer to carry out investigations.[41] It may also appoint any Commissioner or member of its staff as an 'investigation commencement officer'.[42] If an investigation commencement officer has reason to suspect a contravention, they may direct an authorised officer to carry out an investigation.[43] When carrying out an investigation, the authorised officer gives the provider written notice of the commencement which includes the nature of the suspected contravention, the terms of the investigation, and a copy of the material relied upon in defining those terms, or notice of where such material may be inspected and copied.[44] For the purposes of their investigation, an authorised officer has extensive coercive powers.[45]

[2.24] Investigative functions trigger the possible exercise of adjudicative functions. During an investigation, bodies tend to gather and assess evidence, determine the nature of any suspected contraventions, and then decide whether there is sufficient basis to proceed to adjudication.

(iv) Mediative Functions

[2.25] Increasingly, bodies that exercise adjudicative functions may also engage in alternative forms of dispute resolution.[46] A number of bodies exercise mediative functions. For example, the Financial Services and Pensions Ombudsman must try,

[41] Section 139ZH(1) of the Broadcasting Act 2009 as inserted by section 47 of the Online Safety and Media Regulation Act 2022. The term 'investigation commencement officer' does not appear in the legislation and has only been inserted here to provide clarity.

[42] Section 139ZI(2) of the Broadcasting Act 2009.

[43] Section 139ZI(1) of the Broadcasting Act 2009 as inserted by section 47 of the Online Safety and Media Regulation Act 2022.

[44] Section 139ZJ(2) of the Broadcasting Act 2009 as inserted by section 47 of the Online Safety and Media Regulation Act 2022 and substituted by section 17(a) of the Digital Services Act 2024.

[45] Section 139ZK of the Broadcasting Act 2009 as amended by section 47 of the Online Safety and Media Regulation Act 2022 and section 19 of the Digital Services Act 2024.

[46] Alternative Dispute Resolution is discussed in greater detail in the Chapter on Powers under the heading "Alternatives to Adjudication".

as far as possible, to resolve a complaint by mediation.[47] Participation in mediation is voluntary and where mediation fails, the Ombudsman will deal with the complaint through an investigation, leading potentially to adjudication.[48] The mediative function is, thus, complementary to the Ombudsman's investigative and adjudicative functions. Similarly, Coimisiún na Meán must take appropriate steps to encourage the use of independent mediation by users and service providers to resolve disputes arising from user complaints.[49]

[2.26] The Workplace Relations Commission (WRC) provides a mediation service called 'pre-adjudication mediation' for employees in respect of claims of infringements of employment rights, and for interpersonal workplace conflicts, disputes and disagreements.[50] Access to this service is dependent on the submission of a claim to the adjudication service, as it aims to eliminate the need to adjudicate on the complaint concerned. The Director General of the WRC may select a claim for mediation.[51] In this case, a neutral third person assists the parties to achieve a voluntary resolution to the complaint. This process may take place over the telephone or, where a complaint is more complex, the mediator may decide to schedule a face-to-face mediation. The WRC maintains that this process is a quicker and easier solution than proceedings to an adjudication, and emphasises that it is free, informal and involves less paperwork and preparation.[52] Furthermore, the process is confidential, with the parties remaining in control of the outcome of the proceedings at all times. The agreement reached will be legally binding and is therefore enforceable by the courts.

[2.27] In each of these instances, the body in question also exercises adjudicative functions: if mediation fails, adjudication will follow. The mediative functions are distinct from the adjudicative functions. Adjudication occurs after mediation or

[47] Section 58(1) of the Financial Services and Pensions Ombudsman Act 2017.

[48] Sections 58(3) and 58(6) of the Financial Services and Pensions Ombudsman Act 2017.

[49] Section 139ZD of the Broadcasting Act 2009 as inserted by section 45 of the Online Safety and Media Regulation Act 2022.

[50] See Workplace Relations Commission, "WRC Pre-Adjudication Mediation Frequently Asked Questions" <https://www.workplacerelations.ie/en/Publications_Forms/Guides_Booklets/Guidance_Note_for_a_WRC_Adjudication_Hearing.pdf> accessed 27 November 2025.

See also Workplace Relations Commission, "WRC Mediators Principles and Code of Ethics" (revised September 2022) <https://www.workplacerelations.ie/en/complaints_disputes/mediation/wrc-mediation-code-of-practice-and-ethics.pdf> accessed 27 November 2025.

[51] Section 39(1)(a) of the Workplace Relations Act 2015.

[52] Workplace Relations Commission, "WRC Pre-Adjudication Mediation Frequently Asked Questions" <https://www.workplacerelations.ie/en/publications_forms/wrc-pre-adjudication-mediation-frequently-asked-questions.pdf> accessed on 27 November 2025.

resumes after mediation if parties have already commenced the adjudicative process prior to attempting mediation.

2. The Administrative Law Structure

[2.28] This section delves into the administrative law framework in Ireland as set out by *Zalewski* and previous court decisions. In general, this Paper does not discuss any intervention in respect of regulatory, investigative or mediative functions. The difficulties identified in the Programme for Law Reform remain the Commission's primary objective, namely issues pertaining to adjudication. Therefore, this is what the Commission aims to address.

[2.29] The Commission identifies that, as a matter of principle, there is a sharp distinction between Article 37 bodies, which are non-court adjudicative bodies exercising limited judicial functions other than in criminal matters and thus administering justice in a constitutionally permissible way, and other non-court adjudicative bodies. While deciding which bodies come within Articles 34 and 37 may present difficulties in practice, in principle the distinction is clear.

[2.30] The Commission suggests that the jurisprudence demonstrates that adjudication exists on a sliding scale of formality. The exact parameters of those functions will vary depending on the nature of the body, the extent to which the exercise of its functions involves the resolution of conflicts of evidence, the extent to which the body is expected to have and to apply its own expertise, the complexity of the issues and so on.

[2.31] At one end of the scale is the minimum standard which all bodies exercising adjudicative functions must meet. This baseline standard is described as acting fairly or adhering to fair procedures. Bodies engaged in non-court adjudication that does not constitute the administration of justice must exercise their functions in accordance with the principles of natural and constitutional justice and fair procedures. On the other end of the scale is the highest standard of administering justice. This represents a rigorous procedural structure akin to that of a court, where the emphasis is on upholding the principles of justice in a manner similar to judicial proceedings.

[2.32] The Commission suggests that adjudicative bodies operate between these two extremes on different points along this scale of formality. For instance, certain bodies may adopt a more formal approach resembling that of a court, while others might operate with a more relaxed procedural framework. Bodies may exhibit varying degrees of procedural formality and adherence to judicial standards depending on the specific context or nature of their adjudicative functions. Although there are exceptions and variations, understanding where each body generally falls on this spectrum helps in evaluating their respective roles and the appropriateness of their procedural standards.

[2.33] Another aspect of the jurisprudence is concerned with identifying the circumstances where an adjudicative body is considered to be acting judicially. However, as is discussed in greater detail in this Chapter, the Commission has chosen not to consider the concept of acting judicially as forming a distinct category analogous to the categories of acting fairly and administering justice.[53]

[2.34] The following sections of this Chapter will explore these three concepts: acting fairly, acting judicially, and administering justice with the aim of identifying pathways for enhancing the efficacy and fairness of adjudicative functions while respecting the appropriate level of formality for each context. It will examine the relevant jurisprudence that supports the identification of these categories and analyse their implications. Following this, the administrative law framework will be assessed to see how potential reforms might be integrated within this existing structure.

(a) Acting Fairly

[2.35] The majority in *Zalewski* made reference to the idea that "administrative adjudication [is] required to be carried out in accordance with fair procedures".[54] When a body exercising public power is about to embark on a course of action that creates "a real risk that a party's rights will be interfered with in the event that there is an adverse decision",[55] it is said to be under an obligation to act "fairly". And, as discussed earlier in this Consultation Paper, the Oireachtas has legislated for a broad duty to act fairly.[56] As such, in a general sense, the duty of fairness has an all-encompassing quality in that it applies also to bodies administering justice.

[2.36] In some respects, this concept is unhelpful. When the duty of fairness applies, it involves the application of flexible principles of fairness focused on "due fairness of procedures and due and proper consideration for the rights of others…[that are] capable of being objectively perceived to be fair".[57] The duty is context-sensitive, requiring more in some cases and less in others, depending on the nature of the decision to be made and process to be followed in making it.[58] It

[53] See under the heading "Acting Judicially".

[54] *Zalewski vs The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421 at para 127.

[55] *Dellway Investments v NAMA* [2011] IESC 14, [2011] 4 IR 1 at para 99.

[56] See discussion of section 4A of the Ombudsman Act 1980 as inserted by section 6 of the Ombudsman (Amendment) Act 2012 at paragraph 1.10.

[57] *B.F.O. v Governor of Dóchas Centre* [2005] 2 IR 1.

[58] There is a fairly dense terminological thicket in this area, largely because the current law is an outgrowth of concepts that sprouted in 16th and 17th century England. During that period, judges began to impose the rules of natural justice on inferior tribunals. One of these rules was *audi alteram partem* – hear both sides. Over the centuries that followed, the rules came to be

could therefore be said that the requirement of administering justice is simply an example of the duty of fairness applying more rigorously in certain contexts. As a result, the boundaries between acting fairly and administering justice cannot be defined with precision. The Commission is mindful of this definitional difficulty.

[2.37] In addition, it is appreciated that the duty to act "fairly" might apply to investigative and mediative functions, but as explained above, the Commission does not believe it is appropriate or necessary to apply legislative reform to these functions.

(b) Acting Judicially

[2.38] The majority in *Zalewski* also recognises that there is a distinct set of adjudicators who are "bound to act judicially" but who are not "administering justice".[59] Indeed, McKechnie J stated, "the Constitution assumes the distinction, asserts its importance, and requires the legislature to respect it and the courts to uphold it". O'Donnell CJ stated that these bodies exercise "administrative functions" rather than judicial functions, however they "may be required to act judicially and they are bound by the rules of constitutional justice".[60]

[2.39] The concept of acting judicially and the proposition that distinct legal consequences attach to the concept emerge not just from *Zalewski* but from older jurisprudence as well. In *Lynham v Butler,*[61] it was said that the Land Commissioners were bound to act judicially in the exercise of their functions:

> "The Land Commissioners (other than the Judicial Commissioner) are, then, an administrative body of civil servants who are not Judges within the meaning of the Constitution and do not constitute a Court of Justice strictly so-called but who, in the performance of some of their duties, must act judicially, and who are always subject, in respect of any justiciable controversy arising in the course of their business, to the exercise of the Judicial Power of the State for the determination of such controversy by one of

applied more and more widely. However, with the expansion of the state in the late-19th and 20th centuries – a phenomenon that occurred in Ireland as well – the old rules of natural justice came to be seen as too rigid and inflexible for the variety of functions exercised by the modern administrative state. Gradually, the hard-edged rule of *audi alteram partem* was supplanted by flexible principles of fairness. Today, it is common to talk simply of "fair procedures" – see *Dellway Investments v NAMA* [2011] IESC 14, [2011] 4 IR 1. Sometimes the label "constitutional justice" is also applied.

[59] *Zalewski vs The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421 at para 44.

[60] *Zalewski vs The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421 at para 112.

[61] *Lynham v Butler (No 2)* [1933] IR 74.

> the Judges of the High Court of the State assigned to act as Judicial Commissioner for the purpose."[62]

[2.40] Similarly, in *McDonald v Bord na gCon*,[63] Walsh J drew a clear distinction between the administration of justice and being "bound to act judicially":

> "In the Court's view the bodies or persons conducting the investigations under ss. 43 or 44, while bound to act judicially, are not constituted judicial persons or bodies nor do they exercise powers of a judicial nature within the meaning of Article 37 of the Constitution. This is an essential difference between the judgment of this Court and the judgment of Mr. Justice Kenny. Accepting the characteristic features of a judicial body set out by Mr. Justice Kenny these investigating authorities do not satisfy any of those requirements. In particular it is to be noted that the investigating authorities do not themselves by virtue of anything in ss. 43 or 44 affect any right or impose any penalty or liability on anybody. So far as the Board is concerned in the exercise of its powers under s.47, or the Club in the exercise of its powers under the section, they are not constituted judicial bodies or do not exercise powers of a judicial nature as they would only satisfy one of the tests referred to. In the opinion of the Court the submission that the Act in s.47 violates the provisions of Articles, 34, 37, and 38 of the Constitution fails."[64]

[2.41] While the Supreme Court in *Zalewski* referred to the five-factor test developed in *McDonald v Bord ngCon*[65] for determining whether a particular adjudicative function constitutes the administration of justice, and the *Zalewski* judgment also provided guidance on the way in which the test should be applied, there is no similar jurisprudential clarity about a test for bodies acting judicially. In other jurisdictions, legislation provides a 'trigger' for recognising circumstances in which an adjudicator must act judicially. In Ontario for example, the touchstone is whether a hearing is required by statute or as a matter of common law.[66] As the

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[62] *Lynham v Butler (No 2)* [1933] IR 74 at page 105.

[63] *McDonald v Bord na gCon* [1965] 1 IR 217.

[64] *McDonald v Bord na gCon* [1965] 1 IR 217 at page 244.

[65] *McDonald v Bord na gCon* [1965] 1 IR 217. The criteria are set out by Kenny J at pages 230 to 231.

[66] Section 3(1) of the Statutory Powers Procedure Act: "this Act applies to a proceeding by a tribunal in the exercise of a statutory power of decision conferred by or under an Act of the Legislature, where the tribunal is required by or under such Act or otherwise by law to hold or to afford to the parties to the proceeding an opportunity for a hearing before making a decision".

decisions in *Lynham* and *McDonald* illustrate, the courts have recognised that bodies may be bound to act judicially in certain respects without this entailing that they are administering justice for the purposes of Article 34.

[2.42] Indeed, many cases draw a distinction between administering justice and acting judicially. The Commission puts forward the view that the purpose of such references was to make the point that simply because a tribunal was obliged to exercise its functions in accordance with fair procedures, it did not follow that the allocation of such functions to a body other than a court thereby infringed Article 34. The duty to act judicially was not limited to certain types of roles or decisions, nor did courts attempt to distinguish between adjudicative bodies that are required only to act fairly, and other bodies that must adhere to a more onerous set of obligations due to their requirement to act judicially.

(c) Administering Justice

[2.43] Ordinarily, for the purposes of Irish law, the administration of justice is performed by courts, as required by Article 34.1 of the Constitution. However, Article 37 contains a 'saver' provision permitting the exercise of limited powers and functions of a judicial nature by non-courts. *Zalewski* confirms that some adjudicators are engaged in the "administration of justice".

[2.44] Thus, it is open to a statutory body (a body other than a court) to administer justice, as long as it exercises only limited powers and functions of a judicial nature.[67] When an adjudicator is "administering justice, "[t]he standard of justice administered under Article 37 cannot be lower or less demanding than the justice administered in courts under Article 34", according to the Supreme Court in *Zalewski*.[68] The *Zalewski* judgment did not formulate an exhaustive list of standards of justice required from bodies administering justice exercising a limited judicial power, however some requirements relevant to the facts of the case were discussed. Bodies considered to be administering justice were said to be required to make provision for cross-examination, public hearings and the administration of oaths. This is not an exhaustive list, nor are these absolute standards.

[2.45] There is discussion in *Zalewski* of when exactly a body is considered to be administering justice. The majority accepted that the five criteria originally set out by Kenny J in the High Court in *McDonald v Bord na gCon* remain the touchstone.[69] However, they made clear that this test must be applied not as a checklist but as a convenient device for separating those things that have to be

[67] The test in this regard is set out in Chapter 1(a).

[68] *Zalewski vs The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421 at para 138.

[69] *McDonald v Bord na gCon* [1965] 1 IR 217. The criteria are set out by Kenny J at pages 230 to 231.

done by courts "the precise borders of the judicial function" and "the exclusive domain of the administration of justice in courts by judges"- from those things that may be done by adjudicators and non-court adjudicative bodies.[70]

[2.46] The concept of administering justice is expressly embedded in Article 34. When a particular adjudicative function is assessed to constitute the administration of justice for the purposes of that constitutional provision, a series of procedures, powers and other requirements ought to follow.[71]

3. Requests for Views

The Commission suggests that an adjudicative function will generally involve:

(a) the finding of facts based on the presentation of evidence,

(b) deciding cases by applying settled rules or principles to facts,

(c) resolving something in the nature of a legal dispute between parties and

(d) determining legal rights and obligations.

Do you agree with the formulation? Do you think there are any criteria missing from the formulation?

The Commission is interested in hearing any other views on the contents of this Chapter.

[70] *Zalewski vs The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421 at para 91.

[71] Powers, procedures and composition are discussed in Chapters 4 to 6.

CHAPTER 3
RESPONDING TO THE PROBLEM

[3.1] In the Commission's view, the concerns of the relevant stakeholders – judges, adjudicators and individuals – are not mutually exclusive.[1] A properly tailored reform project can respond to the concerns of each of these stakeholders and to the broader public interest in a more accessible, transparent and accountable system of administrative justice. For this reason, the Fifth Programme for Law Reform commits to reforming the legal aspects of adjudication in the administrative state, with the aim of simplifying and clarifying administrative justice for each of these stakeholders.

[3.2] This Chapter identifies possible responses to the issues identified in the Chapter on Identifying the Problem and sets out a number of suggestions for reform. The first suggestion explored is that of a 'super tribunal'. This involves amalgamating separate tribunals into one unified structure, either at first instance or appellate stage.

[3.3] The second suggestion is the enactment of a framework statute. This could provide a standard set of powers and procedures for non-court adjudicative bodies based on those derived from caselaw.

[3.4] The third suggestion is the creation of a new statutory body, referred to in this document as an 'administrative justice council'. This council could oversee non-court adjudicative functions and could also offer support services, legal research, and informed views to lawmakers and adjudicative bodies.

[3.5] However, it should be noted that this is not an exhaustive list of solutions, nor do these solutions need to be mutually exclusive. The Commission welcomes alternative views.

[1] See discussion in the Chapter on Identifying the Problem.

2. A Super Tribunal Model

[3.6] This section explores the possibility of adopting a 'super tribunal' model in Ireland. It does so by considering super tribunal models from other jurisdictions before discussing whether it would be appropriate to adopt such a model in this jurisdiction.

[3.7] A super tribunal refers to a unified administrative body that consolidates multiple specialised tribunals into a single entity with broad jurisdiction over a variety of cases. These tribunals are designed to streamline the adjudication process by centralising different types of disputes under one organisational structure. This often includes various chambers or divisions which handle specific areas. A super tribunal can take many forms as the basic definition merely requires amalgamation of multiple tribunals into a single entity. A super tribunal may be a collection of first instance tribunals or an overarching appellate tribunal. It may even be a hybrid tribunal with a dual function as an administrative review tribunal, or an adjudicator of a wide range of civil and commercial disputes traditionally heard in courts.[2]

(a) 'Super Tribunals' in Other Jurisdictions

(i) United Kingdom

[3.8] It is appropriate to begin with the seminal report of the Committee on Administrative Tribunals and Inquiries, commonly known as the "Franks Committee".[3] The Committee was asked to consider "the constitution and working of tribunals other than the ordinary courts of law". It identified a major challenge created by the "haphazard" delegation of decisional authority[4] and suggested that the "existing chaos of special jurisdictions" could be "moulded into some kind of a coherent system of courts".[5]

[3.9] Cane notes that, in the United Kingdom, until the mid-20th century, non-judicial adjudication was regarded as "qualitatively different from judicial adjudication",[6] as reflected in the report of the Donoughmore Committee in 1932. The Franks Committee significantly challenged this view by 'judicialising' the tribunal system

[2] De Villiers, "Accessibility to the Law - The Contribution of Super-Tribunals to Fairness and Simplicity in the Australian Legal Landscape " (2015) 39 (2) University of Western Australia Law Review 239.

[3] Franks Committee, *Report of the Committee on Administrative Tribunals and Enquiries* (Cmnd. 218, 1957).

[4] Keeton, "Administrative Tribunals and the Franks Report" (1958) Current Legal Problems 88 at page 90.

[5] Keeton, "Administrative Tribunals and the Franks Report" (1958) Current Legal Problems 88 at page 93.

[6] Cane, *Administrative Tribunals and Adjudication* (Hart Publishing, 2009) at page 44.

and associating tribunals with courts.[7] It conceptualised tribunals as "essentially the same as courts ('court substitutes')"[8] and confirmed their modern status as part of the judicial system.[9] One of its key messages was that "tribunals should properly be regarded as machinery provided by Parliament for adjudication rather than as part of the machinery of administration".[10]

[3.10] The Franks Committee did not make recommendations for major structural change to reflect the judicialisation of the tribunal system.[11] It had a major impact on procedure instead.[12] Its "primary legacy"[13] was the development of a set of overarching values: openness, fairness and impartiality, to which administrative tribunals should aspire:

> "In the field of tribunals openness appears to us to require the publicity of proceedings and knowledge of the essential reasoning underlying the decision; fairness to require the adoption of a clear procedure which enables parties to know their rights, to present their case fully and to know the case which they have to meet; and impartiality to require the freedom of tribunals from the influence, real or apparent of departments concerned with the subject-matter of their decisions."[14]

[3.11] The British government responded with "sputnik-like speed"[15] and introduced the Tribunals and Inquiries Act 1958. This Act created a Council on Tribunals to oversee existing tribunals and seek procedural harmonisation.[16]

[3.12] Continued dissatisfaction with the British tribunal system led to the Legatt review in 2001, titled *Tribunals for Users: One System, One Service*.[17] The report explored a broad range of issues relating to the "delivery of justice through tribunals other

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[7] Cane, *Administrative Tribunals and Adjudication* (Hart Publishing, 2009) at page 71.

[8] Cane, *Administrative Tribunals and Adjudication* (Hart Publishing, 2009) at page 44.

[9] Lord Justice Carnwath, "Tribunals and Courts - The UK Model" (2011) 25 (5) Canadian Journal of Administrative Law & Practice at page 5.

[10] Franks Committee, *Report of the Committee on Administrative Tribunals and Enquiries* (Cmnd. 218, 1957) at para 40.

[11] Lord Justice Carnwath, "Tribunals and Courts - The UK Model" (2011) 25 (5) Canadian Journal of Administrative Law & Practice at page 5.

[12] Cane, *Administrative Tribunals and Adjudication* (Hart Publishing, 2009) at page 45.

[13] Harlow and Rawlings, *Law and Administration* 3rd ed (Cambridge University Press, 2009).

[14] Franks Committee, *Report of the Committee on Administrative Tribunals and Enquiries* (Cmnd. 218, 1957) at para 42.

[15] Wade, "Tribunals and Inquiries Act, 1958" (1958) Cambridge Law Journal 129 at page 129.

[16] The Council on Tribunals will be discussed further in this Chapter, under the heading "Administrative Justice Councils in Other Jurisdictions".

[17] Leggatt, *Tribunals for Users: One System, One Service-Report of the Review of Tribunals* (2001).

than ordinary courts of law".[18] It raised concern about the "almost entirely haphazard way" in which administrative tribunals had been created even post-Franks, with the result that the United Kingdom had "a collection of tribunals, mostly administered by departments, with wide variations of practice and approach, and almost no coherence".[19] The existing system was seen as difficult for users to navigate, which was identified as a significant concern:

> "…inefficient document-handling systems which result in parties at the hearing discovering that they do not all have the same bundle of papers; poor listing practices; procedural default by the department being appealed against; over-readiness to grant adjournments, sometimes on flimsy grounds; reluctance to give a decision on the day; and post-hearing inefficiencies."[20]

[3.13] The Leggatt Report's recommendations for a more independent[21] and coherent system[22] led to the creation of an integrated tribunals structure and culminated in the marriage of courts and tribunals in Her Majesty's Courts and Tribunals Service. The Leggatt Report examined 70 tribunals in the United Kingdom and suggested merging these bodies into chambers to hear first instance cases (called the First tier Tribunal) and chambers to hear appeals (called the Upper Tribunal). This suggestion and many of the other recommendations made in the Leggatt Report were adopted in the United Kingdom by the Tribunals, Courts and Enforcement Act 2007.[23]

[3.14] The Tribunals, Courts and Enforcement Act 2007 created a two-tier tribunal structure consisting of a First tier Tribunal and an Upper Tribunal, with a limited right of appeal to the courts on points of law. Not all tribunals are contained within the structure. The Employment Tribunal of England and Wales and many tribunals in Scotland and Northern Ireland operate outside the structure. The First tier Tribunal undertakes first instance reviews of primary decisions. The Upper Tribunal is an appellate court, although it has the power to hear selected first instance cases. These are usually complex cases or cases raising issues of general

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[18] Leggatt, *Tribunals for Users: One System, One Service-Report of the Review of Tribunals* (2001) at para 2.

[19] Leggatt, *Tribunals for Users: One System, One Service-Report of the Review of Tribunals* (2001) at para 1.3.

[20] Leggatt, *Tribunals for Users: One System, One Service-Report of the Review of Tribunals* (2001).

[21] Leggatt, *Tribunals for Users: One System, One Service-Report of the Review of Tribunals* (2001) at 2.

[22] Leggatt, *Tribunals for Users: One System, One Service-Report of the Review of Tribunals* (2001) at Chapter 3. See also Chapter 5 (the Tribunals Service), Chapter 6 (the Tribunals System), and Chapter 9 (Relationship with Departments).

[23] Tribunals, Courts and Enforcement Act 2007 (UK).

significance, and it is considered appropriate for appeals to go directly to the Court of Appeal rather than another tribunal.[24]

[3.15] The two tiers are divided into chambers which are broadly structured around subject areas. There are seven chambers in the first tier Tribunal: the War Pensions and Armed Forces Compensation Chamber; the Health, Education and Social Care Chamber; the Tax Chamber; the Property Chamber; the Social Entitlement Chamber; the General Regulatory Chamber; and the Immigration and Asylum Chamber. Chambers may be further subdivided into section tribunals. For example, the Social Entitlement Chamber consists of the Asylum Support, Criminal Injuries Compensation, and Social Security and Child Support Tribunals. The Upper Tribunal consists of four Chambers: the Administrative Appeals Tribunal, the Immigration and Asylum Tribunal, the Tax and Chancery Chamber, and the Lands Chamber.

[3.16] The Senior President of the Tribunals presides over the entire tribunal system. The Senior President is appointed on the recommendation of the Lord Chancellor.[25] Chambers are headed by a Chamber President. Tribunals are staffed by judges and by specialist layperson members. Tribunal judges must be legally qualified. A person is eligible for appointment as a judge of the first tier Tribunal if they have a legal qualification and five years' legal experience since qualifying,[26] and seven years of post-qualification experience for the Upper Tribunal.[27] Tribunal judges of both tiers may also hold posts *ex officio*.[28] Judges are protected by a prohibition on removal without the concurrence of the Lord Chief Justice of England and Wales, or if appropriate, the Lord President of the Court of Session or Lord Chief Justice of Northern Ireland.[29]

[3.17] Tribunal members are specialist non-legal members of the tribunal panels.[30] Tribunal members must have experience or background knowledge relevant to the work of the tribunal on which they sit. Most tribunal hearings are chaired by legally qualified tribunal judges. However, depending on the subject matter, they often sit with specialist, non-legal members, such as doctors, accountants, surveyors, or those with particular experience of disability issues or the armed services. Tribunal members take an equal part in the decisions made by their tribunal, but they are advised on points of law by the legally qualified tribunal

[24] Cane, *Administrative Tribunals and Adjudication* (Hart Publishing, 2009) at page 120.

[25] Section 2(1) of the Tribunals, Courts and Enforcement Act 2007 (UK).

[26] Schedule 2 section 1(2) of the Tribunals, Courts and Enforcement Act 2007 (UK).

[27] Schedule 3 section 1(2) of the Tribunals, Courts and Enforcement Act 2007 (UK).

[28] Sections 6 and 7 of the Tribunals, Courts and Enforcement Act 2007 (UK).

[29] Schedule 2 section 3 and Schedule 3 section 3 of the Tribunals, Courts and Enforcement Act 2007 (UK).

[30] Section 4(3) of the Tribunals, Courts and Enforcement Act 2007 (UK).

judge who chairs the panel and writes the decision.[31] Practice directions may be made to allow a decision-maker in either tier to act as a mediator instead of a decision-maker.[32] If mediation does not resolve the dispute, the parties may consent to the mediator taking on the role of decision-maker again by making a binding determination. Decision-makers in either the first tier or Upper Tribunal chambers can review their decisions to correct any accidental errors, provide clearer reasons, or set aside a decision.[33] This internal review may only be performed once.

[3.18] The Upper Tribunal is a superior court of record,[34] equivalent to the High Court, and has the power of judicial review. Appeals to the Upper Tribunal are limited to points of law,[35] but the Upper Tribunal may set aside and either remit or remake a decision of the first tier tribunal.[36] If an applicant wishes to appeal a decision, they may only appeal on a point of law to the Upper Tribunal with leave of the first tier Tribunal. For decisions of the Upper Tribunal, there is a right of onward appeal to the Court of Appeal. Applicants must be granted leave to appeal by the Upper Tribunal.[37] The Upper Tribunal may assess the decision as though it were a judicial review application to the High Court and may offer the remedies available in judicial review proceedings.[38] Although the majority of the cases heard by the Upper Tribunal come by way of appeal, "the creation of a judicial review jurisdiction has further sought to consolidate the tribunal system by keeping disputes within its structures where that is at all possible."[39]

[3.19] The creation of the Upper Tribunal was described by Lord Justice Carnwath as one of the most significant innovations of the new system.[40] Similar to the current system in this jurisdiction, there was a multitude of appeal mechanisms and procedures. Some tribunals were two-tiered with internal appeals while

[31] Tribunal Members Where they sit and what they do <https://www.judiciary.uk/courts-and-tribunals/tribunals/about-the-tribunals/fee-paid-judiciary-page-1-2/> accessed 25 November 2025.

[32] Section 24 of the Tribunals, Courts and Enforcement Act 2007 (UK).

[33] Sections 9 and 10 of the Tribunals, Courts and Enforcement Act 2007 (UK) set out the review process.

[34] Section 3(5) of the Tribunals, Courts and Enforcement Act 2007 (UK).

[35] Section 11(1) of the Tribunals, Courts and Enforcement Act 2007 (UK).

[36] Section 12 of the Tribunals, Courts and Enforcement Act 2007 (UK).

[37] Section 13(4) of the Tribunals, Courts and Enforcement Act 2007 (UK).

[38] Sections 15-21 of the Tribunals, Courts and Enforcement Act 2007 (UK).

[39] Anthony, "Administrative Justice in the United Kingdom" (2015) 7(1) Italian Journal of Public Law 9 at page 25.

[40] Lord Justice Carnwath, "Tribunals and Courts - The UK Model" (2011) 25 (5) Canadian Journal of Administrative Law & Practice at page 7.

others had no appeal route other than judicial review. Relationships with the higher courts varied depending on the specific tribunal in question.[41] The Legatt Report proposed to simplify this system, ensuring that onward appeal routes would be rational and clearly defined.[42] This was achieved by the creation of a single appellate division, the Upper Tribunal. Users now have a single and simple route to challenge tribunal decisions.[43] This has increased the speed of processing appeals.[44] Another advantage is the flexibility of panel composition available to the Upper Tribunal. Panels may be composed of tribunal judges specialised in the legal field in question, alongside experienced judges from the court system including High Court and Court of Appeal judges.[45]

[3.20] The Legatt Report envisaged that this new appellate division would "develop, by its general expertise and the selective identification of binding precedents, a coherent approach to the law".[46] The purpose of the Upper Tribunal is to provide for tribunals the sort of appellate guidance that the higher appeal courts provide for the court system.[47] As the Upper Tribunal is a superior court of record which may sit in panels of three, decisions may be made which are binding on all single judges in the Upper Tribunal, the first tier Tribunal, and the original decision-makers.[48] Justice Hickinbottom notes that the systemic coherence achieved by the reform of the organisation of the tribunal system led to greater jurisprudential coherence in the area of administrative justice. According to Justice Hickinbottom, due to the "splintered nature" of tribunal appeal systems before the reforms, especially in cases where the right to appeal was restricted to judicial review before the Administrative Court, development of the law in a

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[41] Leggatt, *Tribunals for Users: One System, One Service-Report of the Review of Tribunals* (2001) at para 6.8.

[42] Leggatt, *Tribunals for Users: One System, One Service-Report of the Review of Tribunals* (2001) at para 6.9.

[43] Justice Hickinbottom, "Tribunal Reform: A New Coherent System" (2010) 15 (2) Judicial Review 103. at para 14. It should be noted that not all jurisdictions otherwise transferred across have a right to appeal to the Upper Tribunal. See section 11(5) of the Tribunals, Courts and Enforcement Act 2007. In respect of those jurisdictions, the only right of challenge remains judicial review. Where no right to an appeal existed, the judicial review jurisdiction has been transferred to the Upper Tribunal. However, for most other jurisdictions, the right of challenge by judicial review has been replaced by a right of appeal to the Upper Tribunal, with an onward right of appeal to the Court of Appeal.

[44] Justice Hickinbottom, "Tribunal Reform: A New Coherent System" (2010) 15 (2) Judicial Review 103 at para 18.

[45] Hickinbottom, "Tribunal Reform: A New Coherent System" (2010) 15 (2) Judicial Review 103 at para 18.

[46] Leggatt, *Tribunals for Users: One System, One Service-Report of the Review of Tribunals* (2001) at para 6.32.

[47] Cane, *Administrative Tribunals and Adjudication* (Hart Publishing, 2009) at page 121.

[48] Justice Hickinbottom, "Tribunal Reform: A New Coherent System" (2010) 15 (2) Judicial Review 103 at para 19.

coherent way was "at best difficult".[49] Justice Hickinbottom states that the "new system allows the development of the relevant law, by a dedicated cadre of specialist judges."[50]

[3.21] The structural changes introduced by the Tribunal Courts and Enforcement Act 2007 greatly accelerated the judicialisation of the tribunal system. A distinction was created between tribunal members and tribunal judges. Tribunal members are not legally qualified; however, they still take the judicial oath. Most tribunals are chaired by legally qualified tribunal judges. Tribunal judges are recognised as members of the judiciary and are guaranteed judicial independence.[51] The Senior President is a judge of the Court of Appeal and the Chamber Presidents of the Upper Tribunal are High Court judges. Court judges sit regularly as members of the Upper Tribunal. Tribunal judges are appointed through the Judicial Appointments Commission. They are subject to the same disciplinary procedures as court judges. Tribunal judges and members are represented on the Judges' Council, a body chaired by the Lord Chief Justice and representing all levels of the judiciary in England and Wales.

[3.22] In 2011, the Courts Service and Tribunals Service in England and Wales were amalgamated into a single body, His Majesty's Courts and Tribunals Service. Continued integration into a single judicial structure has been described as "the natural evolution of work since the creation of the unified tribunals in 2007".[52] Further integration has been proposed, with the aim of bringing tribunal judges fully into a unified judicial structure with court judges.[53] The abolition of the current office of the Senior President has also been proposed, along with the accompanying creation of a unified leadership structure. This would bring the tribunals together with the courts under the leadership of the Lord Chief Justice of England and Wales. The newly established office of the Senior President of Tribunals would be brought into the judicial hierarchy as a Head of Division.[54]

[3.23] In 2014, Scotland passed the Tribunals (Scotland) Act 2014. This Act created a unified two-tier tribunal system, consisting of a First tier Tribunal and an Upper

[49] Hickinbottom, "Tribunal Reform: A New Coherent System" (2010) 15 (2) Judicial Review 103 at para 21.

[50] Hickinbottom, "Tribunal Reform: A New Coherent System" (2010) 15 (2) Judicial Review 103 at para 21.

[51] Section 1 of the Tribunals, Courts and Enforcement Act 2007 (UK).

[52] Ministry of Ministry of Justice, *Tribunals leadership - Consultation on reform of the office of Senior President of Tribunals* (CP 829 2023) at page 3.

[53] Ministry of Justice, *Tribunals leadership - Consultation on reform of the office of Senior President of Tribunals* (CP 829 2023) at page 8.

[54] Ministry of Justice, *Tribunals leadership - Consultation on reform of the office of Senior President of Tribunals* (CP 829 2023) at page 8.

Tribunal for tribunals that fell outside the jurisdiction of the Tribunals, Courts and Enforcement Act 2007. The First tier is divided into a Housing & Property Chamber, Health & Education Chamber, General Regulatory Chamber, Tax Chamber, and Social Security Chamber. The Upper Tribunal primarily hears decisions appealed from the First tier. Decisions of the Upper Tribunal are appealed to the Court of Session. Tribunals began to be transferred into the appropriate Chamber in 2016 and this process continues under a programme that extends to 2026.

(ii) Québec

[3.24] In Québec, the road toward the creation of a super tribunal administrative appeal court began in 1971 when the Minister for Justice constituted the first working group on administrative tribunals presided over by Dussault.[55] Dussault was mandated to examine the legality and possibility of creating an administrative appeals court. He considered abolishing the power of the superior courts to review administrative action and instead creating a court with the jurisdiction to hear an appeal of all decisions taken by the administration,[56] but expressed reservations regarding the constitutionality of such a court.[57] He proposed instead to transfer the jurisdiction of existing administrative appeals tribunals to the Court of Québec.[58] In the report, he also recommended an "in-depth reform"[59] of the rules of procedure applicable to decision-making processes. This reform, however, would apply only to 'administrative tribunals', which were strictly defined as those with exclusive jurisdictional or quasi-judicial functions.[60]

[3.25] The Ouellette Report, published in 1987, expanded on the Dussault recommendations. It proposed a framework law which would provide guiding

[55] Houle, "A Brief Historical Account of the Reforms to the Administrative Justice System in the Province of Québec" (2009) 22 Canadian Journal of Administrative Law & Practice 47 at page 61.

[56] Houle, "A Brief Historical Account of the Reforms to the Administrative Justice System in the Province of Québec" (2009) 22 Canadian Journal of Administrative Law & Practice 47 at page 62.

[57] Houle, "A Brief Historical Account of the Reforms to the Administrative Justice System in the Province of Québec" (2009) 22 Canadian Journal of Administrative Law & Practice 47 at page 61.

[58] Houle, "A Brief Historical Account of the Reforms to the Administrative Justice System in the Province of Québec" (2009) 22 Canadian Journal of Administrative Law & Practice 47 at page 62.

[59] Houle, "A Brief Historical Account of the Reforms to the Administrative Justice System in the Province of Québec" (2009) 22 Canadian Journal of Administrative Law & Practice 47 at page 50.

[60] Houle, "A Brief Historical Account of the Reforms to the Administrative Justice System in the Province of Québec" (2009) 22 Canadian Journal of Administrative Law & Practice 47 at page 50.

principles on procedure and evidence that would apply to 'administrative tribunals' as defined by Dussault.[61] Tribunals would then be free to create their own rules of procedure using these guiding principles.[62] It also rejected the idea of transferring the jurisdiction of administrative appeal tribunals to the courts. He believed this would defeat the advantages provided by administrative tribunals, such as expertise, flexibility, and procedural simplicity, and would have a negative impact on the accessibility of appeals for individuals, particularly those with limited financial means.[63]

[3.26] Ouellette returned to the idea of creating a general administrative appeal tribunal, which would regroup all tribunals and boards reviewing "primary decisions to which a statute was conferring a right to an appeal".[64] He reiterated the constitutional difficulties originally raised by Dussault. In recognition of these concerns, Ouellette recommended the creation of four new, distinct administrative tribunals. A bill enacting those recommendations was introduced in 1993 but it was opposed by many groups for not going far enough.[65]

[3.27] A third working group to examine the administrative justice system was established in 1994, resulting in the Garant Report, which proposed that instead of creating four separate tribunals, one super tribunal be created with four divisions.[66] This tribunal would amalgamate five existing tribunals with jurisdiction to hear appeals. Some powers that previously fell under the

[61] Houle, "A Brief Historical Account of the Reforms to the Administrative Justice System in the Province of Québec" (2009) 22 Canadian Journal of Administrative Law & Practice 47 at page 50.

[62] Houle, "A Brief Historical Account of the Reforms to the Administrative Justice System in the Province of Québec" (2009) 22 Canadian Journal of Administrative Law & Practice 47 at page 50.

[63] Houle, "A Brief Historical Account of the Reforms to the Administrative Justice System in the Province of Québec" (2009) 22 Canadian Journal of Administrative Law & Practice 47 at page 62.

[64] Houle, "A Brief Historical Account of the Reforms to the Administrative Justice System in the Province of Québec" (2009) 22 Canadian Journal of Administrative Law & Practice 47 at page 62.

[65] Houle, "A Brief Historical Account of the Reforms to the Administrative Justice System in the Province of Québec" (2009) 22 Canadian Journal of Administrative Law & Practice 47 at page 64.

[66] Houle, "A Brief Historical Account of the Reforms to the Administrative Justice System in the Province of Québec" (2009) 22 Canadian Journal of Administrative Law & Practice 47 at page 64.

jurisdiction of the Court of Québec would need to be transferred to the super tribunal and new powers created.[67]

[3.28] Québec accepted the recommendations of the Garant Report and adopted a super tribunal model in the Act respecting administrative justice.[68] This legislation established the Administrative Tribunal of Québec, organised into four divisions. The social affairs division, the immovable property division,[69] the territory and environment division,[70] and the economic affairs division.[71] These chambers hear appeals in matters where the state and individuals are in disagreement about the latter's legal rights and obligations.

[3.29] Not every administrative tribunal in Québec falls under the aegis of the Administrative Tribunal of Québec. Labour relations, human rights and professional discipline each have their own bespoke administrative tribunal structure. These tribunals typically adjudicate between two parties rather than between state and individual (though, evidently, the state might occasionally be a party). The scope of this super tribunal is therefore limited in comparison to the structure in the United Kingdom.

[3.30] A significant downside of the Québec model is that it has been inserted in a constitutional landscape where judicial review is guaranteed. The 'super-tribunal' cannot be walled off from judicial oversight. This has led to situations where questions of principle are litigated more or less *de novo* through multiple levels: decision by the super-tribunal, appeal on a point of law to the provincial court, judicial review by the superior court, appeal of the judicial review decision to the court of appeal and, possibly, an onward appeal to the Supreme Court of Canada. In some areas, legislation has provided for appeals on points of law to the court of appeal. This avoids some of the difficulties of multi-year, multi-level litigation but creates significant extra work for the legislature and with a panoply of appeal provisions, can lead to confusion, especially for individuals. Houle questions the need for judicial review where the Administrative Tribunal of Québec functions like a court and whether it adds any value.[72]

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[67] Houle, "A Brief Historical Account of the Reforms to the Administrative Justice System in the Province of Québec" (2009) 22 Canadian Journal of Administrative Law & Practice 47 at page 65.

[68] Ellis, "Super Provincial Tribunals: A Radical Remedy for Canada's Rights Tribunals" (2002) 15 Canadian Journal of Administrative Law and Practice 15 at page 19.

[69] Section 32 of the Act respecting administrative justice CQLR c J-3 (Québec).

[70] Section 34 of Act respecting administrative justice CQLR c J-3 (Québec).

[71] Section 36 of the Act respecting administrative justice CQLR c J-3 (Québec).

[72] Houle, "A Brief Historical Account of the Reforms to the Administrative Justice System in the Province of Québec" (2009) 22 Canadian Journal of Administrative Law & Practice 47 at page 73.

[3.31] Similar to the trend in the United Kingdom, the Québec tribunal system has undergone significant judicialisation, to the point where it has been described as functioning "pretty much as a court of justice".[73] Commentators have expressed reservations about the judicialisation that has resulted from the creation of the Administrative Tribunal of Québec, with Houle noting the increasingly dominant role played by the legal profession. Houle believes this is a cause for concern, as the scope of analysis of the legal profession is "too narrow", and the contribution of other disciplines is necessary to "reach a more complete understanding of social and economic problems."[74] Houle also believes that the range of action of the Administrative Tribunal of Québec has been restricted due to its judicialisation, and that due to its court-like nature, "it can protect individual interests, but not public interests".[75]

(iii) Federal Australia

[3.32] The Commonwealth Administrative Review Committee produced a 1971 report on administrative justice matters in the Australian Commonwealth. The Committee believed that the common law system of judicial review could not provide an adequate review of administrative decisions.[76] Conscious of the absence of any "general prescription" of procedural rules,[77] the Committee formed the view that there was a need for "the establishment of machinery which provides for a more comprehensive review of administrative decisions".[78]

[3.33] In formulating an alternative, the Commonwealth Administrative Review Committee was mindful of the need to prescribe both substantive and procedural aspects to the role of any oversight bodies.[79] It ultimately concluded that

[73] Houle, "A Brief Historical Account of the Reforms to the Administrative Justice System in the Province of Québec" (2009) 22 Canadian Journal of Administrative Law & Practice 47 at page 72.

[74] Houle, "A Brief Historical Account of the Reforms to the Administrative Justice System in the Province of Québec" (2009) 22 Canadian Journal of Administrative Law & Practice 47 at page 72.

[75] Houle, "A Brief Historical Account of the Reforms to the Administrative Justice System in the Province of Québec" (2009) 22 Canadian Journal of Administrative Law & Practice 47 at page 73.

[76] Administrative Review Committee, *Commonwealth Administrative Review Committee Report* (Parliamentary Paper no. 144, 1971) at para 5.

[77] Committee, *Commonwealth Administrative Review Committee Report* (Parliamentary Paper no. 144, 1971) at para 74.

[78] Committee, *Commonwealth Administrative Review Committee Report* (Parliamentary Paper no. 144, 1971) at para 12.

[79] Administrative Review Committee, *Commonwealth Administrative Review Committee Report* (Parliamentary Paper no. 144, 1971) at paras 92 to 93.

legislation should provide for a court with expertise in administrative law,[80] and for a general administrative appeals tribunal with the power to review the merits of administrative decisions.[81] This tribunal, to be vested with a supervening jurisdiction,[82] would have the power to regulate its own procedure[83] and, by virtue of its existence and supervisory role, bring a significant degree of uniformity to administrative appeals.

[3.34] The Commonwealth Administrative Review Committee made recommendations about the constitution and procedures of administrative tribunals,[84] with "basic procedures" to be set out in statute.[85] On foot of the report, the Administrative Appeals Tribunal Act 1975 was adopted by the Commonwealth Parliament. This created an Administrative Appeals Tribunal with a broad jurisdiction to review the merits of a variety of administrative decisions,[86] and an Administrative Review Council with a mandate to oversee administrative tribunals.[87] Further merits review bodies were added over the years, such that "[m]erits review has become a significant mechanism for responding to individual grievances, thereby enhancing the accountability of public decision-making".[88]

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[80] Committee, *Commonwealth Administrative Review Committee Report* (Parliamentary Paper no. 144, 1971) at Chapter 11.

[81] Committee, *Commonwealth Administrative Review Committee Report* (Parliamentary Paper no. 1441971) at Chapter 14.

[82] See Committee, *Commonwealth Administrative Review Committee Report* (Parliamentary Paper no. 1441971) at para 300. The jurisdiction should be to hear and determine an application by a person who is aggrieved or adversely affected by a decision on the ground that the decision was erroneous on the facts and merits of the case.

[83] Committee, *Commonwealth Administrative Review Committee Report* (Parliamentary Paper no. 1441971) at para 296.

[84] Committee, *Commonwealth Administrative Review Committee Report* (Parliamentary Paper no. 1441971) at Chapter 16.

[85] Committee, *Commonwealth Administrative Review Committee Report* (Parliamentary Paper no. 1441971) at para 326.

[86] Sections 25 and 26 and Schedule to the Administrative Appeals Tribunal Act 1975.

[87] Section 51(1) of the Administrative Appeals Tribunal Act 1975 (Australia) provided a lengthy list of functions, including reviewing the classes of administrative decisions that are not the subject of review and making recommendations about whether they should be subject to review, recommending improvements in the law, practice and procedures relating to review of administrative decisions, to make recommendations about the constitution of tribunals and about improving the exercise of administrative discretions to ensure they are exercised in a just and equitable manner.

[88] Saunders, *The Constitution of Australia A Contextual Analysis* (Hart, 2011) at page 174. Moreover, "[t]his super tribunal model has been replicated at the State level in Australia, although these tribunals have taken on a variety of different forms in practice". Sossin and Baxter, "Ontario's *Administrative* Tribunal Clusters: A Glass Half-full or Half-empty for Administrative Justice?" (2012) 12 Oxford University Commonwealth Law Journal 157 at page 166.

[3.35] In Australia, the phrase 'merits review' has a particular meaning. Due to the Australian approach to the separation of powers, a distinction must be made between questions of law, which are for the courts and questions about the merits of administrative decisions, which are for the administration. The Administrative Appeals Tribunal's merits-based role therefore responds to particularities of the Australian Constitution.

[3.36] In May 2024, after scandals involving patronage at the Administrative Appeals Tribunal,[89] the Australian government passed legislation. The Administrative Review Tribunal Act 2024 abolished the Administrative Appeals Tribunal and established a new administrative review body, named the Administrative Review Tribunal. The Administrative Review Tribunal commenced its functions in October 2024.[90]

[3.37] The Administrative Review Tribunal conducts merits-based reviews of administrative decisions to ensure that all administrative decisions are correct and preferable. The Administrative Review Tribunal may affirm, vary or set aside a decision-maker's decision. If the Administrative Review Tribunal sets aside a decision, it may make a substitute decision or remit the matter to the decision-maker to reconsider as ordered or recommended by the Administrative Review Tribunal. The Administrative Review Tribunal may also direct parties to undertake dispute resolution in relation to a proceeding, part of a proceeding, or any matter arising out of a proceeding.

[3.38] The Administrative Review Tribunal does not have a general review jurisdiction. Its jurisdiction to review a decision is granted on a case-by-case basis by other Acts and legislative instruments.[91] The Administrative Review Tribunal is divided into eight jurisdictional areas: General, Intelligence and Security, Migration, National Disability Insurance Scheme, Protection, Social Security, Taxation and Business, and Veterans' and Workers' Compensation.[92] The President may establish a list as a sub-area within a jurisdictional area,[93] assign senior members

[89] Groves and Weeks, "Tribunal Justice and Politics in Australia: The Rise and Fall of the Administrative Appeals Tribunal" (2023) 97(4) Australian Law Journal 278.

[90] See Administrative Review Tribunal, "Administrative Appeals Tribunal" <https://www.art.gov.au/about-us/accountability-and-reporting/administrative-appeals-tribunal> accessed 26 November 2025.

[91] Section 12 of the Administrative Review Tribunal Act 2024 (Australia).

[92] Section 196(1) of the Administrative Review Tribunal Act 2024 (Australia).

[93] Section 196(2) of the Administrative Review Tribunal Act 2024 (Australia).

to lead lists[94] and members to a jurisdictional area,[95] and vary or revoke such assignments without Ministerial approval.

[3.39] The Act envisages the introduction of a merit-based selection process to ensure independent and high-quality decision-making. The Administrative Review Tribunal Act also requires the President of the Administrative Review Tribunal to make a member code of conduct and performance standard publicly available. The President can also direct members, investigate conduct, and temporarily restrict a member's duties if there is a performance or conduct concern. The Governor General can terminate a member's appointment for breaches of the code of conduct, performance standard, serious misconduct, or on conviction of an indictable offence.

[3.40] The Act also creates a guidance and appeals panel within the Administrative Review Tribunal. Applicants do not have an automatic right of review by the panel; matters must be referred to it by the President of the Administrative Review Tribunal.[96] The President can refer applications that raise an issue of significance to administrative decision-making in the first instance[97] and decisions of the Administrative Review Tribunal that may contain an error of fact or law materially affecting the decision or that raise an issue of significance to administrative decision-making.[98] The panel also has the power to initiate a review of applications raising such issues. Parties may also apply to the President to have a decision of the Administrative Review Tribunal reviewed by the panel where the decision may contain an error of fact or law that materially affects it, or where there are significant administrative implications.[99] The panel considers matters *de novo*. Decisions of the Administrative Review Tribunal or of the guidance and appeals panel may only be appealed on a point of law to the federal courts.[100]

(iv) Australian States and Territories

[3.41] The creation of the Commonwealth Administrative Appeals Tribunal "informed much of the subsequent development of tribunals in Australia".[101] In Australia, there has been "a trend towards consolidation of tribunals into more

[94] Section 198 of the Administrative Review Tribunal Act 2024 (Australia).

[95] Section 199 of the Administrative Review Tribunal Act 2024 (Australia).

[96] Section 122 of the Administrative Review Tribunal Act 2024 (Australia).

[97] Section 122 of the Administrative Review Tribunal Act 2024 (Australia).

[98] Section 128 of the Administrative Review Tribunal Act 2024 (Australia).

[99] Sections 122 and 123 of the Administrative Review Tribunal Act 2024 (Australia).

[100] Section 172(1) of the Administrative Review Tribunal Act 2024 (Australia).

[101] Judge Kevin O'Connor, "Appeal Panels in Super Tribunals" (2013) 31 (1) University of Queensland Law Journal 31 at page 31.

professionalized, multi-divisional structures".[102] The state of Victoria established an Administrative Appeals Tribunal in 1984 which brought "together in the one body the State planning appeals tribunal's jurisdiction and a variety of administrative appeals rights previously scattered across the court system".[103] This was then merged into a super tribunal called the Victorian Civil and Administrative Tribunal in 1998. Since the establishment of the Victorian super tribunal, most Australian state and territory governments have amalgamated their discrete subject-matter tribunal networks to create similar 'super tribunals'.[104]

[3.42] In the state of Western Australia, for example, the State Administrative Tribunal was established by the State Administrative Tribunal Act 2004. The State Administrative Tribunal has an expanded jurisdiction compared to a traditional review tribunal. It reviews decisions made by government agencies and officials with respect to a broad range of administrative, commercial, and human rights issues.[105] The President of the State Administrative Tribunal is a Supreme Court judge and two District Court judges act as deputy presidents.[106] There are also senior decision-makers and ordinary members of the State Administrative Tribunal, who have both legal and non-legal experience and qualifications.[107]

[3.43] The State Administrative Tribunal "aims to make the correct or preferable decision based on the merits of each application" and uses informal procedures.[108] Most decisions made by the Tribunal may be appealed on a point of law.[109] The Tribunal uses an inquisitorial model, meaning that members often play an active role in hearings, decision-makers may ask relevant questions of

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[102] O'Connor, "Appeal Panels in Super Tribunals" (2013) 31 (1) University of Queensland Law Journal 31 at page 31.

[103] O'Connor, "Appeal Panels in Super Tribunals" (2013) 31 (1) University of Queensland Law Journal 31 at page 31.

[104] Ananian-Welsh, "CATs, Courts and the Constitution: The Place of Super-Tribunals in the National Judicial System" (2020) 43 (3) Melbourne University Law Review 852. There are currently super-tribunals in Victoria, Western Australia, Queensland, New South Wales, Australian Capital Territory, and draft legislation under consideration in Tasmania.

[105] State Administrative Tribunal Act 2004 (Western Australia) and Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 (Western Australia). See also Cane, *Administrative Tribunals and Adjudication* (Hart Publishing, 2009) at pages 189 and 190.

[106] Structure of SAT <https://www.sat.justice.wa.gov.au/S/structure_of_sat.aspx> accessed 26 November 2025.

[107] SAT Members <https://www.sat.justice.wa.gov.au/S/sat_members.aspx> accessed 26 November 2025.

[108] About SAT <https://www.sat.justice.wa.gov.au/A/about_sat.aspx> accessed 26 November 2025.

[109] Section 105 of the State Administrative Tribunal Act 2004. See also: Appeals from SAT Decisions<https://www.sat.justice.wa.gov.au/A/appeals_from_sat_decisions.aspx> accessed 8 October 2024.

witnesses, rules of evidence are flexible, and informal case management procedures are used.[110] The Tribunal reputedly has the advantages of providing one point of contact for applicants, greater independence from the government, speed, and economies of scale.[111] There is an emphasis on self-representation in the Tribunal, with around 80% of litigants representing themselves. In some jurisdictions, this reaches 98%.[112] Alternative dispute resolution is also emphasised, with members themselves conducting mediation and conciliation rather than staff or an external mediator. This leads to high rates of settlement in cases referred to mediation.[113]

[3.44] Commentators have praised the development of 'super tribunals' across Australia, with Ananian-Welsh commenting that the 'super-tribunal' system in Australian states and territories focuses on resolving a wide range of matters in a manner that is "accessible, fair, just, economical, informal and quick".[114] She also notes that the 'super-tribunals' take a "flexible attitude to the formalities and technicalities of legal dispute resolution" such as legal representation and the rules of evidence.[115] All 'super-tribunals' are expressly not bound by the rules of evidence for instance.[116] De Villiers also emphasises the flexible nature of 'super-tribunals', stating that they are "more in tune with the modern day demands of informality, flexibility, simplicity, and alternative dispute resolution

[110] De Villiers, "The State Administrative Tribunal of Western Australia - Time to End the Inquisitional/Accusatorial Conundrum" (2014) 37 University of Western Australia Law Review 182 at page 183.

[111] De Villiers, "The State Administrative Tribunal of Western Australia - Time to End the Inquisitional/Accusatorial Conundrum" (2014) 37 University of Western Australia Law Review 182 at pages 194 to 198.

[112] De Villiers, "Accessibility to the Law - The Contribution of Super-Tribunals to Fairness and Simplicity in the Australian Legal Landscape " (2015) 39 (2) University of Western Australia Law Review 239 at page 247.

[113] De Villiers, "Accessibility to the Law - The Contribution of Super-Tribunals to Fairness and Simplicity in the Australian Legal Landscape " (2015) 39 (2) University of Western Australia Law Review 239 at page 248.

[114] Ananian-Welsh, "CATs, Courts and the Constitution: The Place of Super-Tribunals in the National Judicial System" (2020) 43 (3) Melbourne University Law Review 852 at page 854, citing section 3(b) of the Queensland Civil and Administrative Tribunal Act 2009, section 8(1) of the South Australian Civil and Administrative Tribunal Act 2013.

[115] Ananian-Welsh, "CATs, Courts and the Constitution: The Place of Super-Tribunals in the National Judicial System" (2020) 43 (3) Melbourne University Law Review 852 at page 854.

[116] Ananian-Welsh, "CATs, Courts and the Constitution: The Place of Super-Tribunals in the National Judicial System" (2020) 43 (3) Melbourne University Law Review 852 at page 854.

mechanisms".[117] The interdisciplinary background of the members allows for specialisation but as with other 'super tribunals', most members are lawyers.[118]

[3.45] Australian state and territory 'super tribunals' have not escaped the judicialisation of other jurisdictions. On the contrary, they have merged with the judicial system in a unique manner. De Villiers states that "the establishment of super-tribunals has been, arguably, one of the most successful examples of creativity in the area of dispensing of justice that states have embarked upon."[119] Australian 'super tribunals' are "much more than mere consolidated administrative review tribunals".[120] The jurisdiction of the Australian state and territory 'super tribunals' has expanded to include civil and commercial matters that previously fell within the jurisdiction of the courts.[121] In fact, the administrative review jurisdiction of these 'super tribunals' is relatively small compared to the civil and commercial jurisdiction.[122] This led De Villiers to claim that "the super-tribunals are therefore akin to courts – in their style and jurisdiction - more so than traditional tribunals ever were".[123] The 'super tribunals' in the states and territories are now associated with the judicial branch of government, rather than the executive branch, as traditionally tribunals would have been.[124] The Queensland Civil and

[117] De Villiers, "Accessibility to the Law - The Contribution of Super-Tribunals to Fairness and Simplicity in the Australian Legal Landscape " (2015) 39 (2) University of Western Australia Law Review 239 at page 241.

[118] De Villiers, "Accessibility to the Law - The Contribution of Super-Tribunals to Fairness and Simplicity in the Australian Legal Landscape " (2015) 39 (2) University of Western Australia Law Review 239 at page 248.

[119] De Villiers, "Accessibility to the Law - The Contribution of Super-Tribunals to Fairness and Simplicity in the Australian Legal Landscape " (2015) 39 (2) University of Western Australia Law Review 239 at page 240.

[120] De Villiers, "Accessibility to the Law - The Contribution of Super-Tribunals to Fairness and Simplicity in the Australian Legal Landscape " (2015) 39 (2) University of Western Australia Law Review 239 at page 245.

[121] De Villiers, "Accessibility to the Law - The Contribution of Super-Tribunals to Fairness and Simplicity in the Australian Legal Landscape " (2015) 39 (2) University of Western Australia Law Review 239 at page 242.

[122] In 2022-2023 just over 5% of all matters dealt with by the State Administrative Tribunal fell within its "review" jurisdiction. See State Administrative Tribunal, "Annual Report 2022/23" <https://www.sat.justice.wa.gov.au/_files/SAT_Annual_Report_2023.pdf> accessed 26 November 2025.

[123] De Villiers, "Accessibility to the Law - The Contribution of Super-Tribunals to Fairness and Simplicity in the Australian Legal Landscape " (2015) 39 (2) University of Western Australia Law Review 239 at page 242.

[124] De Villiers, "Accessibility to the Law - The Contribution of Super-Tribunals to Fairness and Simplicity in the Australian Legal Landscape " (2015) 39 (2) University of Western Australia Law Review 239 at page 242. De Villiers notes that in contrast to the Commonwealth, the strict separation of powers doctrine does not apply to states and territories, allowing for the assignment of civil, commercial, and administrative functions to tribunals.

Administrative Tribunal is referred to as a "court of record" in its founding statute,[125] and was confirmed as such in the case of *Owen v Menzies & Ors*.[126]

[3.46] 'Super tribunals' have absorbed the jurisdiction of the lower courts in many states and territories.[127] For example, 'super tribunals' hear matters of a civil and commercial jurisdiction, such as "residential tenancy disputes; retail and commercial tenancy disputes; strata and community title disputes; building disputes; construction contract disputes; retirement village and long-stay caravan disputes; and disputes about the sale and ownership of property".[128] Australian state and territory 'super tribunals' are hybrid courts of a kind, rather than tribunals in the usual sense. They form part of the traditional judicial system; however, they retain the informal processes and procedures of traditional review tribunals. The introduction of 'super tribunals' has also contributed to other changes. According to De Villiers, these include significant changes to the Australian court system, namely in the "prevalence of self-represented parties; the investigative role of presiding members during hearings; the use of facilitative dispute resolution to resolve disputes; and simplified court processes".[129]

(b) Establishing a Super Tribunal Model in Ireland

[3.47] Super tribunals offer three main advantages: administrative, systemic and jurisprudential coherence.[130] Whether first instance non-court adjudicative bodies are amalgamated into a super tribunal or an administrative appeals tribunal is created, some administrative coherence will inevitably result. Consolidating multiple non-court adjudicative bodies into a single entity can lead to more efficient and effective decision-making.

[3.48] Amalgamation simplifies and rationalises the structure and management of non-court adjudicative bodies. A unified body can adopt standardised procedures which can enhance consistency in decision-making and reduce confusion for both staff and users of the tribunal system. This can lead to a more coherent and user-friendly system where parties understand the processes and expectations

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[125] Section 164(1) of the Queensland Civil and Administrative Tribunal Act 2009.

[126] *Owen v Menzies & Ors; Bruce v Owen; Menzies v Owen* [2012] QCA 170 at para 10.

[127] De Villiers, "Accessibility to the Law - The Contribution of Super-Tribunals to Fairness and Simplicity in the Australian Legal Landscape " (2015) 39 (2) University of Western Australia Law Review 239 at page 245.

[128] De Villiers, "Accessibility to the Law - The Contribution of Super-Tribunals to Fairness and Simplicity in the Australian Legal Landscape " (2015) 39 (2) University of Western Australia Law Review 239 at page 245.

[129] De Villiers, "Accessibility to the Law - The Contribution of Super-Tribunals to Fairness and Simplicity in the Australian Legal Landscape " (2015) 39 (2) University of Western Australia Law Review 239 at page 241.

[130] Justice Hickinbottom, "Tribunal Reform: A New Coherent System" (2010) 15 (2) Judicial Review 103.

more clearly, thus reducing the time and effort needed to navigate the system. Consolidation can also improve case management and efficiency. Centralised administration makes it easier to implement uniform case tracking and management systems, leading to faster processing times and reduced backlogs. The amalgamated body can also facilitate better training and professional development opportunities for staff, ensuring a high level of expertise and consistency across all cases. The body can provide a single point of contact for users, making it easier for individuals and organisations to access the services they need. This can lead to improved public perception and trust in the administrative justice system as it becomes more accessible and transparent.

[3.49] Jurisprudential coherence would also improve under an appellate super tribunal model. Currently, there are multiple appeal routes from the decisions of various non-court adjudicative bodies. Depending on the body in question, an appeal may lie to the District Court, Circuit Court, the High Court, or oversight might lie by way of judicial review. Additionally, there are many different types of appeal available, such as *de novo* appeals, appeals on the record, appeals against error, and appeals on a point of law.[131] An administrative appeal tribunal could streamline the various appeal routes and allow for the sustained and consistent development of the law in a coherent way. The creation of the Upper Tribunal in the United Kingdom was seen as the culmination of a trend toward "supervision by judges who are specialists in the particular law and practice under review."[132] In that context, it was suggested that the advantage of a specialised appellate body is that the decision-makers develop experience and expertise in the highly specialised and complex legislation pertaining to non-court adjudicative bodies. This places them in a special position to construe administrative legislation coherently, having regard to the relevant scheme as a whole.[133]

[3.50] A super tribunal model in Ireland could save costs by reducing redundant or duplicated administrative functions and could ensure the efficient use of shared resources. This could lead to lower operational costs relating to office space, utilities, and staff. Moreover, pooling resources in this manner would allow funds to be allocated towards essential functions, which would improve overall service delivery without increasing costs. Some adjudicative bodies do not sit frequently enough, nor are they large enough to justify permanent staff. Other adjudicative

[131] See the Chapter on Judicial Oversight for more detail about appeals.

[132] Lord Justice Carnwath, "Tribunal Justice - A New Start" (2009) Public Law 48 at page 57. Citing also *Cooke v Secretary of State for Social Security* [2001] EWCA Civ 734; [2002] 3 All ER 279, *Hooper* [2007] EWCA Civ 495 at para 42, *Napp Pharmaceutical Holdings Ltd v Director General of Fair Trading (No.5)* [2002] EWCA Civ 796, [2002], 4 All ER 376 (Competition Appeal Tribunal), and *Akaeke v Secretary of State for the Home Department* [2005] EWCA Civ 947, [2005] Imm. A.R. 701 at paras 26 to 30.

[133] Justice Hickinbottom, "Tribunal Reform: A New Coherent System" (2010) 15 (2) Judicial Review 103.

bodies may be dependent on staff from a Government department the same public bodies whose decisions they are reviewing, leading to questions about to independence. As such, these bodies would stand to benefit greatly from access to shared administrative resources.

(i) First instance Super Tribunal

[3.51] A 'super tribunal' may take the form of a first instance body. However, the creation of such a super tribunal possibly raises constitutional concerns. Article 37 of the Constitution states that "nothing in this Constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorised by law to exercise such functions and powers, notwithstanding that such person or such body of persons is not a judge or court appointed or established as such under this Constitution". A super tribunal created to consider first instance matters by amalgamating various first instance non-court adjudicative bodies might not be considered limited due to its wide jurisdiction. The scope of the 'limited' requirement has received limited judicial analysis and remains to be defined with certainty.

[3.52] Choices must be made about what falls within and outside the jurisdiction of both an administrative appeal tribunal and a first instance 'super tribunal.' It is also necessary to decide which matters to assign to different chambers or units within a tribunal. These choices relate more to governance, management and public administration than to law, and so fall outside the scope of this Consultation Paper.[134] Nonetheless, it may be that non-court adjudicative bodies with a two-tiered structure allowing for 'internal' appeals of original decisions would be less suited to amalgamation than simple first instance decision-making non-court adjudicative bodies.

[3.53] As noted, there are already significant problems with uncertainty at all levels of adjudication in Ireland. Creating a super tribunal risks distracting attention from real difficulties that may be better addressed by a move to a more coherent, stable and predictable system of decision-making. These difficulties may be more suitably dealt with by the creation of a standardised framework that ensures uniformity and fairness in adjudication.

[3.54] The establishment of a first instance super tribunal would necessitate extensive procedural reforms to unify the diverse processes currently in place across various non-court adjudicative bodies. Regardless, some sort of procedural reform would be necessary to implement a super tribunal. It may be necessary to introduce procedural reforms before the creation of a super tribunal can be considered. It could be argued that the first step towards reform should be to

[134] <https://ses.library.usyd.edu.au/handle/2123/621> accessed 28 November 2025.

establish a robust procedural foundation that enhances the quality and reliability of decision-making across existing bodies. This approach might offer a more direct and effective solution to the challenges faced by the current system. If such procedural reforms are implemented, it is perhaps unclear what additional benefit a super tribunal would bring to the administrative justice strata. If the primary issues of inconsistency and inefficiency are addressed through procedural harmonisation, the need for a super tribunal might diminish. Furthermore, the implementation of a super tribunal could introduce new complexities, such as the need to balance the specialised knowledge required for different types of cases within a single overarching body.

(ii) Administrative Appeals Super Tribunal

[3.55] Another potential avenue for reform is the creation of an appellate super tribunal. The advantage of this model is that it would rationalise the various appeal mechanisms. As noted in the Chapter about Judicial Oversight, a non-court adjudicative body's relationship with the courts varies depending on the body in question. Some bodies are two-tiered with internal appeal routes, while others appeal to another non-court adjudicative body. With the creation of a unified single appellate body, the current haphazard system would be considerably simplified.

[3.56] This introduces another aspect of the 'super-tribunal' model, which is the value of judicialising the process. As the Franks Report aptly put it, the advantage of tribunals is their "cheapness, accessibility, freedom from technicality, expedition and expert knowledge of their particular subject".[135] Inspiration may be taken from the other dedicated lists within the High Court, such as the Commercial Court List, the Planning and Environment List, and the Professional Disciplinary List. A section of the High Court dealing solely with administrative appeals could function as an administrative appeals super tribunal. This would remove the possibility of judicially reviewing decisions and may reduce the number of judicial review cases. This configuration also comes with the advantage of not requiring a constitutional amendment.

[3.57] The Commission notes that a delicate balance must be struck between constitutional guarantees of fairness and the informal nature of tribunal decision-making. Even if a constitutional amendment was not required, the creation of such a body in other jurisdictions has led to the judicialisation of the administrative appeals system there. Often, the majority of staff are legally trained, while the tribunal itself applies court-like procedure. The United Kingdom

[135] Franks Committee, *Report of the Committee on Administrative Tribunals and Enquiries* (Cmnd.) at para 38.

model is at the far end of the spectrum, where the tribunal system has been almost completely folded into the judicial system.

[3.58] However, judicialising the system may be unavoidable after *Zalewski*,[136] as an administrative appeals tribunal would almost certainly be viewed as administering justice. This would require the body to have court-like powers, procedures, and structures to ensure constitutionality. The effects of judicialising an administrative appeals tribunal should therefore be considered when discussing an appellate super tribunal model. Despite the advantages, the Commission is not suggesting this reform as it believes that the creation of such a body would require a constitutional amendment.[137] This would likely be the case for any possible configuration of such an appeals tribunal. A single appellate tribunal hearing appeals from non-court adjudicative bodies across the country would not be exercising 'local' jurisdiction under Article 37 of the Constitution. It would also be difficult to satisfy the requirement that it have a 'limited' jurisdiction because it would hear appeals for a wide range of subject matters. The requirement of limitation may be partially achieved by legislating for monetary limits similar to the District and Circuit Courts though the jurisdictional issue remains.

[3.59] Even if a specialised appellate body was not unconstitutional, it would not be immune from the inherent supervisory jurisdiction of the High Court.[138] Inserting such an appellate body into a system with a guarantee of judicial review might not rationalise appeal mechanisms but rather complicate them. In order to avoid this outcome, the appellate body would need to be a superior court of record of equal status with the High Court. This would also undoubtedly require the amendment of Article 34 of the Constitution.

[3.60] Another consideration is that such an appellate tribunal would certainly be considered to be administering justice under the *Zalewski* criteria. Any such tribunal would therefore need to be substantially 'court-like' with similar adjudicative standards. Its procedures, powers and structure would need to be similar to those of the courts. This raises the question of whether it would be simpler and more effective to judicialise the body completely.

(iii) Constitutional Issues

[3.61] Any discussion of the potential establishment of a super tribunal in Ireland necessarily involves constitutional analysis. Article 34.3.1 of the Constitution vests in the High Court the "full original jurisdiction in and power to determine all

[136] *Zalewski v The Workplace Relations Commission* [2021] IESC 24, [2022] 1 IR 421.

[137] See the discussion in the Chapter on Adjudicative Bodies and Functions of this Consultation Paper.

[138] *Farrell v Attorney General* [1998] 1 IR 203.

matters and questions whether of law or fact, civil or criminal".[139] The courts have interpreted this as transferring to the High Court the "inherent supervisory jurisdiction over inferior tribunals".[140] Commentators have noted that "the Irish courts will narrowly interpret any legislative provisions that attempt to limit judicial control of statutory bodies".[141] It is important to note that this discussion is not speaking to the Courts' inherent supervisory jurisdiction over statutory bodies, but how appellate bodies interact with Articles 34 and 37 of the Constitution.

[3.62] In the Commission's view, it is difficult to see what constitutional objection there could be to the *principle* of creating an administrative appeals tribunal with general jurisdiction, as there are already numerous statutory appeal tribunals. Clearly, if the jurisdiction of such a body were to extend to hearing appeals from bodies, such as the Workplace Relations Commission, whose functions amount to the "administration of justice", the position might become more complicated. The fusion of appellate jurisdiction in a single appellate tribunal might be said to go beyond Article 37. This could potentially be addressed by providing for a further appeal to the High Court and/or judicial review of the tribunal's decisions.

[3.63] As previously discussed, in *Zalewski*,[142] the Supreme Court looked at whether the Workplace Relations Commission's procedures were constitutional and in line with Article 34 and Article 37.[143] O' Donnell J criticised the "narrow reading" of Article 37 in *Re Solicitors,*[144] categorising the test as "relativist and impressionistic". He then set out the five ways in which the functions and powers of the Workplace Relations Commission can be said to be limited: (a) subject matter, because it only relates to employment law; (b) limitations on awards; (c) enforceability; (d) the right of appeal to the Labour Court; and on a point of appeal to the High Court; and finally (e) the fact that the Workplace Relations Commission may be subject to judicial review.[145] When speaking to the subject matter of the Workplace Relations Commission, O'Donnell J stated that:

> "it is limited by subject matter to those areas of employment law specifically identified in the Act… it does not have jurisdiction to

[139] Article 34.3.1 of the Constitution of Ireland.

[140] *Farrell v Attorney General* [1998] 1 IR 203 at page 224.

[141] *Kinghan v Minister for Social Welfare* Unreported, High Court, November 25, 1985.

[142] *Zalewski v The Workplace Relations Commission* [2021] IESC 24, [2022] 1 IR 421.

[143] See the Chapter on Identifying the Problem at para 1.25 under the heading "Contextual Background".

[144] *Re Solicitors Act, 1954* [1960] IR 239.

[145] *Zalewski v The Workplace Relations Commission* [2021] IESC 24, [2022] 1 IR 421. See also, Cahillane, "Defining the Administration of Justice in Ireland After the Zalewski Decision" (2023) 69(69) The Irish Jurist 164.

> deal with any other type of dispute. This, in itself, is, in normal language, a significant limitation and, moreover, something that distinguishes such a body from courts established under the Constitution having general jurisdiction".[146]

[3.64] While *Zalewski* provided some clarity on the approach to be taken to administrative justice under Articles 34 and 37 of the Constitution, a number of issues remain unanswered including for example, the definition of what is "limited" and the issue of the necessity for a merits-based appeal from the decisions of the Workplace Relations Commission.[147]

[3.65] There are three different categorisations of bodies and powers in relation to the question of the administration of justice. The first category is administrative bodies not coming within the remit of Article 34, but which require fair procedures to be followed (not judicial power). The second category is courts and judges operating under Article 34 (judicial power) and the third category includes bodies exercising judicial power in a limited nature which come within Article 34 but are permitted by the exception under Article 37 (also judicial power but limited).[148]

[3.66] It is clear that an administrative appeals tribunal could not be integrated into the court structure in the same way as in England and Wales. Regardless of the necessity of a constitutional amendment, an administrative appeals tribunal would also likely require elevation to superior court status for efficacy. The Upper Tribunal of the United Kingdom is a superior court of record and can create precedent. Its decisions may only be appealed to the Court of Appeal. This creates jurisprudential and systemic coherence in rationalising the many existing appeal routes. The Upper Tribunal can also carry out judicial reviews of its own decisions though it must be noted that the use and development of the law of judicial review is substantially different in the United Kingdom than in this jurisdiction. Any suggestion of a structure for a new super tribunal must take account of the fact that judicial review of the decisions of public bodies is guaranteed in this jurisdiction. Inserting a super tribunal into a constitution with a guarantee of judicial review is liable to cause operational difficulties.

[3.67] As previously mentioned when discussing 'super-tribunals' in Federal Australia and its states and territories, the tribunal is made to fit with the particularities of the Australian Constitution. In the Australian system, questions of law are dealt with in the courts whereas any questions of the merits of the administrative decision are for the super-tribunal. As a result of this differentiation, the

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[146] *Zalewski v The Workplace Relations Commission* [2021] IESC 24, [2022] 1 IR 421 at para 116.

[147] Cahillane, "Defining the Administration of Justice in Ireland after the Zalewski Decision" (2023) 69(69) The Irish Jurist 164.

[148] *Zalewski v The Workplace Relations Commission* [2021] IESC 24, [2022] 1 IR 421.

constitutional character of the previous Administrative Appeals Tribunal was beyond doubt as it was part of the executive branch and did not exercise a judicial function.[149] In the landmark case *Attorney General v Quin*,[150] the High Court distinguished the functions of the courts and administrative appeal bodies. Brennan J made it clear that the sole province of the court was to correct errors of law and that the substantive merits of a decision were not a matter for the courts in constitutional terms. Therefore, there is a clear separation between judicial power and the system of merits review in both the Australian Federal system and in its states and territories.

[3.68] In the Irish context, the constitutionality of administrative appeals is not entirely clear. While *Zalewski* did provide some clarity on what may be considered "limited" for the purposes of Article 37, there are still many questions around the issues of constitutionality. For example, if a 'super-tribunal' was established with the current employment law powers and functions of the Workplace Relations Commission, the residential tenancies powers and functions of the Residential Tenancies Board, and the powers and functions of the Financial Services and Pensions Ombudsman, it could be argued that this body would be "limited" under Article 37 in light of *Zalewski*. Therefore, the introduction of a super tribunal in Ireland would give rise to a degree of constitutional uncertainty.

3. A Framework Statute Model

[3.69] Another option for reform is the introduction of a framework statute to ensure that minimum and basic procedural standards are enacted into legislation, thereby creating a standardised framework to ensure uniformity and fairness in adjudicative functions. This statute would aim to simplify and rationalise the structure and management of such bodies by identifying what they have in common, including shared logistical, procedural, and substantive adjudicatory features.

[3.70] A framework statute in the context of administrative tribunals is a legislative act that establishes the basic structure, principles, and operational guidelines for these tribunals. This type of statute serves as a foundational legal document that outlines the framework within which administrative tribunals operate. It typically leaves detailed procedural or substantive rules to be developed at a later stage, often through secondary legislation or regulations. This law would provide guiding principles on procedure and evidence that would apply to adjudicative bodies, regardless of whether they operate adversarially or inquisitorially, when exercising their adjudicative functions.

[149] Groves and Weeks, "Tribunal Justice and Politics in Australia: The Rise and Fall of the Administrative Appeals Tribunal" (2023) 97(4) Australian Law Journal 278.

[150] *Attorney General v Quin* (1990) 170 CLR 1.

[3.71] Such a framework would provide certainty about the over-arching procedures, powers and duties of bodies exercising these types of functions while conserving the advantages provided by such administrative bodies, such as expertise, flexibility, and procedural simplicity. To this end, the Commission recognises that a framework must also build in discretion for individual bodies to depart from the proposed norm where necessary to protect their individual purpose or function. However, it suggests that any decision to opt out would have to be rationalised to minimise such departures.

[3.72] A framework could provide a gold standard for procedures which could be adopted by administrative bodies. This would provide adjudicative bodies with legal certainty about those procedures, while also ensuring procedural consistency across similar bodies for practitioners and members of the public accessing such services. It could enable better training and professional development opportunities for staff, ensuring a high level of expertise and consistency across all cases.

[3.73] The framework's goal should be to provide accessible, fair, just, economical, informal and quick procedures to the benefit of the adjudicative body and the individual who comes into contact with it. This would make it simpler for individuals and organisations to access the services they need. Moreover, this could lead to improved public trust in the adjudicative process, making it more accessible and transparent and would, in turn, minimise procedural and technical challenges to decision-making processes.

(a) Framework Statutes in Other Jurisdictions

(i) Ontario

[3.74] Ontario's Statutory Powers Procedure Act[151] from 1990 is an example of such a framework statute. This legislation originates from the extensive McRuer Report.[152] The Report was wide-ranging, covering legislative, executive and administrative action affecting individuals' rights and freedoms. The McRuer Report focused on "the statutory methods by which the powers of the State are brought to bear in the carrying out or administering of such social schemes".[153] This led to the introduction of the Statutory Powers Procedure Act. Commentators have noted that the Act was "intended to provide certainty through a codification of the minimum rules of natural justice".[154]

[151] Statutory Powers Procedure Act (Ontario).

[152] McRuer, *Royal Commission Inquiry into Civil Rights: Report No. 1* (1968).

[153] McRuer, *Royal Commission Inquiry into Civil Rights: Report No. 1* (1968) at page 2.

[154] Atkey, "The Statutory Powers Procedure Act, 1971" (1972) 10 (1) Osgoode Hall Law Journal 155 at page 155.

[3.75] The Statutory Powers Procedure Act defines its scope as applying to "a proceeding by a tribunal in the exercise of a statutory power of decision … where the tribunal is required … to hold or to afford to the parties to the proceeding an opportunity for a hearing before making a decision".[155] Any body or person that exercises a statutory power of decision is considered a tribunal.[156] Whether tribunals are required to hold hearings is determined under statute or as a matter of common law.[157] In most cases, this will be stated clearly in the statute. Where the enacting statute remains silent, then "one is thrust back into the long line of cases which attempt to determine whether a tribunal is acting judicially or quasi-judicially and thereby required to hold a hearing".[158] While any administrative tribunal in Ontario that is required to hold a hearing is subject to the Act, specific provisions in other legislation may exempt tribunals from the Act.[159]

[3.76] The Statutory Powers Procedure Act provides certain "minimum rules and procedure"[160] for tribunals. It guarantees procedural rights and protections to parties. These include the right to reasonable notice of the hearing,[161] the right to reasonable provision of information concerning certain allegations,[162] the right to a public hearing,[163] the right to representation,[164] the right to call and examine witnesses,[165] the right to cross-examine other witnesses,[166] the right to protection against self-incrimination regarding evidence relevant to a subsequent criminal or civil trial,[167] the right to reasonable adjournments,[168] and the right to a written decision with reasons if requested.[169] Other procedural matters are covered, such

[155] Section 3(1) of the Statutory Powers Procedure Act (Ontario).

[156] Section 1 of the Statutory Powers Procedure Act (Ontario).

[157] Section 3(1) of the Statutory Powers Procedure Act (Ontario).

[158] Atkey, "The Statutory Powers Procedure Act, 1971" (1972) 10 (1) Osgoode Hall Law Journal 155 at page 158.

[159] Atkey, "The Statutory Powers Procedure Act, 1971" (1972) 10 (1) Osgoode Hall Law Journal 155 at page 160.

[160] Atkey, "The Statutory Powers Procedure Act, 1971" (1972) 10 (1) Osgoode Hall Law Journal 155 at page 160.

[161] Section 6 of the Statutory Powers Procedure Act (Ontario).

[162] Section 8 of the Statutory Powers Procedure Act (Ontario).

[163] Section 9 of the Statutory Powers Procedure Act (Ontario).

[164] Section 10 of the Statutory Powers Procedure Act (Ontario).

[165] Section 10.1(a) of the Statutory Powers Procedure Act (Ontario).

[166] Section 10.1(b) of the Statutory Powers Procedure Act (Ontario).

[167] Section 14 of the Statutory Powers Procedure Act (Ontario).

[168] Section 21 of the Statutory Powers Procedure Act (Ontario).

[169] Section 17 of the Statutory Powers Procedure Act (Ontario).

as the scope of evidence which may be admitted in hearings.[170] Tribunals are exempt from the rules of evidence applied before the courts, although there are limitations so proceedings may be conducted more informally and expeditiously.[171]

[3.77] The Statutory Powers Procedure Act also confers powers on tribunals to "adequately discharge their adjudicative responsibilities."[172] These include the power to review decisions,[173] administer oaths,[174] call witnesses,[175] require the production of evidence,[176] and take judicial notice of facts.[177] While the Act provides for minimum standards for procedure, "significant discretion is built into the Act, expressly and implicitly".[178] The Act grants tribunal discretion to determine matters to its 'satisfaction' in relation to adjournments[179] and cross-examination.[180]

[3.78] Commentators have noted that prior to the Statutory Powers Procedure Act, the powers of each tribunal varied with each founding statute.[181] These powers could be very broad, including the power to issue bench warrants for the arrest and detention of witnesses, and the power to direct imprisonment for contempt. Other tribunals would find their powers insufficient, resulting in the tribunal being unable to decide the case before it.[182] A significant result of the Act is that it

[170] Section 15 of the Statutory Powers Procedure Act (Ontario).

[171] Atkey, "The Statutory Powers Procedure Act, 1971" (1972) 10 (1) Osgoode Hall Law Journal 155 at page 168.

[172] Atkey, "The Statutory Powers Procedure Act, 1971" (1972) 10 (1) Osgoode Hall Law Journal 155 at page 167.

[173] Section 21.2 of the Statutory Powers Procedure Act. (Ontario).

[174] Section 22 of the Statutory Powers Procedure Act (Ontario).

[175] Section 12(1)(a) of the Statutory Powers Procedure Act (Ontario).

[176] Section 12(1)(b) of the Statutory Powers Procedure Act (Ontario).

[177] Section 16 of the Statutory Powers Procedure Act (Ontario).

[178] Paul Daly, "Administrative Tribunals: Procedural Flexibility <https://www.administrativelawmatters.com/blog/2023/07/05/administrative-tribunals-procedural-flexibility/> accessed 28 November 2025.

[179] Section 21 of the Statutory Powers Procedure Act (Ontario).

[180] Section 23(2) of the Statutory Powers Procedure Act (Ontario).

[181] Atkey, "The Statutory Powers Procedure Act, 1971" (1972) 10 (1) Osgoode Hall Law Journal 155 at page 167.

[182] Atkey, "The Statutory Powers Procedure Act, 1971" (1972) 10 (1) Osgoode Hall Law Journal 155 at page 167.

standardised the powers conferred on tribunals and provided judicial controls to limit arbitrary action.[183]

[3.79] The Statutory Powers Procedure Act delegates authority to administrative tribunals to make their own rules of procedure. This authority is delegated in specific provisions to provide for more flexible forms of hearing in writing[184] or electronically[185], and for less rigid approaches to disclosure,[186] costs[187] and reconsideration of a final decision[188]." Aside from the specific delegations, the 1990 Act also authorises tribunals generally to "make rules governing the practice and procedure before it."[189] This rule-making authority is broad but may not conflict with specific prescriptive provisions of the Act. The Act allows for other statutes to expressly disapply provisions of the Act. When viewed as a whole, the Act is not so much a "strict mandatory code" as it is a "firm guideline with the flexibility permitted through expressed statutory variations".[190] Tribunals are given a framework of minimum rules to apply, often with discretion in how they are applied, and they can draft their own more detailed rules. This allows tribunals to tailor the template to better suit their specialised demands.

(ii) British Columbia

[3.80] In July 2002, the province of British Columbia formed the Administrative Justice Project which produced the White Paper, "On Balance: Guiding Principles for Administrative Justice Reform in British Columbia".[191] This work led to the Administrative Tribunals Act.[192] This statute defines an administrative tribunal as simply "a tribunal to which some or all of the provisions of this Act are made

[183] Atkey, "The Statutory Powers Procedure Act, 1971" (1972) 10 (1) Osgoode Hall Law Journal 155 at page 167.

[184] Section 5.1 of the Statutory Powers Procedure Act. (Ontario).

[185] Section 5.2 of the Statutory Powers Procedure Act (Ontario).

[186] Section 5.4 of the Statutory Powers Procedure Act (Ontario).

[187] Section 17.1 of the Statutory Powers Procedure Act (Ontario).

[188] Section 21.2(1) of the Statutory Powers Procedure Act See also Paul Daly, "Administrative Tribunals: Procedural Flexibility <https://www.administrativelawmatters.com/blog/2023/07/05/administrative-tribunals-procedural-flexibility/> accessed 28 November 2025.

[189] See section 25.1 and section 25.0.1 of the Statutory Powers Procedure Act (Ontario).

[190] Atkey, "The Statutory Powers Procedure Act, 1971" (1972) 10 (1) Osgoode Hall Law Journal 155 at page 175.

[191] Administrative Justice Project, *On Balance Guiding Principles for Administrative Justice Reform in British Columbia* (Attorney General of British Columbia 2002). <https://web.archive.org/web/20051103143826/http://www.gov.bc.ca/ajo/down/white_paper.pdf> accessed 28 November 2025.

[192] Administrative Tribunals Act (British Columbia).

applicable",[193] which has been implemented by subsequent legislation.[194] This framework statute grants administrative tribunals flexibility in crafting their own rules and procedures. Administrative tribunals have the discretion to "make rules respecting practice and procedure to facilitate the just and timely resolution of the matters before [them]".[195] A non-exhaustive list is provided as to matters in respect of which rules and procedures may be made.[196] The Act specifies that the tribunal may "waive or modify one or more of its rules in exceptional circumstances".[197] It also specifies that "rules for the tribunal may be different for different classes of disputes, claims, issues and circumstances."[198]

[3.81] The Administrative Tribunals Act also grants tribunals the power to make practice directives.[199] These directives must be consistent with any enactment applying to the tribunal and any rules of practice or procedure made by the tribunal.[200] The Act even grants tribunals a general power to make orders: a tribunal may, "to facilitate the just and timely resolution of an application" make any order "in relation to any matter that the tribunal considers necessary for purposes of controlling its own proceedings".[201]

[3.82] While the foregoing provisions vest considerable discretion in the tribunals, the Administrative Tribunals Act explicitly lists powers which tribunals may exercise, and the circumstances under which they may be exercised. These include the power to make interim orders,[202] consent orders,[203] facilitated settlements,[204] compel witnesses and disclosure,[205] and dismiss applications summarily.[206] There are other more prescriptive provisions relating to actions tribunals must take in

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[193] Section 1 of the Administrative Tribunals Act (British Columbia).

[194] Compare with the Alberta framework statute, the Administrative Procedures and Jurisdiction Act (Alberta), which permits the government of the province to designate bodies for the purposes of the application of the legislation.

[195] Section 11 of the Administrative Tribunals Act (British Columbia).

[196] See section 11(2) of the Administrative Tribunals Act (British Columbia) for the complete list.

[197] Section 11(3) of the Administrative Tribunals Act (British Columbia).

[198] Section 11(5) of the Administrative Tribunals Act (British Columbia).

[199] Section 13 of the Administrative Tribunals Act (British Columbia). Some practice directives, in relation to time limits, must be made but the tribunal "is not bound by its practice directives in the exercise of its powers or the performance of its duties" (section 12(2) Administrative Tribunals Act (British Columbia).

[200] Section 12(3) of the Administrative Tribunals Act (British Columbia).

[201] Section 14(c) of the Administrative Tribunals Act (British Columbia).

[202] Section 15 of the Administrative Tribunals Act (British Columbia).

[203] Section 16 of the Administrative Tribunals Act (British Columbia).

[204] Section 28 of the Administrative Tribunals Act (British Columbia).

[205] Section 34 of the Administrative Tribunals Act (British Columbia).

[206] Section 31 of the Administrative Tribunals Act (British Columbia).

certain circumstances, such as when applications are withdrawn or a settlement is reached,[207] or when parties fail to comply with tribunal rules and orders.[208] The Act also prescribes matters such as how the tribunal must be organised,[209] the practice directives it must issue on time periods for completing applications and for the release of reasons after the hearing,[210] the examination of witnesses,[211] adjournments,[212] and admissibility of evidence.[213] This framework statute, while laying out the standard powers and procedure for tribunals, leaves significant scope for tribunals to tailor procedure to their own ends.

(iii) Québec

[3.83] In Québec, the Garant report led to the Act respecting administrative justice in 1996.[214] While Title II of the Act established the super tribunal known as the Administrative Tribunal of Québec, Title I of the Act served as a framework statute by laying down uniform procedures for decisions affecting individuals. The Act "establishes the general rules of procedure applicable to individual decisions made in respect of a citizen. Such rules of procedure differ according to whether a decision is made in the exercise of an administrative or adjudicative function and are, if necessary, supplemented by special rules established by law or under its authority."[215] What constitutes an administrative function is not explicitly defined by the Act.[216] Instead, the entity that makes decisions in the exercise of an administrative function is identified, as the "Administration". The "Administration" is defined as (a) "government departments" and (b) "bodies whose members are in the majority appointed by the Government or by a minister and whose personnel is appointed in accordance with [public service legislation]".[217]

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[207] Section 17 of the Administrative Tribunals Act (British Columbia).

[208] Section 18 of the Administrative Tribunals Act (British Columbia).

[209] Section 26 of the Administrative Tribunals Act (British Columbia).

[210] Section 12 of the Administrative Tribunals Act (British Columbia).

[211] Section 38 of the Administrative Tribunals Act (British Columbia).

[212] Section 39 of the Administrative Tribunals Act (British Columbia).

[213] Section 40 of the Administrative Tribunals Act (British Columbia).

[214] Act respecting administrative justice CQLR c J-3 (Québec).

[215] Section 1 of the Act respecting administrative justice CQLR c J-3 (Québec).

[216] Houle, "A Brief Historical Account of the Reforms to the Administrative Justice System in the Province of Québec" (2009) 22 Canadian Journal of Administrative Law & Practice 47 at page 50.

[217] Section 3 of the Act respecting administrative justice CQLR c J-3 (Québec).

[3.84] As Québec is a civil law province, the Act begins in civilian style, to prescribe general principles.[218] Decisions made by the "Administration" in respect of an individual must be conducted in keeping with the duty to act fairly.[219] Daly notes "that procedures and relevant information must be communicated clearly to the citizen,[220] and the citizen has a right to be given notice of adverse decisions,[221] to disclosure,[222] to make representations[223] and to written reasons".[224]

[3.85] The second Chapter of the Act respecting administrative justice regards rules specific to decisions in the exercise of an adjudicative function. Decisions made by the Administrative Tribunal of Québec or by another body of the administrative branch charged with settling disputes between individuals and an administrative authority or a decentralised authority must ensure a fair process and adjudication must be impartial.[225] The minimum procedural safeguards for "adjudicative decisions" involve a hearing,[226] which consists of "meaningful participation by the parties followed by written reasons."[227] In the hearing, the decision-maker is required to "take measures to circumscribe the issue and, where expedient, to promote reconciliation between the parties, to give the parties the opportunity to prove the facts in support of their allegations and to present arguments and allow each party to be assisted or represented by persons empowered by law to do so".[228] The decision-maker is also entitled to provide, if necessary, "fair and impartial assistance to each party during the hearing".[229] The decision-maker is entitled to rule on the admissibility of evidence and means of

[218] Paul Daly, "Administrative Tribunals: Procedural Flexibility" (2023) <https://www.administrativelawmatters.com/blog/2023/07/05/administrative-tribunals-procedural-flexibility/> accessed 2 December 2025.

[219] Section 2 of the Act respecting administrative justice CQLR c J-3 (Québec).

[220] Paul Daly, "Administrative Tribunals: Procedural Flexibility" (2023) <https://www.administrativelawmatters.com/blog/2023/07/05/administrative-tribunals-procedural-flexibility/> accessed 2 December 2025.

[221] Section 5 of the Act respecting administrative justice (CQLR c J-3) (Québec).

[222] Section 6 of the Act respecting administrative justice (CQLR c J-3) (Québec).

[223] Section 7 of the Act respecting administrative justice (CQLR c J-3) (Québec).

[224] Section 8 of the Act respecting administrative justice (CQLR c J-3) (Québec). See also Paul Daly, "Administrative Tribunals: Procedural Flexibility" (2023) <https://www.administrativelawmatters.com/blog/2023/07/05/administrative-tribunals-procedural-flexibility/> accessed 2 December 2025.

[225] Section 9 of the Act respecting administrative justice (CQLR c J-3) (Québec).

[226] Section 10 of the Act respecting administrative justice (CQLR c J-3) (Québec).

[227] Paul Daly, "Administrative Tribunals: Procedural Flexibility" (2023) <https://www.administrativelawmatters.com/blog/2023/07/05/administrative-tribunals-procedural-flexibility/> accessed 2 December 2025.

[228] Section 12(1) of the Act respecting administrative justice (CQLR c J-3) (Québec).

[229] Section 12(3) of the Act respecting administrative justice (CQLR c J-3) (Québec).

proof. For that purpose, it may "follow the ordinary rules of evidence applicable in civil matters".[230] Decision-makers are entitled to "reject any evidence which was obtained under such circumstances that fundamental rights and freedoms are breached and the use of which could bring the administration of justice into disrepute."[231]

[3.86] Daly notes that, while the Act respecting administrative justice guarantees certain rights, the "precise specification of the content of these rights is left to administrative tribunals".[232] The tribunals then set out "simple and flexible rules devoid of formalism, with respect, prudence and promptness, in accordance with the norms and standards of ethics and discipline governing its agents and with the requirements of good faith".[233] Daly also notes that administrative tribunals in Québec have "significant autonomy and flexibility in shaping their procedures."[234] The Act does not contain a long or detailed framework for administrative tribunals. Instead, it legislates for certain core procedural requirements and leaves the rest to the tribunals themselves.

(b) Implementing a Framework Statute in Ireland

[3.87] The framework statutes discussed share a number of common features. First, they have a defined scope, applicable to an identifiable range of bodies. Whether a body falls within the scope of the framework statute is determined by some sort of "formula" or "trigger": if the formula is satisfied, or the trigger pulled, then legal consequences follow in terms of the procedures the body must follow and the powers it may exercise. Second, each framework statute provides a template of procedures and powers, making general provision from which individual bodies can make specific alterations tailored to their circumstances.

(iv) Defining the Scope

[3.88] The first question which arises when considering a framework statute is how to define the scope of the statute – specifically, determining which bodies the statute would apply to. Different jurisdictions approach this task in different ways.

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[230] Section 11 of the Act respecting administrative justice (CQLR c J-3) (Québec).

[231] Section 11 of the Act respecting administrative justice (CQLR c J-3) (Québec). The use of evidence obtained in violation of the right to professional secrecy is deemed to bring the administration of justice into disrepute.

[232] Paul Daly, "Administrative Tribunals: Procedural Flexibility" (2023) <https://www.administrativelawmatters.com/blog/2023/07/05/administrative-tribunals-procedural-flexibility/> accessed 2 December 2025.

[233] Section 4(1) of the Act respecting administrative justice CQLR c J-3 (Québec).

[234] Paul Daly, "Administrative Tribunals: Procedural Flexibility" (2023) <https://www.administrativelawmatters.com/blog/2023/07/05/administrative-tribunals-procedural-flexibility/> accessed 2 December 2025.

In British Columbia, the categorisation of administrative tribunals under the Administrative Tribunals Act[235] is determined by the tribunal's enabling act, meaning the legislature directly defines the applicability of the statute.[236] In Alberta, the executive makes this determination through subsequent regulations.[237] Ontario employs a different criterion, where the application of the Statutory Powers Procedure Act[238] hinges on whether a tribunal is required to act quasi-judicially and hold hearings under common law.[239] Ontario uses a trigger provision in the legislation to determine which bodies fall within the framework. Each jurisdiction's approach reflects its unique administrative and legislative practices, influencing how adjudicative bodies are integrated into the legal framework.

[3.89] Considering the various approaches taken in other jurisdictions, there are multiple options available in the context of an Irish framework statute. Firstly, the task of designating whether the framework statute applies to a particular body may be granted to the appropriate Minister or the legislature. The appropriate Minister may designate adjudicative bodies individually through regulations. The legislature may do so either by amending the original parent Act of the adjudicative body in question or by drafting a trigger provision within the framework statute itself to capture adjudicative bodies through definition.

[3.90] In the Commission's view, it would not be suitable or effective to grant the task of amending every parent statute to the legislature. It would be too time-consuming for the legislature to amend the large number of enacting statutes through the normal legislative process. A trigger provision in the legislation would be simpler and more effective, as it could apply to both existing adjudicative bodies and new adjudicative bodies when they are created. This would also allow for instant implementation.

[3.91] For a trigger provision to be effective, it needs to be simple. The definition for adjudicative bodies adopted in this Consultation Paper could be used as a potential definition for a trigger provision; "a body, independent of the Government or any other entity but at the same time not a court, which takes decisions affecting individual rights, according to some fairly precise (and usually

[235] Administrative Tribunals Act (British Columbia).

[236] Section 1 of the Administrative Tribunals Act (British Columbia).

[237] Section 2(1) of the Administrative Procedures and Jurisdiction Act (Alberta) provides that the statute applies to an authority only to the extent provided under that section. Section 2(2) provides that "the Lieutenant Governor in Council may, by regulation, designate any authority as an authority to which this Part applies in whole or in part".

[238] Statutory Powers Procedure Act (Ontario).

[239] *Re Webb and Ontario Housing Corporation* (1978) 93 DLR (3d) 187 and section 3(1) of the Statutory Powers Procedure Act (Ontario).

legal) guidelines and by following a regular and fairly formal procedure".[240] This trigger provision is long and complicated, in comparison to the Ontario provision, for example. It leaves potential for interpretation. The problem with a complicated trigger provision is how it is determined, or who determines, whether the trigger applies to a certain body. It would not be appropriate to allow bodies to interpret for themselves whether they fall into any definition chosen by the legislature. A simple provision such as "whether a body holds hearings" avoids this issue. Drafting a similarly simple provision suitable for the Irish legal context might be difficult.

[3.92] Given the difficulties identified with granting the legislature the role of deciding whether an adjudicative body falls within the framework statute, the Commission believes the task might be best carried out by an appropriate Minister by way of statutory instrument. This method would offer efficiency and simplicity while allowing for swift implementation. It could be carried out in collaboration with the body in question, and potentially also in collaboration with an administrative justice council. An advantage of this method is that it would tie in with the later duties of the executive in tailoring a framework statute to apply to each adjudicative body. A framework statute would contain powers which would need to be assigned to bodies on an individual basis according to their function by the executive. Bodies would also need to collaborate with the appropriate Minister - and potentially an administrative justice council - to implement and customise the procedural template supplied by the framework statute. Granting the executive the ability to designate bodies as coming under the framework statute in the first instance would be in keeping with the suggested role of the executive in implementing the framework statute generally. Another advantage of this method is that it would grant the executive flexibility to decide whether to exempt certain non-court adjudicative bodies from the framework statute.

(v) A Two-tier Framework Statute

[3.93] A further consideration is how to categorise adjudicative bodies within the framework itself. The Commission has noted that the distinctions made by *Zalewski*[241] and previous jurisprudence, such as acting fairly, acting judicially, and administering justice, are not practical for structuring a framework statute.[242] The category acting judicially, in particular, lacks clear jurisprudential guidance and fails to offer a sufficiently detailed framework for categorisation. The Commission

[240] Hogan, Morgan and Daly, *Administrative Law in Ireland* 5th ed (Roundhall, 2019) at paras 6-11. Of course, independence here does not necessarily mean the independence a superior court enjoys, but it does mean protection from outside interference in an administrative tribunal's operations, especially but not limited to its adjudicative functions.

[241] *Zalewski v The Workplace Relations Commission* [2021] IESC 24, [2022] 1 IR 421.

[242] See discussions in the Chapter on Adjudicative Bodies and Functions under the headings "Acting Fairly" and "Acting Judicially".

does not believe that these three categories have been demonstrated in caselaw to be sufficiently distinct from each other, with the exception of bodies administering justice. Instead, the Commission believes that the caselaw reflects a spectrum of standards rather than discrete categories. Adjudicative bodies exist along a continuum, from the minimal standard of acting fairly to the more rigorous standard of administering justice, without clearly defined categories in between.

[3.94] To address these challenges, the Commission suggests a two-tiered framework for adjudicative bodies. The first tier would encompass all adjudicative bodies which must adhere to the standard attached to acting fairly. The second tier would include bodies that are administering justice and are therefore subject to the most stringent procedural standards. This classification would simplify the framework and ensure that procedural requirements are appropriately scaled to the role and function of each body.

[3.95] The Commission notes that determining whether an adjudicative body is merely required to act fairly or administer justice is ultimately a judicial function, as emphasised in *Zalewski* by O'Donnell CJ.[243] Nonetheless, the Commission believes that the courts would neither be the most effective nor the most suitable means for categorising the wide range of non-court adjudicative bodies at first instance. Instead, the appropriate Minister should handle this initial designation, with the flexibility to categorise bodies based on their operational characteristics and procedural requirements. The Commission suggests that the executive, in its role of designating adjudicative bodies under the framework statute, should also classify whether these bodies are merely required to act fairly or administer justice. This dual classification approach will help tailor procedural standards to the specific needs and functions of each adjudicative body.

4. An Administrative Justice Council

[3.96] Another possibility for reform is the introduction of a new statutory body, referred to in this Paper as an administrative justice council. This body could have general oversight responsibility for the exercise of non-court adjudicative functions in the State, whether in a single framework statute or in the various statutes establishing individual adjudicative bodies. Such a body could also enable scarce resources to be used more efficiently. It could offer back-office functions (such as administrative support and case management) and front-office functions (legal advice and hearing management, for example) that existing adjudicative functions could be plugged into. Such a body could conduct research and give views on the design and processes of an adjudicative body when new legislation is under consideration by the Oireachtas and Government,

[243] *Zalewski v The Workplace Relations Commission* [2021] IESC 24, [2022] 1 IR 421 at para 128.

as well as on the potential for rationalisation of existing structures. Such a body could also be set up on a non-statutory basis initially.

(a) Administrative Justice Councils in Other Jurisdictions

(i) Australia's Administrative Review Council

[3.97] Section 246 of the Administrative Review Tribunal Act 2024 re-establishes the Administrative Review Council in Australia following its abolition in 2022. The Administrative Review Council serves as an independent policy advisory body. The functions of the Council are to monitor the integrity and operation of the Commonwealth administrative law system; to inquire into the adequacy of procedures used in relation to the making of administrative decisions and the exercise of administrative discretion; to consult and advise in relation to those procedures; to inquire into systemic issues; to inquire into the availability, accessibility and effectiveness of review mechanisms; to develop and publish guidance; and to support education and training for officials.[244]

[3.98] The Administrative Review Council must report annually in relation to its operations. Under section 264 of the Administrative Review Tribunal Act, the report for a financial year must include: a description of any systemic issues related to the making of reviewable decisions that the President has informed the Council of during that year; and a description of any information given to the Council under section 294B during that year.[245]

[3.99] The Administrative Review Council consists of the President of the Administrative Appeals Tribunal, the Commonwealth Ombudsman, the Australian Information Commissioner and at least three but not more than ten other members appointed by the Governor-General. To be appointed, a member must have knowledge or experience in a specified area, or be a senior official of a Commonwealth entity. The Governor-General appoints one of the members to be the Chair of the Council.[246]

(ii) Québec's Administrative Justice Council

[3.100] Québec's Administrative Justice Council (Conseil de la justice administrative) is established by section 165 of the Act respecting administrative justice. The Council is comprised of the President of the Administrative Tribunal of Québec, an ordinary member of the Administrative Tribunal of Québec, presidents and

[244] Section 249 of the Administrative Review Tribunal Act 2024 (Federal Australia).

[245] Section 264 of the Administrative Review Tribunal Act 2024 (Federal Australia). It is of note that Section 294B of the Act requires Ministers and Commonwealth entities to inform the Council of action taken or proposed to be taken in relation to some systemic issues.

[246] Section 245 of the Administrative Review Tribunal Act 2024 (Federal Australia).

ordinary members of various other adjudicative tribunals, two lawyers, and seven lay representatives.

[3.101] The Administrative Justice Council also has advisory functions. The Council has the power to "report to the Minister on any matter the Minister may submit to the Council and make recommendations to the Minister concerning the administration of administrative justice by the bodies of the Administration whose president or chairman is a member of the Council".[247] It is also responsible for maintaining a list of government departments and other entities that are subject to the duty of fairness.[248]

[3.102] The Administrative Justice Council has significant disciplinary functions, including setting a code of ethics for the members of the Administrative Tribunal of Québec.[249] It receives and examine complaints against members. It can inquire, into whether a member is suffering from a permanent disability[250] or into any lapse raised as grounds for the removal of the Tribunal President or Vice-President. The content of the code of ethics is described in general terms in the legislation,[251] as well as the procedures relating to complaints.[252]

(iii) Administrative Justice Councils in the United Kingdom

[3.103] The United Kingdom has a variety of examples to draw from in relation to the management of adjudicative bodies and the provision of advice to the government and Parliament.

[3.104] Until its abolishment in 2007,[253] the Council on Tribunals had worked to "keep under review the constitution and working" of a specified list of administrative tribunals; the Council also had a power to make "general recommendations" about appointments; and the Council was to be consulted on any new procedural rules, with a view to achieving a level of procedural harmonisation.

[3.105] Section 44 of the Tribunals, Courts and Enforcement Act 2007 created the Administrative Justice and Tribunals Council in its place. This body had the following functions:

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[247] Section 177 of the Act respecting administrative justice (CQLR c J-3) (Québec).

[248] Section 178 of the Act respecting administrative justice (CQLR c J-3) (Québec).

[249] Section 177 of the Act respecting administrative justice (CQLR c J-3) (Québec).

[250] This is a ground for removal from office, under section 193 of the Act respecting administrative justice (CQLR c J-3) (Québec), a power which is exercisable at the request of the Minister or of the President of the Tribunal.

[251] Section 181 of the Act respecting administrative justice (CQLR c J-3) (Québec).

[252] Sections 182-192 of the Act respecting administrative justice (CQLR c J-3) (Québec).

[253] By section 45 of the Tribunals, Courts and Enforcement Act 2007 (UK).

(a) keep the administrative justice system under review,

(b) consider ways to make the system accessible, fair and efficient,

(c) advise [the Lord Chancellor, the Scottish Ministers, the Welsh Ministers, and the Senior President of Tribunals] on the development of the system,

(d) refer proposals for changes in the system to those persons, and

(e) make proposals for research into the system.

The Council was abolished in 2013 as part of the then-government's austerity agenda and it has not been replaced by a statutory body. However, the Administrative Justice Council was established in 2018 and is a non-statutory body which acts as an oversight body for the administrative justice system in the United Kingdom, advising government and the judiciary on the development of that system.[254] The purpose of the Administrative Justice Council is to ensure that the needs of users are central to the system, to develop and share good practice, and to promote understanding, learning and continuous improvement.[255]

(b) Establishing an Administrative Justice Council in Ireland

[3.106] An administrative justice council, sitting at arm's length from the Government and Oireachtas, could have a variety of functions, if established. These include ensuring independence, providing shared services, overseeing rule-making authority, and providing research and advocacy services.

[3.107] First, the administrative justice council could function as an accountability mechanism which would be responsible for the smooth running of the country's administrative justice system. The council could oversee operations, ensuring that the management of adjudicative bodies takes place at arm's length from Government. It could be responsible for developing, considering and determining

[254] Courts and Tribunals Judiciary, "About the Administrative Justice Council" <https://www.judiciary.uk/related-offices-and-bodies/advisory-bodies/administrative-justice-council/about-the-ajc/ > accessed 2 December 2025.

[255] Courts and Tribunals Judiciary, "About the Administrative Justice Council" <https://www.judiciary.uk/related-offices-and-bodies/advisory-bodies/administrative-justice-council/about-the-ajc/ > accessed 2 December 2025. See also: Administrative Justice Council, "Terms of Reference 2024 (3rd Term)" <https://www.judiciary.uk/wp-content/uploads/2025/01/Terms-of-Reference-2024-third-term-final.pdf > accessed 2 December 2025.

matters of policy relating to non-court adjudicative bodies at all levels and overseeing the implementation of that policy.

[3.108] Second, the council could provide a single hub containing independent, reliable and standardised information for members of the public when interacting with non-court adjudicative bodies, as well as advice about specific functions of specialised bodies. Moreover, it could provide some advisory support in relation to standardised procedures.

[3.109] Third, the council's oversight role could include powers to enforce effective independence safeguards for the recruitment, reappointment, and training of adjudicators, and powers to ensure effective complaints and discipline procedures that comply with best practice. This could enable the development of overarching generic procedures to ensure fairness, consistency and transparency in the administrative process.

[3.110] Fourth, the council could offer support to adjudicative bodies, as well as advocacy and advice. It could also oversee discipline and procedural rules. Moreover, it could provide, directly or indirectly, both back-office functions (such as administrative support, case management) and front-office functions (legal advice and hearing management, for example) that existing adjudicative functions could adopt.

[3.111] Finally, the council could conduct research and provide its views to the Oireachtas and Government on the design and process of an adjudicative body when new legislation is under consideration.

5. Reforming Judicial Oversight in Ireland

[3.112] For the sake of completeness, another issue to take into consideration is judicial oversight of administrative bodies and how this may fit into the remedies suggested in this Paper. The Chapter on Judicial Oversight delves into judicial oversight in detail; however, this section will briefly introduce the primary issues and the possible standardisation options.

[3.113] First, caselaw demonstrates frequent difficulty in choosing whether to appeal or challenge a decision by judicial review. Different remedies are available under each type of proceedings. The distinction between different types of statutory appeals and the scope of each type is not sufficiently clear. In *Fitzgibbon v Law Society,*[256] the Supreme Court, noting a number of caveats, suggested that there are four types of appeals, de novo appeals, appeals on the record, appeals against error, and appeals on a point of law.[257]

[256] *Fitzgibbon v Law Society* [2014] IESC 48, [2015] 1 IR 516.

[257] *Fitzgibbon v Law Society* [2014] IESC 48, [2015] 1 IR 516 per Clarke J at para 3.3.

[3.114] The rules about whether new evidence or new arguments may be submitted on appeal are different depending on the type of appeal. While some statutory appeals provide for the admission of new evidence, most do not, leaving the decision about admission to the appeal court.

[3.115] As a general rule, where administrative bodies are deemed to be specialists in their area, the courts are reluctant to interfere with their decision-making unless there is an error of law.[258] Finally, there is a question around the appropriate forum for appeal proceedings and inconsistencies to the possibility of appealing onwards.

[3.116] In this section, the Commission outlines four potential routes for standardisation of judicial oversight with the aim of addressing the current issues. Each of these is discussed in more detail in the Chapter on Judicial Oversight. They are as follows:

(1) A complete reform of statutory appeals which would involve creating a framework that would outline the scope of each type of appeal and relevant remedies that would be available. This would allow for greater clarity on how appeals should be managed, streamlining the process and making it easier for users to be aware of the best path to take (such as appeal by way of rehearing or a hybrid appeal).
(2) Another possible reform would be to create an Administrative Appeals/Division List within the High Court instead of creating another non-court adjudicative body to serve an appellate tribunal.[259]
(3) Reform regarding onward appeals must also be considered. The Commission suggests s that where an appeal lies to the High Court, any further appeal to the Court of Appeal should be limited in scope.[260]
(4) Finally, the Commission suggests the reform of judicial remedies. While statutory appeals offer a broader number of remedies, judicial review proceedings have the potential for a wider impact. The standardisation of judicial remedies could provide greater clarity for users about which type of proceeding is most appropriate.

[258] See *Henry Denny & Son (Ireland) Ltd v Minister for Social Welfare* [1998] 1 IR 34, where the Supreme Court held that the High Court should not have interfered with the findings of the appeals officer unless the first instance body had erred in the law or the decision of the appeals officer could not be supported by the facts of the case.

[259] This recommendation was also put forward in an earlier Law Reform Commission report, the *Report on Regulatory Powers and Corporate Offences Volume 1* (LRC 119-2018) at page 338.

[260] See section 15AAB of the Competition (Amendment) Act 2022 which provides that any further appeals must be certified by a High Court judge and must involve a point of law of "exceptional public importance and that it is desirable in the public interest that an appeal should be made to the Court of Appeal".

[3.117] As this section has outlined, there are several challenges facing judicial oversight of administrative bodies. These challenges must be taken into account when considering potential models of reform and how appeals would fit into, or interact with, a super tribunal model, a framework statute model, or an administrative justice council. The options identified put forward by the Commission on how to approach the standardisation of appeals will be discussed in greater detail in the Chapter on Judicial Oversight.

6. Request for Views

The Commission invites views on the creation of a first instance super tribunal in this jurisdiction.

The Commission invites views on the proposal for the implementation of a framework statute in Ireland.

The Commission invites views on what provisions could usefully be included in a framework statute.

The Commission invites views on the proposal for the establishment of an administrative justice council in Ireland.

The Commission invites views on how the functions suggested for an administrative justice council might interact with other bodies, such as Government departments and the Office of the Ombudsman.

The Commission is interested in hearing any other views on the contents of this Chapter.

CHAPTER 4
PROCEDURAL REQUIREMENTS

[4.1] This Chapter discusses the procedures that attach to non-court adjudicative bodies. Procedures are the processes used by adjudicators to discharge their legal tasks. Procedures can be more or less formal depending on the nature of the decision being taken, the nature of the individual interests engaged and other contextual considerations.

[4.2] The procedures applicable to adjudicators who are required to act fairly are relatively informal, but when administering justice, the standard of procedural formality required is closer to that of a court:

> "Tribunals exercising Non-Court Adjudicative functions are frequently allowed to act informally – to receive unsworn evidence, to act on hearsay, to depart from the rules of evidence, to ignore courtroom procedures, and the like – but they may not act in such a way as to imperil a fair hearing or a fair result. (…) The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth".[1]

[1] *Kiely v Minister for Social Welfare* [1977] IESC 2, [1977] IR 267 per Henchy J at page 281.

[4.3] The type of procedures employed should be proportionate to the seriousness of the matter.[2] The formality of proceedings also varies depending on whether evidence is taken, a hearing is held, parties can cross-examine each other and witnesses, and whether the decision issued is binding or non-binding. This Chapter discusses the procedures that are triggered at different points on the scale.

1. Procedures in a Framework Statute

[4.4] The Commission is of the view that the procedural requirements discussed in this Chapter, which are mostly based on precedent, should have a statutory foundation. As discussed earlier in this Consultation Paper, the implementation of such statutory reform could take the form of a framework statute.[3] This statute would enshrine key procedural duties on adjudicative bodies, thereby establishing a uniform statutory baseline for minimum standards of procedure across such bodies.

[4.5] An advantage of a framework statute lies in its adaptability. The primary purpose of a framework statute is to guarantee certain procedural rights for those appearing before adjudicative bodies. This is achieved by establishing a statutory baseline for minimum and basic standards of procedure with a degree of uniformity across adjudicative bodies. Framework statutes also usually recognise the "infinite variety"[4] of adjudicative bodies by granting bodies a degree of flexibility in their implementation. This flexibility enables adjudicative bodies to deviate from the prescribed procedures when necessary to accommodate unique functions or circumstances.

[4.6] The extent of discretion granted to bodies in this regard varies depending on the framework statute in question. Some framework statutes authorise bodies to create their own rules of practice and procedure for matters not directly addressed by the statute. The Statutory Powers Procedure Act of Ontario grants bodies a general power to create their own rules and procedures.[5] This delegation is kept in check by specifying that any rules and procedures created cannot conflict with prescriptive provisions of the statute.[6] Similarly, the

[2] See: *Mooney v An Post* [1998] 4 IR 288 at page 298, where the Supreme Court held that "the terms natural and constitutional justice are broad terms and what the justice of a particular case will require will vary with the circumstances of the case".

[3] A framework statute is discussed in greater depth in the Chapter on Responding to the Problem, under the heading "A Framework Statute Model".

[4] Hogan, Morgan and Daly, *Administrative Law in Ireland* 5th ed (Roundhall, 2019) at para 6.10.

[5] See sections 25.1 and 25.0.1 of the Statutory Powers Procedure Act. (Ontario). Ontario's framework statute is discussed in greater detail in the Chapter on Responding to the Problem under the heading "Framework Statutes in Other Jurisdictions: Ontario".

[6] Section 25.1(3) of the Statutory Powers Procedure Act (RSO 1990, c S22) (Ontario).

Administrative Tribunals Act of British Columbia grants tribunals the ability to "control [their] own processes and…make rules respecting practice and procedure."[7] The Act enumerates 26 specific areas in which a tribunal may make its own rules of procedure and it specifies that this is a non-exhaustive list.[8] It also specifies that tribunals may waive or modify one or more of those rules in exceptional circumstances, further enhancing their flexibility.[9] These statutes illustrate how framework legislation can balance the need for standardised procedural duties with the flexibility required by diverse adjudicative bodies. These statutes offer significant discretion to adjudicative bodies, enabling them to tailor their procedures to their specific needs while maintaining compliance with overarching statutory requirements.

[4.7] Nevertheless, while such discretion can be beneficial, it must be carefully managed to avoid perpetuating a proliferation of varied and inconsistent procedures. One of the aims of this Project is to address the issue of disparate and unique procedures among adjudicative bodies in Ireland. Currently, some bodies in Ireland have their procedures detailed explicitly by statute while others operate under less prescriptive statutes that permit bodies to draft much of their own rules and procedures. If adjudicative bodies are granted excessive discretion to develop their own procedures, it could result in continued procedural variety, counteracting efforts to achieve greater standardisation and consistency. While flexibility is crucial, it must be balanced with the need for consistency to ensure that the benefits of a framework statute are fully realised.

[4.8] The Commission recognises that adjudicative bodies differ in their statutory functions and objectives. This foundation of differing functions and objectives inherently creates variations in procedure. It is undesirable, and probably impossible, to standardise procedures to a great level of detail. Often procedures vary for good reason, as the procedures used by a certain body are suited to its particular function. Standard procedures at a high level of detail would not be workable for many bodies. Although the large spectrum of adjudicative bodies defies easy standardisation, the Commission believes some level of standardisation is still achievable.

[4.9] A framework statute should be designed to offer a procedural template that is both comprehensive and flexible. The aim is to strike a balance between providing a clear and structured procedural framework and allowing adjudicative bodies the flexibility to adapt to their specific needs. The statute should ensure that while a broad procedural template is in place, it does not become so detailed as to stifle the operational needs of various bodies. To strike this balance

[7] Section 11(1) of the Administrative Tribunals Act (British Columbia).

[8] Section 11(2)(a)-(x) of the Administrative Tribunals Act (British Columbia).

[9] Section 11(3) of the Administrative Tribunals Act (British Columbia).

effectively, the framework statute should grant adjudicative bodies the discretion to deviate from the prescribed procedural template when necessary or to draft their own rules of procedure where no template is given. However, deviations should not be arbitrary or unchecked. Adjudicative bodies should be required to provide a rational justification for any departure from the standard procedures. For non-standardised rules, bodies should also be required to adhere to objective criteria in drafting their rules of procedure.

[4.10] The Commission suggests that these objective criteria should take into consideration the objectives and functions of the body in question. This requirement will help maintain a degree of uniformity while still allowing for necessary flexibility. By rationalising their deviations, adjudicative bodies can minimise unnecessary divergence from procedures and ensure that departures are well-considered and justifiable. This has precedent in the Finance (Tax Appeals) Act, which specifies that Tax Appeals Commissioners may adopt rules of procedure "with respect to any of their functions."[10] Rules made under this section must be published.[11]

[4.11] This drafting of rules may be supervised by an oversight body, such as the Administrative Justice Council (which will be discussed in greater detail later in this Chapter), or the relevant Minister. For example, the Valuation Tribunal has the power to draft rules of procedure which must be presented to the Minister for Finance for their consent.[12]

[4.12] The Commission has examined possible methods of implementing a system to draft rules for adjudicative bodies. This could include recognising different categories of rules that require different standards. Under this system, there would be fundamental procedural rules applicable to all adjudicative bodies to ensure a baseline of fairness and consistency. These rules would be the minimum standard required by the statute, providing essential procedural safeguards. Fundamental rules would include, for example, the right to notice, relevant information, and good administration, which is defined and explained under the heading "Good Administration" below.

[4.13] Some procedural rights in the framework statute would not contain a standardised procedure in great detail. This would allow for some drafting of procedures by the adjudicative bodies in consultation with an oversight body. This oversight could be managed by an administrative justice council or an appropriate Minister. This is to ensure that modifications are necessary, expedient for the performance of its statutory functions or in furtherance of its

[10] Section 6(5) of the Finance (Tax Appeals) Act 2015.

[11] Section 6(5) of the Finance (Tax Appeals) Act 2015.

[12] See Schedule 2, section 11(1) of the Valuation Act 2001. See also section 109(1) of the Residential Tenancies Act 2004.

statutory objectives and that they uphold the principles of fairness and consistency while addressing specific needs of the body. Bodies would be allowed draft procedure where necessary to give effect to the standard procedural rights or to the power granted by the framework statute. For example, the Tax Appeals Commission allows parties to be represented by a legal professional and a member of a professional body, such as an accountant. This procedural rule would not be necessary across all bodies and, therefore, the individual adjudicative bodies must have some level of flexibility.

[4.14] Finally, there may be procedural rules which do not contain a standardised procedure or matters which are not addressed by the statute. This category would allow for bodies to draft the procedure without requiring consultation with an oversight body. While these rules may be tailored to the bodies' unique functions, it would have to be objectively demonstrated that they are necessary or expedient for the performance of its statutory functions or in furtherance of its statutory objectives. Furthermore, the rules must uphold the principles of fairness and consistency while addressing specific needs. An example of procedural rules in this category would be rules surrounding timely decision-making. These rules must also be able to demonstrate coherence with the core procedural standards and principles of fairness and consistency established by the minimum standard of procedure mandated by the statute.

[4.15] By implementing such a system, the framework statute would provide a clear structure for procedural standardisation while allowing for necessary adaptations. This approach ensures that while adjudicative bodies have the latitude to develop procedures suited to their specific circumstances, there remains a consistent and fair baseline across the board. Structured flexibility is crucial for improving the predictability and coherence of adjudicative processes and would ultimately enhance the effectiveness and fairness of the administrative justice system.

2. Duties on Adjudicative Bodies

[4.16] When exercising adjudicative functions, all bodies should be subject to certain basic procedural duties. The body should communicate to an individual what information is required in order to provide all the information needed to facilitate the making of a decision. Where a decision adverse to the interests of the individual is contemplated, the individual should be given notice and an opportunity to comment. Decisions should be made and communicated in a timely manner, containing clear and concise reasons and an explanation of available appeal, reconsideration or reapplication options. There should also be a statutory duty on bodies exercising adjudicative functions to publish a plain language explanation of their processes in both official languages.

[4.17] It is instructive at this point to refer to the legislation in force in the Canadian province of Québec. Section 2 of An Act respecting administrative justice sets out a general principle of fairness:

> "The procedures leading to an individual decision to be made by the Administration, pursuant to norms or standards prescribed by law, in respect of a citizen shall be conducted in keeping with the duty to act fairly."[13]

[4.18] Note that the statutory "trigger" here is the making of an "individual decision… pursuant to norms or standards prescribed by law" (an adjudication). Once this trigger is pulled, the duty to act fairly applies, but only to a defined category of bodies. The "Administration" is defined by section 3 as (a) "government departments" and (b) "bodies whose members are in the majority appointed by the Government or by a minister and whose personnel is appointed in accordance with [public service legislation]". Consequently, the principle of fairness has a clear trigger and applies to a defined category of bodies in Québec.

[4.19] The implications of the principle of fairness are teased out in subsequent sections of the Act respecting administrative justice. First, there is a general obligation on the Administration to ensure good administration. This general obligation is imposed by section 4:

> "The Administration shall take appropriate measures to ensure
>
> 1) that procedures are conducted in accordance with legislative and administrative norms or standards and with other applicable rules of law, according to simple and flexible rules devoid of formalism, with respect, prudence and promptness, in accordance with the norms and standards of ethics and discipline governing its agents and with the requirements of good faith;
>
> 2) that the citizen is given the opportunity to provide any information useful for the making of the decision and, where necessary, to complete his file;
>
> 3) that decisions are made with diligence, are communicated to the person concerned in clear and concise terms and contain the information required to enable the person to communicate with the Administration;
>
> 4) that the directives governing agents charged with making a decision are in keeping with the principles and

[13] Section 2 of An Act respecting administrative justice (Québec).

> obligations under this chapter and are available for consultation by the citizen."[14]

[4.20] Section 5 then imposes procedural obligations in respect of "an unfavourable decision concerning a permit or licence or other authorization of like nature". No such decision can be made unless the decision-maker concerned has:

> 1) informed the citizen of its intention and the reasons therefor;
> 2) informed the citizen of the substance of any complaints or objections that concern him;
> 3) given the citizen the opportunity to present observations and, where necessary, to produce documents to complete his file.[15]

[4.21] Section 6 makes provision for procedural obligations in respect of unfavourable decisions about entitlements. Here, the decision-maker:

> "…must ensure that the citizen has received the information enabling him to communicate with the authority and that the citizen's file contains all information useful for the making of the decision. If the authority ascertains that such is not the case or that the file is incomplete, it shall postpone its decision for as long as is required to communicate with the citizen and to give the citizen the opportunity to provide the pertinent information or documents to complete his file. In communicating the decision, the administrative authority must inform the citizen that he has the right to apply, within the time indicated, to have the decision reviewed by the administrative authority."[16]

[4.22] After a decision has been made, the individual is entitled to make further representations in the case of a re-examination or reconsideration of a negative decision,[17] and to receive reasons for any unfavourable decision.[18]

[4.23] In short, the Québec legislation imposes basic procedural obligations on government departments and similar bodies when they are exercising adjudicative functions. The individual has a right to notice that an adverse decision is being contemplated, the individual has a right to put relevant information before the decision-maker, and the individual has a right to reasons. In addition, by virtue of section 4 of the Act, government departments and similar

[14] Section 4 of An Act respecting administrative justice (Québec).

[15] Section 5 of An Act respecting administrative justice (Québec).

[16] Section 6 of the Act respecting administrative justice (Québec).

[17] Section 7 of the Act respecting administrative justice (Québec).

[18] Section 8 of the Act respecting administrative justice (Québec).

bodies have general obligations to ensure good administration. There are similar rights and obligations in Irish law.

(a) Good Administration

[4.24] While there are no general obligations on Irish public bodies to commit to good administration, Article 41 of the European Union Charter confers on every person a right to "good administration" " – the impartial, fair and timely handling of their affairs, when Member States are implementing EU law obligations.[19] Article 41 creates a number of specific rights under the heading of "good administration". This Article binds EU agencies and national authorities, including adjudicators. These rights follow from those considered in the preceding subsections:

> (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
>
> (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
>
> (c) the obligation of the administration to give reasons for its decisions.[20]

[4.25] Placing the right to notice and relevant information, the right to make submissions, and the right to reasons on a statutory basis would be consistent with the requirements of Article 41. If placed on a statutory basis in Ireland, these principles would also apply outside the context of the implementation of EU law obligations.

[4.26] It is of note that the Ombudsman Act 1980[21] already provides for administrative action in circumstances where the performance of administrative functions affects a right, privilege or other benefit of an eligible person or, conversely an obligation, liability, penalty or other detriment affecting an eligible person. The Act imposes duties to:

> (a) give reasonable assistance and guidance to that person in any dealings of the person with the agency in relation to the

[19] *Case C-277/11 MM v Minister for Justice, Equality and Law Reform, Ireland and Attorney General* EU:C:2012:744 at paras 81 to 94. See also *Case C-604/12 HN v Minister for Justice, Equality and Law Reform* EU:C:2014:302 at paras 49 to 50.

[20] Article 41(2) of the European Union Charter.

[21] Section 4A of the Ombudsman Act 1980 as inserted by section 7 of the Ombudsman Amendment Act 2012.

action taken by the agency, having particular regard to the needs of the person as a result of any disability,

(b) ensure that the business of the person with the agency in relation to that action is dealt with properly, fairly, impartially and in a timely manner, and

(c) provide information to the person on any rights of appeal or review in respect of that action and on the procedures for, and any time limits applying to, the exercise of those rights.[22]

[4.27] More generally, some Irish bodies exercising adjudicative functions have adopted 'Charters' that are designed to further the objectives of the bodies in question.[23] These involve an overall commitment to good administration. For example, the Tax Appeals Commission, in an extensive document that comprises a customer charter, customer service action plan and complaints procedure, commits among other things to "[taking] a proactive approach in providing information that is clear, timely and accurate, is available at all points of contact, and meets the requirements of people". It also commits to ensuring "that the information available on public service websites follows the guidelines on web publication" and to simplifying "rules, regulations, forms, information leaflets and procedures".[24]

[4.28] The legal consequences of such Charters were considered in *Keogh v Criminal Assets Bureau and Revenue Commissioners*.[25] It is clear that there are no objections, legally speaking, to the adoption of such Charters: indeed, Keane CJ observed that instruments of this nature are "no more than praiseworthy statements of an aspiration nature, designed to encourage the members of the organisation concerned to meet acceptable standards of behaviour in their dealing with the public".[26]

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[22] Section 4A(2) of the Ombudsman Act 1980.

[23] For example, the Departments of Health and Agriculture, the Revenue Commissioners, Iarnród Éireann, Eircom, ESB as mentioned in Hogan, Morgan and Daly, *Administrative Law in Ireland* 5th ed (Roundhall, 2019) at para 13-25.

[24] Tax Appeals Commission, "*Quality Customer Service - Customer Charter, Customer Service Action Plan, Complaints Procedure (SI No of 2022).* <https://www.taxappeals.ie/_fileupload/Customer%20Service%20Charter/Quality%20Customer%20Service%20-%20English.docx> accessed 24 November 2025.

[25] *Keogh v Criminal Assets Bureau and Revenue Commissioners* [2004] IESC 32, [2004] 2 IR 159.

[26] *Keogh v Criminal Assets Bureau and Revenue Commissioners* [2004] IESC 32, [2004] 2 IR 159 at page 175.

[4.29] As mentioned in the Chapter on Identifying the Problem the Fair Procedures in the Administration of Justice Bill 2024 provided for reform of fair procedures in decision-making by quasi-judicial bodies.[27] These fair procedures included the right to be heard in public, the right to cross-examine, the right against self-incrimination and a duty of candour. It also provided that decision-makers would swear an oath that they would "act honestly, fairly and independently without bias and without fear nor favour".[28] This Bill lapsed with the dissolution of the Dáil in 2024.

[4.30] The Commission invites views on whether additional principles of good administration should be enshrined in the statutory framework for adjudicative bodies and, if so, what principles should be included?

(b) Duty to Give Notice and Relevant Information

[4.31] The duty to give notice is "the most basic right of all".[29] It has been said to require:[30]

(a) a notification that a decision adverse to the person affected is in contemplation,[31]
(b) the grounds upon which the action is to be taken,[32]
(c) all information relevant to the issue, including details of the case against and (probably) in favour of the person affected,[33] as well as details of any concerns the decision-maker has about deficiencies in the individual's case,[34]
(d) the possible consequences of the decision, i.e. sanctions.[35]

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[27] Houses of the Oireachtas, "Fair Procedures in the Administration of Justice Bill 2024" (last updated 8 November 2024) <https://www.oireachtas.ie/en/bills/bill/2024/24/?tab=bill-text> accessed 24 November 2025.

[28] Section 4(g) of the Houses of the Oireachtas, "Fair Procedures in the Administration of Justice Bill 2024" (last updated 8 November 2024) <https://www.oireachtas.ie/en/bills/bill/2024/24/?tab=bill-text> accessed 24 November 2025.

[29] Hogan, Morgan and Daly, Administrative Law in Ireland 5th ed (Roundhall, 2019) at para 15-16 discussing Davitt v Ireland [1989] IEHC 1938 and Atleantean v Minister for Communications and Natural Resources [2007] IEHC 233.

[30] Hogan, Morgan and Daly, *Administrative Law in Ireland* 5th ed (Roundhall, 2019) at para 15-17. See *Downey v O'Brien* [1994] 2 ILRM 130 at page 150.

[31] *TV3 v Independent Radio and Television Commission* [1994] 2 IR 439.

[32] *International Fishing Vessels v Minister for the Marine (No. 2)* [1991] 2 IR 93.

[33] *OO v Minister for Justice, Equality and Law Reform* [2004] IEHC 426, [2004] 4 IR 426.

[34] *Mishra v Minister for Justice* [1996] 1 IR 189; *M(JGM) v Refugee Applications Commissioner* [2009] IEHC 352.

[35] Hogan, Morgan and Daly, *Administrative Law in Ireland* 5th ed (Roundhall, 2019) at para 15-17, citing Downey v O'Brien [1994] 1992 ILRM 130 at page 150 and *Cahill v Dublin City*

[4.32] These are uncontroversial and well-established elements of the duty to give notice which should apply to all adjudicative bodies.

(c) Ability to Receive Submissions

[4.33] Once an individual is on notice that a decision affecting their rights is in contemplation, they may then make submissions in an attempt to convince the decision-maker that a decision in their favour should be made. A useful example is that of *BFO v Governor of Dóchas Centre*.[36] Here, the applicant had applied for residency. The applicant's case was impacted by an intervening Supreme Court decision. In the circumstances, the duty of fairness required that the applicant be given the opportunity to offer observations on the relevance of the Supreme Court decision for the application. Ultimately, part of the duty on adjudicative bodies to act fairly includes allowing applicants to make submissions.

[4.34] Additionally, in *SA v Minister for Justice and Equality* the Court reiterated that it would require very special circumstances to challenge a deportation order unless there was a failure to consider a relevant section of the 1996 Act, the Minister could not reasonably have come to view she did, did not afford the opportunity to make submissions, or failed to consider such submissions.[37]

(iv) Ability to Admit Evidence

[4.35] The courts have acknowledged that due to the flexible nature of administrative adjudication, strict rules of evidence do not need to be applied as long as fair procedures are respected.[38] The touchstone for the admissibility of evidence before a body exercising an adjudicative function is relevance. The question to ask is whether the material proposed to be admitted is relevant to the body's task.

[4.36] In *TN v Minister for Justice, Equality and Law Reform*,[39] the Court held that the respondent's failure to consider certain documents which the applicant had submitted in support of his claim was a breach of the constitutional right to fair procedures and a breach of the statutory scheme under sections 11 and 16(16)(e) of the Refugee Act 1996.[40] The Court further held that there was a statutory obligation to consider any information furnished, but this was not be construed

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University [2009] IESC 1980 per Geoghegan J. See also *TV3 v Independent Radio and Television Commission* [1994] 2 IR 439.

[36] *BFO v Governor of Dochas Centre* [2005] 2 IR 1.

[37] *SA v Minister for Justice and Equality* [2016] IEHC 462 quoting Clarke J in Kouaype v Minister for Justice, Equality and Law Reform [2011] 2012 IR 2011 at page 2011.

[38] *Mooney v An Post* [1998] 4 IR 288.

[39] *TN v Minister for Justice* [2007] IEHC 257, [2007] 4 IR 553.

[40] *TN v Minister for Justice* [2007] IEHC 257, [2007] 4 IR 553 at para 33.

"so literally as to require the respondent in all circumstances to consider the content of [every document]".[41]

[4.37] In *Stefan v Minister for Justice, Equality and Law Reform*,[42] the applicant was a refugee claimant who completed a questionnaire. However, the questionnaire was not translated, and consequently, the officer making the determination of the refugee claim did not consider this relevant evidence. This was a breach of the duty to act fairly.

[4.38] There is also a basic requirement of even-handedness. For example, in *Kiely v Minister for Social Welfare*,[43] the Court rejected the proposition that unsworn written evidence could be used to rebut oral sworn evidence as "contrary to natural justice."[44] In other words, evidence from both parties in a dispute must be capable of being subjected to the same level of scrutiny and probing.

(v) Oral Evidence/Examination and Cross-Examination of Witnesses

[4.39] Another issue surrounding the ability to receive submissions is the examination of witnesses. The Court in *Zalewski* held that an adjudicator who is administering justice must be able to receive evidence with a degree of procedural formality.[45]

[4.40] Another issue raised in *Zalewski* related to the cross-examination of witnesses. It is worth noting that there is no general right to cross-examine witnesses.[46] Rather, the right to cross-examine witnesses arises in specific circumstances. First, it has been stated that there is a "right to cross-examine witnesses as to facts which are essential to the establishment of the charges".[47] Second, the entitlement to cross-examination may arise from the requirements of even-handedness to ensure that the evidence of both sides is equally tested.[48] Apart from these circumstances, there is no general right of cross-examination in administrative proceedings where an adjudicator is acting fairly.[49] However, the majority in *Zalewski* was clear that "the ability to cross-examine the opposing

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[41] *TN v Minister for Justice* [2007] IEHC 257, [2007] 4 IR 553 at para 31.

[42] *Stefan v Minister for Justice, Equality and Law Reform* [2001] IESC 92, [2001] 4 IR 203 at page 205.

[43] *Kiely v Minister for Social Welfare* [1977] IESC 2, [1997] IR 267.

[44] *Kiely v Minister for Social Welfare* [1977] IESC 2, [1977] IR 267 at page 278.

[45] *Zalewski v The Workplace Relations Commission* [2021] IESC 24, [2022] 1 IR 421.

[46] *VZ v Minister for Justice, Equality and Law Reform* [2002] 2 IR 135 at pages 161 to 162.

[47] *Gallagher v Revenue Commissioners (No 2)* [1995] 1 ILRM 241, [1995] 1 IR 55 at page 62.

See also *Lyons v Financial Services Ombudsman* [2011] IEHC 454 at para 35.

[48] *State (Boyle) v General Medical Services (Payment) Board* [1981] ILRM 14, discussing *Kiely v Minister for Social Welfare (No 2)* [1977] IESC 2, [1997] IR 267.

[49] See *In Re Haughey* [1971] IR 217 and *Maguire v Ardagh* [2002] IESC 21, [2002] 1 IR 385, dealing with cross-examination in the context of the Oireachtas.

party" is a fundamental aspect of the administration of justice.[50] It must, therefore be the case that where there is an oral hearing, an adjudicator who is administering justice must have a power to allow the cross-examination of witnesses. The Commission notes, however, that nothing in *Zalewski* suggests that a party has unlimited rights in respect of cross-examination.

[4.41] It would not be appropriate, in the Commission's view, to impose limits on cross-examination by bodies exercising adjudicative functions. Therefore, the Commission is of the view that where an adjudicative body holds an oral hearing, it should have the power to regulate the calling of witnesses, and to limit evidence and cross-examination to what is necessary and relevant, under its case management powers.[51]

(d) Right to Access to Information

[4.42] The administration of justice comes with additional requirements relating to transparency. Case law under Article 34.1 of the Constitution has established certain principles relating to the accessibility of documents to the public. These principles may extend to adjudicative bodies administering justice in public.

[4.43] In *Allied Irish Bank plc v Tracey,*[52] it was held that once documents are opened in court, they can be accessed by non-parties to the litigation without requiring the permission of the court. Court documents can be considered 'opened' when they are referenced or when excerpts are read, either partially or entirely. This does not apply to material which is protected by the *in camera* rule or subject to reporting restrictions.

[4.44] In *BPSG Limited t/a Stubbs Gazette v The Courts Service & Anor,*[53] it was held that there is no right of public access to unregistered judgments of the District or Circuit Courts. The High Court held that the constitutional right to have justice administered in public provided applicants access to the court process itself. However, this right did not extend "to information in the form of records generated by administrative action after the public hearing has concluded."[54]

[4.45] The right of access to court records was expanded in 2018 with the publication of new Rules of Court for the Superior Courts, the Circuit Court and the District Court. These rules gave effect to section 159(7) of the Data Protection Act 2018

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[50] *Zalewski v The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421 at para 145 at page 159.

[51] See the Chapter on Powers of Adjudicative Bodies.

[52] *Allied Irish Bank plc v Tracey (No 2)* [2013] IEHC 242, [2013] 3 IR 398.

[53] *BPSG Limited t/a Stubbs Gazette v The Courts Service & Anor* [2017] IEHC 209, [2017] 2 IR 343.

[54] *BPSG Limited t/a Stubbs Gazette v The Courts Service & Anor* [2017] IEHC 209, [2017] 2 IR 343 at paras 59 to 65.

which provides for the disclosure to 'bona fide' members of the media information contained in court records "for the purpose of facilitating the fair and accurate reporting of the proceedings".[55] These rules apply to documents which have been opened in court or documents which have been read by the judge prior to the hearing and that the judge deems to have been opened.[56]

[4.46] The Commission notes that this right of access to court records is exclusive to court proceedings. Therefore, the Commission considers that a power to give access to documents would be more suitable for adjudicative bodies. Such a power could be exercised with the discretion of the adjudicative bodies themselves. This is subject to any procedural rules the body in question might adopt to preserve privacy or confidentiality.[57]

(i) Recording of Hearings

[4.47] The approach to recording proceedings varies across adjudicative bodies and is inconsistent. Both the International Protection Appeals Tribunal[58] and the Valuation Tribunal[59] require proceedings to be recorded. In these instances, the recording is carried out by the bodies themselves. If proceedings are recorded by the body itself, parties are given the recording either automatically[60] or after the payment of a reasonable fee.[61] In other instances, the decision to allow recording of the proceedings is left to the discretion of the presiding officer or tribunal. When recording is permitted, the recording is carried out by one of the parties, for example in the Labour Court.[62] No formal recording is created and the final decision is based on the notes taken by the decision-maker and the documentation provided only. The form of recording also differs. The Labour Court only permits recognised court stenographers to record proceedings.[63] The Legal Practitioners Disciplinary Tribunal appoints a person to take either a stenographic, sound, or sound and visual recording of the proceedings.[64]

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[55] Section 159(7) of the Data Protection Act 2018.

[56] Data Protection Act 2018 (Section 159(7): Superior Courts) Rules 2018 (SI No 660 of 2018).

[57] Open Justice is discussed in greater detail later in this Chapter under the heading "Transparency and Past Decisions".

[58] Section 13(4) of the International Protection Act 2015.

[59] Rule 91 of the Valuation Tribunal (Appeals) Rules, 2019

[60] Section 13(4) of the International Protection Act 2015.

[61] Regulation 29 of the Legal Practitioners Disciplinary Tribunal Regulations 2021 (SI No 786 of 2021).

[62] Rule 61 of the Labour Court Rules.

[63] Rule 60 of the Labour Court Rules.

[64] Regulation 29 of the Legal Practitioners Disciplinary Tribunal Regulations 2021 (SI No 786 of 2021).

[4.48] It is of note that MacMenamin J stated in *Atanasov v Refugee Appeals Tribunal*[65] that "clearly it is not always necessary that there should be a recording or reporting procedure for the decisions of any court. But what is necessary is that the law must be adequately accessible, to an applicant no less than a citizen".[66]

[4.49] The Commission is of the view that adjudicative bodies should outline their protocol on recording hearings in their procedural rules and that there need not be an obligation to record all interactions that relate to an application. However, formal hearings carried out by bodies administering justice should be recorded. The bodies should have discretion regarding the format of such a recording. Additionally, the level of access (public access or access only to the parties) to these recordings may depend on the privacy required by the adjudicative bodies.

[4.50] Furthermore, the Commission invites consultees' views on whether adjudicative bodies should be required to keep a record of proceedings or whether this requirement should only apply to formal public hearings. It also invites views on whether there are circumstances in which the parties involved in the proceedings should have access to this record.

(e) Transparency and Past Decisions

[4.51] The concept of "open justice" applies across the procedures and powers of adjudicative bodies generally. However, it plays a key role in ensuring the transparency of adjudicative bodies and the publication of past decisions. Baker J in *BPSG Limited t/a Stubbs Gazette v The Courts Service & Anor* stated that "it is, in [her] view, beyond doubt that the pronouncement of a judgment by a judge in every court in the State, whether that be a judgment delivered orally or in a written judgment, is to be considered to be part of the administration of justice, and must be done in a way that is sufficiently open and sufficiently public that the identity of the litigants and the result of the litigation is known, and capable of being known, by all members of the public".[67] It is therefore important to consider the accessibility of adjudicative functions, transparency in the availability of past decisions and consistency and coherence in adjudicative procedures.

[4.52] The publication of past decisions could further the principles of coherence, consistency and fairness. These principles were emphasised by Geoghegan J in the Supreme Court in *PPA v Refugee Appeals Tribunal*:

> "It is of the nature of refugee cases that the problem for the appellant back in his or her country of origin which is leading him

[65] *Atanasov v Refugee Appeals Tribunal* [2005] IEHC 237.

[66] *Atanasov v Refugee Appeals Tribunal* [2005] IEHC 237 at page 19.

[67] *BPSG Limited t/a Stubbs Gazette v The Courts Service & Anor* [2017] IEHC 209, [2017] 2 IR 343 Baker J at para 59.

> or her to seek refugee status is of a kind generic to that country or the conditions in that country. Thus, as in these appeals, it may be a problem of gross or official discrimination against homosexuals; enforced female circumcision or it may be some concrete form of discrimination against a particular tribe. Where there are such problems it is blindingly obvious, in my view, that fair procedures require some reasonable mechanisms for achieving consistency in both the interpretation and the application of the law in cases like this of a similar category. Yet, if relevant previous decisions are not available to an appellant, he or she has no way of knowing whether there is such consistency …Previous decisions of the tribunal may be ones which if applied in the appellant's case would benefit the appellant but if there is no access, he has no knowledge of them and indeed he has no guarantee that the member of the tribunal has any personal knowledge of the previous decisions made by different colleagues … [S]uch a secret system is manifestly unfair. The unfairness is compounded if, as in this jurisdiction, the presenting officers as advocates against the appellants have full access to the previous decisions. That raises immediately an 'equality of arms' issue."[68]

[4.53] In *Kelly & Doyle v Criminal Injuries Tribunal*,[69] the applicants argued that they needed access to past decisions of the Criminal Injuries Compensation Tribunal to make meaningful submissions relating to a provision of the Scheme of Compensation of Personal Injuries Criminally Inflicted. This provision conferred discretion on the Tribunal to disentitle an applicant from an award or to reduce an award on the basis of conduct, character or way of life. The applicants argued that their constitutional right to fair procedures and their right to fair and appropriate compensation under EU law meant they were entitled to not only previous decisions of the Tribunal, but also that the proceedings be conducted in public.[70] Ní Raifeartaigh J stated that:

> "The complete absence of any information which might assist both decision-maker and claimant in ensuring that the claimant gets the benefit of a consistent approach, and has notice as to what that approach is, seems to me to be fundamentally unfair."[71]

[68] *PPA v Refugee Appeals Tribunal* [2006] IESC 53, [2007] 4 IR 94 at pages 105 to 106.

[69] *Kelly & Doyle v Criminal Injuries Tribunal* [2020] IECA 342.

[70] *Kelly & Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 147.

[71] *Kelly & Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 162.

[4.54] The Court in *Kelly* held that the *PPA*[72] decision and the principle of effective protection of an EU right required the applicants be provided with information to give them a sufficient understanding of how the provision of the Scheme of Compensation of Personal Injuries Criminally Inflicted was applied for the purpose of presenting their claims.[73]

[4.55] Many bodies exercising adjudicative functions already make their decisions publicly available on their websites. The Residential Tenancies Board website contains an archive of dispute outcomes and determination orders for both adjudications and tribunals.[74] The International Protection Appeals Tribunal also provides a decision archive of its decisions and the decisions of its predecessor, the Refugee Appeals Tribunal from 2006 to date in redacted format.[75] The Workplace Relations Commission's website provides a decision archive for decisions and determinations of the Labour Court and the Workplace Relations Commission. It also contains decisions and recommendations of the Equality Tribunal since 1996 and, post-2007, determinations of the Employment Appeals Tribunal.[76] Before the *Zalewski* judgment, decisions and determinations were anonymised when published, if adjudication hearings had been held in private. Decisions post-dating the *Zalewski* judgment are no longer anonymised by default as hearings are no longer held in private.[77] Nonetheless, adjudication officers have the discretion not to publish the names of the parties in relation to whom a decision is made if the officer believes that special circumstances exist which justify not doing so.[78]

[4.56] The Social Welfare Tribunal and the Mental Health Tribunal do not publish their decisions.[79] The Social Welfare Tribunal deals with applications for

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[72] *PPA v Refugee Appeals Tribunal* [2006] IESC 53, [2007] 4 IR 94.

[73] *Kelly & Doyle v Criminal Injuries Tribunal* [2020] IECA 342 at para 165.

[74] Residential Tenancies Board, "RTB Dispute Outcomes" <https://www.rtb.ie/dispute-resolution-services/dispute-case-outcomes> accessed 25 November 2025.

[75] International Protection Appeals Tribunal, "Tribunal Decisions Archive" <https://www.protectionappeals.ie/about-the-tribunal/tribunal-decisions-archive/> accessed 25 November 2025.

[76] Workplace Relations Commission, "Decisions and Determinations" <https://www.workplacerelations.ie/en/search/?decisions=1&from=04/03/2024&to=15/03/2024&body=15376> accessed 25 November 2025.

[77] Workplace Relations Commission, "Guide to Searching the Decisions and Determinations Database" <https://www.workplacerelations.ie/en/Publications_Forms/Decisions_Information_Guide.pdf> accessed 25 November 2025.

[78] Section 41(14)(b) of the Workplace Relations Act 2015.

[79] Section 49(9) of the Mental Health Act 2001 states that "[s]ittings of a tribunal for the purposes of an investigation by it under this Act shall be held in private." Section 49(10) of this Act states that absolute privilege applies to "(a) documents of the tribunal and documents of its members connected with the tribunal or its functions, wherever published,

unemployment benefit or assistance related to the stoppage of work or trade disputes.[80] The Minister for Social Protection may provide for the publication of decisions of the Tribunal,[81] but this has not yet been done. In practice, decisions of the Mental Health Tribunals are only available to parties who appear before this body and their legal representatives.

[4.57] The Mental Health Commission provides a useful summary of key cases that have been heard by the courts on appeal or by way of judicial review from the Mental Health Tribunal.[82] Providing a summary of key decisions made by the adjudicative body in question could assist applicants, representatives, and decision-makers alike. In the Commission's view, this is a useful mechanism that bodies exercising adjudicative functions could utilise to ensure transparency around the decision-making process.

[4.58] The Tax Appeals Commission refers to both court judgments and its own past determinations in order to make its decisions.[83] Therefore, its ability to assess cases on a case-by-case basis is already limited to a degree. Another example is that of the Residential Tenancies Board. Its legislation provides that where the Residential Tenancies Board "is of the opinion that the determination is not consistent with previous determinations of the [Tenancy] Tribunal in relation to disputes of a similar nature to the dispute concerned", then the Board may set in train a procedure leading to a *de novo* rehearing of the dispute.[84]

[4.59] Access to tribunal decisions in the United Kingdom varies depending on the tribunal concerned, the type of issue involved, and whether the hearing is held in public. For example, in the Immigration and Asylum Chamber (First-tier Tribunal) parties may apply for anonymity so their names are not published. While the decisions are not published generally from in the First-tier Tribunal, all reported

(b) reports of the tribunal, wherever published, (c) statements made in any form at meetings or sittings of the tribunal by its members or officials and such statements wherever published subsequently."

[80] Section 331 of the Social Welfare Consolidation Act 2005.

[81] Section 333(12) of the Social Welfare Consolidation Act 2005.

[82] For example, Mental Health Commission, "Summary of Judgments by the Superior Courts on the Interpretation of the Mental Health Acts 2001-2018" (12 April 2024) <https://www.mhcirl.ie/sites/default/files/2024-04/MHA%20Summary%20of%20Judgments%20April%202024.pdf> accessed 26 November 2025.

[83] For example see Tax Appeals Commission, "*Appellant v Revenue Commissioners* (Determination 19TACD 2020)" (16 January 2020) at para 11 <https://www.taxappeals.ie/_fileupload/Determinations/2020/19TACD2020.pdf> accessed 26 November 2025.

[84] Section 122 of the Residential Tenancies Act 2004.

determinations of the Upper Tribunal of the Immigration and Asylum Chamber are published on their website.[85]

[4.60] The 2008 New Zealand Law Commission's paper on tribunal reform discussed the issues of transparency and the publication of past decisions.[86] The paper outlined the benefits of public decisions as making tribunal decisions more visible and understandable to the public, as well as allowing for scrutiny of decisions.[87] Similarly to Ireland, the publication of decisions varies across different adjudicative bodies in New Zealand. Some tribunals publish full decisions (frequently with parties' names removed), others publish summaries, others send their decisions for publication in law reports, and some do not publish decisions at all.[88] The New Zealand Commission noted that privacy concerns should generally be dealt with by publishing decisions without identifying parties, rather than not publishing decisions at all.

[4.61] The publication of past decisions is similar across Australian jurisdictions, where the vast majority of decisions are published, with the option for names to be redacted in certain cases. For example, in Victoria, decisions are posted on the Victorian Civil and Administrative Tribunal website "if the case has attracted media attention or public interest" or if they help explain the Victorian Administrative system's approach to different situations.[89] All other decisions are posted to the Australasian Legal Information Institute website with individual lists for each tribunal.

[4.62] The Commission is of the view that publication of decisions should be the default for adjudicative bodies. However, it does appreciate that some bodies dealing with sensitive subject matters might be reluctant to publish decisions in full and unredacted form. Redactions in published decisions could be utilised to preserve anonymity in sensitive cases.

(f) Right to Representation

[4.63] Parties to adjudicative proceedings may require some form of representation. This is especially true if they are vulnerable, struggle with literacy, are non-native English speakers, or have an intellectual disability. Even informal adjudicative

[85] Tribunal Decisions UK, "Immigration and Asylum Chamber: decisions on appeals to the Upper Tribunal" <https://tribunalsdecisions.service.gov.uk/utiac/> accessed 26 November 2025.

[86] New Zealand Law Commission, "Tribunal Reform – Issues Paper" (2008) at 3.24 to 3.25.

[87] New Zealand Law Commission, "Tribunal Reform – Issues Paper" (2008) at 3.24.

[88] New Zealand Law Commission, "Tribunal Reform – Issues Paper" (2008) at 3.25.

[89] Victorian Civil and Administrative Tribunal, "Significant Decisions" <https://www.vcat.vic.gov.au/the-vcat-process/decisions/high-profile-decisions> accessed 26 November 2025.

proceedings can be intimidating as the interests of applicants will be affected by the decision. Applicants who are accompanied have assistance interpreting and asking for additional information and may be more empowered as a result.[90] The benefits of having representation depend, however, on the competence of the representative in question. In an adjudicative setting, it can be appropriate to insist that the proposed representative be capable of aiding the body in discharging its functions.[91]

[4.64] Whether representation is allowed, how it is funded, and its quality may affect a hearing. Genn's research suggests that skilled representation increases the likelihood that applicants will be successful before bodies exercising adjudicative functions.[92] A degree of subjectivity exists in assessing the likelihood of success and the definition of a 'skilled' representative. The rate of success for applications should not be conflated with achieving the best outcome. in every case, as the correct outcome may be an adverse decision for the applicant.

[4.65] The specialised nature of certain bodies, such as the Tax Appeals Commission, somewhat undermines the argument that the process can be made sufficiently simple to enable applicants to represent themselves.[93] It may be difficult to find a sufficient number of decision-makers who are simultaneously experts in their fields, understand legal issues without the assistance of legal representatives, can make complex issues simple for applicants, maintain consistency across decisions, weigh evidence accurately, and make reasoned decisions quickly.[94]

[90] With respect to agricultural appeals, Minister Éamon Ó Cuív stated that "[his] experience has been that when the appellant is accompanied at the hearing it makes a huge difference in terms of confidence, of getting information and helping to interpret what has happened at the appeal hearing." See Select Committee on Agriculture, Food and the Marine, Agriculture Appeals Bill 2001 Debate 26 Jun 2001 <https://www.oireachtas.ie/en/debates/debate/select_committee_on_agriculture_food_and_the_marine/2001-06-26/2/#spk_61> accessed 26 November 2025.

[91] *Coffey v Environmental Protection Agency* [2013] IESC 31, [2014] 2 IR 125.

[92] Genn "Tribunals and Informal Justice" (1993) 56 *Modern Law Review* 393 at page 400. "In social security appeals tribunals, the presence of a skilled representative increased the likelihood of success from 30 to 48 per cent. In hearings before immigration adjudicators, the overall likelihood of success was increased by the presence of a representative from 20 to 38 per cent. In mental health review tribunals, the likelihood of a favourable change in conditions rose from 20 to 35 per cent as a result of representation. The effect of representation on the outcome of industrial tribunal hearings is more complicated to state since both parties to hearings are able to appear with a representative." These statistics are based on English tribunals, rather than Irish bodies. Even taking these factors into account, it still suggests that representation improves outcomes for applicants.

[93] Genn "Tribunals and Informal Justice" (1993) 56 *Modern Law Review* 393 at page 398.

[94] Genn "Tribunals and Informal Justice" (1993) 56 *Modern Law Review* 393 at page 406.

(i) Right to Legal Representation

[4.66] A more difficult question is whether legal representation should be a requirement. To begin with, it is of course clear that an individual may at any time seek legal advice about their rights and obligations, including rights and obligations determined by an administrative body – the right of access to a lawyer is "fundamental".[95]

[4.67] There may be issues around equality of arms if one party is represented and the other party is unrepresented. The Free Legal Advice Centre has noted that this may be a problem in work-related disputes:

> "While employers can often afford to pay for legal representation before the [Workplace Relations] Commission, employees often cannot. Where an employee does not have such financial means and is faced with an experienced legal team on the other side, this can give rise to an inequality of arms in practice."[96]

[4.68] In *O'Brien v Personal Injuries Assessment Board*,[97] the Supreme Court was concerned with whether the Personal Injuries Assessment Board was correct in refusing to correspond with the applicant's solicitor.[98] Section 7 of the Personal Injuries Assessment Board Act 2003 provides that a person has the right to seek legal advice in respect of their claim.[99] The Supreme Court discussed the principle of 'equality of arms' which concerns any party having a procedural advantage over another, stating:

> "The fact that the process in PIAB is not adjudicative does not exclude the right to legal representation. There are many situations which are not adjudicative and which a person may wish to have a lawyer by his side. The lawyer places the person on an equal footing. It creates a situation which is even handed."[100]

[4.69] The Court held that the Personal Injuries Assessment Board was unable to point to an express or implied intention on the Oireachtas to exclude a claimant from

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[95] *AGAO v Minister for Justice, Equality and Law Reform* [2006] IEHC 251, [2007] 2 IR 492, MacMenamin J at para 28.

[96] Free Legal Advice Centre, "Submission to inform the Department of Justice and Equality's consultation on a new National Women's Strategy 2017 – 2020" (February 2017) at page 8 <https://www.flac.ie/assets/files/pdf/final_flac_submission_on_new_national_womens_strategy.pdf?issuusl=true> accessed 22 October 2024.

[97] *O'Brien v Personal Injuries Assessment Board* [2008] IESC 71, [2009] 3 IR 243.

[98] The Personal Injuries Assessment Board is now the Injuries Resolution Board.

[99] Section 7 of the Personal Injuries Assessment Board Act 2003.

[100] *O'Brien v Personal Injuries Assessment Board* [2008] IESC 71, [2009] 3 IR 243 at para 60.

being legally represented in their dealings with the Board. Therefore, the Supreme Court found that the Board's action, in refusing to correspond with the applicant's solicitor, was in breach of the Act.[101]

[4.70] In *Burns v Governor of Castlerea Prison,* the Supreme Court held that legal representation was clearly unnecessary in cases where the dispute was factual.[102] Geoghegan J made reference to the UK *case R V Secretary of State for the Home Department, ex parte Tarrant*[103] in his judgment. The Court in *Burns* suggested that the criteria to be considered in a request for legal representation elucidated in the *Tarrant* case, could be safely adopted in Ireland. The six matters suggested by Webster J in *Tarrant* were:

1) The seriousness of the charge and of the potential penalty;
2) Whether any points of law are likely to arise;
3) The capacity of a particular prisoner to present his own case;
4) Procedural difficulty;
5) The need for reasonable speed in making the adjudication, that being an important consideration; and
6) The need for fairness as between prisoners and prison officers.

[4.71] Geoghegan J approved this list but, only as a list "of the kind of factors which might be relevant" and reiterated that "legal representation should be the exception not the rule".[104] In *Campbell v The Irish Prison Service*,[105] the Court found that while the allegations against the applicant were of a serious nature, it did not mean that legal representation was necessary to ensure a fair hearing in the absence of complex legal issues.[106]

[4.72] The Irish courts have been clear that there is no automatic right to legal representation in an administrative setting.[107] Indeed, in *Iarnród Éireann/Irish Rail v McKelvey*,[108] the Court of Appeal noted that it may be "wholly undesirable" to

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[101] This decision was later cited in *Mary Skeffington v Ireland and the Attorney General* [2020] IEHC 296 at para 80 where the court noted in its findings that "the decision in *O'Brien* strongly and unequivocally maintains the entitlement of any claimant before PIAB to obtain legal representation".

[102] *Burns v Governor of Castlerea Prison* [2009] IESC 33, [2009] 3 IR 682 at pages 682 to 683.

[103] *R v Secretary of State for the Home Department, ex parte Tarrant* [1985] 1 QB 251.

[104] *Burns v Governor of Castlerea Prison* [2009] IESC 33, [2009] 3 IR 682 at page 688.

[105] *Campbell v The Irish Prison Service* [2023] IEHC 706.

[106] *Campbell v The Irish Prison Service* [2023] IEHC 706 at para 50.

[107] *Barry v Sentence Review Group and the Minister for Justice, Equality and Law Reform* [2001] IEHC 151, [2001] 4 IR 167 at 169 to 170; *Garvey v Minister for Justice, Equality and Law Reform* [2006] IESC 3, [2006] 1 IR 548 at 559. See also *O'Brien v Personal Injuries Assessment Board* [2008] IESC 71.

[108] *Iarnród Éireann/Irish Rail v McKelvey* [2018] IECA 346.

permit legal representation in some settings, as it may lead to unnecessary complexification of the issues in dispute.[109] The Supreme Court in *McKelvey* held that when considering if a process is fair in the context of representation, "the question is not whether a particular type of representation might give some added value but whether its absence can be said to leave the person concerned without an adequate level of representation".[110]

[4.73] There may be situations in which the complexity of the issues or the importance of the stakes justifies legal representation. For example, it is generally accepted that legal representation is required in Mental Health Tribunal processes where the right to liberty of an at-risk adult is at stake and complex legal issues may be at play. Parties appearing before the Legal Practitioners Disciplinary Tribunal are entitled to be legally represented.[111] Similarly, the International Protection Appeals Act 2015 grants detainees the entitlement to seek legal assistance and to receive legal aid.[112] On the other hand, the Tax Appeals Commission grants parties the entitlement to be represented not only by a legal representative but also by someone who is a member of a professional body, or anyone else the Tax Appeals Commission is satisfied is appropriate.[113] Another issue to take into consideration is the availability of legal aid for specific adjudicative bodies.[114]

[4.74] The Leggatt Report in the United Kingdom endorsed self-representation to encourage participation, reduce costs and delay, simplify matters, and avoid formality.[115] It suggested that decision-makers can assist applicants and systems can be simplified to enable self-representation in most cases. However, there are limits to the extent to which decision-makers can aid unrepresented applicants in presenting their cases while also maintaining their impartiality and avoiding delays. It might be misleading to an applicant if a decision-maker is overly informal when their decision has binding effects and they must follow set rules.[116]

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[109] *Iarnród Éireann/Irish Rail v McKelvey* [2018] IECA 346 at para 35.

[110] *Iarnród Éireann/Irish Rail v McKelvey* [2019] IESC 79, [2020] 1 IR 573 at page 588.

[111] Regulation 27 of Legal Practitioners Disciplinary Tribunal Regulations 2021 (SI No of 786 of 2021).

[112] Section 20(14) of the International Protection Act 2015.

[113] Section 949AB of Finance (Tax Appeals) Act 2015.

[114] The issue of legal aid is discussed in the Chapter the on Powers of Adjudicative Bodies under the heading "Power to Grant Legal Aid".

[115] Sir Andrew Leggatt, *Report of the Review of Tribunals ("The Leggatt Report")* (2001).

[116] See Genn "Tribunals and Informal Justice" (1993) 56 *Modern Law Review* 393 at page 401, "informality can constitute a trap for those bringing or defending their cases by conveying the false impression that the tribunal's decision-making process can be carried out with the same lack of formality and relaxation of rules as the hearing."

Close questioning of an applicant by a decision-maker could be misinterpreted as hostility.[117]

(ii) Comparative Jurisdictions

[4.75] It is set out in the rules of each tribunal whether a person has the right to representation, legal or otherwise, during proceedings in the United Kingdom. The Tribunals, Courts and Enforcement Act 2007 provides that the right to representation before both First-Tier Tribunals and Upper Tribunals should be decided in the tribunal procedure rules of each tribunal.[118] For example, section 11(1) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 provides that a "party may appoint a representative in (whether a legal representative or not) to represent that party in the proceedings".[119] This approach has led to minimal controversy in the United Kingdom courts regarding the right to representation in Tribunals. Conversely, an area that has caused controversy is the reduced provision of legal aid.[120] Tribunals are generally obliged to offer assistance to unrepresented appellants, which may lead to inefficiencies in the tribunal process.[121]

[4.76] Similarly, in Ontario, the right to representation, legal or otherwise, is outlined in the Tribunals Ontario, Common Rules.[122] Rule A.91 provides that parties may be self-represented, represented by a person licenced by the Law Society or represented by an unlicenced person permitted by the Law Society Act.[123] For example, the Practice direction on Representation before the Landlord and Tenant Board gives guidelines on who may act as a representative before the board. The representative may be a licensed lawyer, paralegal, or an unlicensed person the Law Society of Ontario has exempted from licensing requirements.[124]

[117] Genn "Tribunals and Informal Justice" (1993) 56 *Modern Law Review* 393 at page 405.

[118] Schedule 5, section 9 of the Tribunals, Courts and Enforcement Act 2007 (United Kingdom). The "tribunal procedure rules" are provided for in section 22(1) of the Tribunals, Courts and Enforcement Act 2007 (UK).

[119] Section 11(1) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (UK).

[120] Elliott and Thomas, "Tribunal Justice and Proportionate Dispute Resolution" (2012) 71(2) Cambridge Law Journal 297 at page 316.

[121] *Hooper v Secretary of State for Work and Pensions* [2007] EWCA Civ 495 at para 25; *Mongan v Department of Development* [2005] NICA 16, [2006] NI 43 at paras 14 to 17.

[122] Tribunals Ontario Common Rules 2017 as set out pursuant to section 25.1 of the Statutory Powers Procedure Act 1990.

[123] Rule A9.1 of the Tribunals Ontario Common Rules 2017.

[124] Tribunals Ontario Practice Direction on Representation before the Landlord and Tenant Board 2022.

Additionally, rule A9.1 of the Rules of Procedures for appeal to the Social Benefits Tribunal provides for a representation before the tribunal.[125]

[4.77] In New Zealand, the right to representation varies between adjudicative bodies. In the 2008 New Zealand Law Commission paper, Tribunals in New Zealand, the Commission emphasised that a tribunal is designed to be less formal than the courts.[126] The paper stated the reason for this is the desire to make tribunals quicker, cheaper and more easily accessible.[127] Legal representation is allowed in the Employment Relations Authority, Human Rights Review Tribunal, Legal Aid Review Panel, Refugee Status Appeal Authority, and the Taxation Review Tribunal. Notably, legal aid is available for applicants to these bodies.[128] However, this does not mean that legal representation will always be provided for, and there are in fact tribunals where decision-makers do not have the discretion to allow legal representation even in exceptional circumstances.[129] For example, the Disputes Tribunal does not permit legal representation.[130]

(iii) Conclusion

[4.78] The optimal approach, in the Commission's view, is to provide that individuals have a right to be represented, or to represent themselves before a body exercising adjudicative functions. In addition, that body should have discretion to determine whether legal representation should be permitted. This discretion could, evidently, be exercised in favour of permitting legal representation in cases where the complexity of the issues, the individual's circumstances or the importance of the stakes requires it. The body in question would be permitted to make its own procedural rules in relation to representation, legal or otherwise.

(g) Timely Decision-making

[4.79] Timeframes are a key part of pre-hearing, hearing, decision-making, appeal, and review processes. These time limits may affect which avenue of review or appeal is chosen by an applicant.

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[125] Rule A9.1 of the Tribunals Ontario Rules of Procedure for appeals to the Social Benefits Tribunal 2018.

[126] New Zealand Law Commission, "Tribunals in New Zealand" (2008) at para 2.49.

[127] New Zealand Law Commission, "Tribunals in New Zealand" (2008) at para 2.49.

[128] New Zealand Law Commission, "Tribunals in New Zealand" (2008) at para 3.9.

[129] "Tribunal referees" refers to the person who oversees and makes the decision in a tribunal in New Zealand. "Tribunal referees" are often referred to as adjudicators or adjudicating officers in Ireland.

[130] Section 38(7) of the Disputes Tribunal Act 1988 (New Zealand).

[4.80] The Better Regulation Unit, in its Consultation Paper on Regulatory Appeals, set out five areas to consider in the context of appeals, including the time limit to bring the appeal; (ii) the time for an appeal to be assigned a forum for hearing; (iii) the time for the first hearing to occur; (iv) the time for a stay to be heard if requested; (v) the time for the full hearing; and (vi) the time for a judgment to be issued, if not given at the full hearing.[131] These timings apply equally to first instance decisions.

[4.81] The Better Regulation Unit noted that introducing statutory time frames or creating a statutory duty that decision-making procedures shall be expeditious could improve processes.[132] However, time frames should be realistic in light of the resources available to bodies, and must not undermine the fair hearing and due consideration that each application and case deserves. Complex decisions may take longer to decide. Consequently, tight time frames may not be appropriate in all decision-making processes.

[4.82] Changes to organisational culture could more effectively promote expeditious processes than strict statutory requirements. For example, as already suggested, uploading summaries of key cases online could facilitate decision-makers and reduce delays.[133] Making good use of meetings between developers and relevant authorities before a planning application is made could also reduce delays.[134]

[4.83] Some legislation sets out the time frame in which an adjudicative body must make a decision and inform applicants of the reasons for this decision. For example, the Mental Health Tribunal operates on strict time limits due to the importance of avoiding any unlawful restrictions on the liberty of patients. Mental Health Tribunal decisions are ordinarily made on the same day as the hearing and these tribunals must be held within 21 days of a patient being involuntarily admitted.[135] The Student Grants Appeals Board must make a determination within 60 days from the making of an appeal.[136] The Personal Injuries Resolution

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[131] Better Regulation Unit, Consultation Paper on Regulatory Appeals (July 2006) PRN. A6/1047, page 37 at para 4.18.

[132] Better Regulation Unit, *Consultation Paper on Regulatory Appeals* (July 2006) PRN. A6/1047, pages 26 at paras 3.5 and 27.

[133] See the proposal in this Chapter under the heading "Transparency and Past Decisions" regarding summaries of key cases.

[134] This point was raised in the Select Committee on Housing, Planning, Community and Local Government Debate 12 Apr 2017 at page 62 <https://data.oireachtas.ie/ie/oireachtas/debateRecord/select_committee_on_housing_planning_community_and_local_government/2017-04-12/debate/mul@/main.pdf> accessed 26 November 2025. Alternative dispute resolution is discussed in the Chapter on Powers, under the subheading Alternatives to Adjudication, however it is important to re-emphasise its utility here.

[135] Sections 15(1) and 18(2) of the Mental Health Act 2001.

[136] Section 21(4)(d) of the Student Support Act 2011.

Board makes an assessment within nine months of receiving consent to make an assessment from the respondent.[137] This may be extended by a further six months by the Personal Injuries Resolution Board.[138] The Aquaculture Licences Appeals Board must endeavour to determine appeals within four months of receiving the notice of appeal, or within such other period as the Minister for Agriculture, Food and the Marine may prescribe, either generally or in respect of a particular class or particular classes of appeals.[139] Where the legislation does not specify a time frame, the timeliness of decision-making is entirely a matter for the adjudicative body in question.

[4.84] Overall, the Commission is not convinced that general statutory time limits for the exercise of adjudicative functions would be appropriate. It believes that this power is best left for adjudicative bodies to exercise for themselves. In that regard, it may be appropriate for bodies exercising adjudicative functions to include suggested time limits and remedies for breaches in their Charters.[140]

(h) Duty to Give Reasons

[4.85] In Irish law, public bodies generally have a duty to provide reasons for a decision made by that body if it affects the interests of another party:[141] "the person whose rights are affected by the decision in issue must be enabled thereby to comprehend the reason or reasons for it and how and why it was arrived at".[142] In other words, giving reasons for a decision enables the affected parties to understand why the decision was reached, and decide whether they wish to appeal or seek review of the decision. Reasons could also include an explanation of any avenues of review or appeal.[143] Moreover, reasons also enable the courts

[137] Section 49(2) of the Personal Injuries Assessment Board Act 2003.

[138] Section 49(4) of the Personal Injuries Assessment Board Act 2003.

[139] Section 56(2) of the Fisheries (Amendment) Act 1997.

[140] Charters were discussed in this Chapter on Procedural Requirements on under the heading "Good Administration" at para 4.27 and 4.28.

[141] *Mallak v Minister for Justice, Equality and Law Reform* [2012] IESC 59, [2012] 3 IR 297. In this case, legislation gave the Minister the power to exercise "absolute discretion" when refusing or granting citizenship applications. The Supreme Court held that reasons for a decision generally must be given in order to comply with constitutional justice.

[142] *Deehan v State Examinations Commission* [2016] IEHC 213 per Noonan J at para 66.

[143] See section 31(1)(b) of the Housing (Regulation of Approved Housing Bodies) Act 2019, section 27(2) of the Private Security Services Act 2004 and section 7(3) of the Forestry Act 2014.

or another appellate authority to properly review whether the decision was lawful.[144]

[4.86] In the context of an adjudication, such reasons could outline the facts of the dispute, the issues, the weight given to the evidence, and the reasons accepted for preferring the facts or interpretation advanced by one side over the alternative view.[145] Setting out these criteria clarifies the decision-making process which may also aid decision-makers by providing a structure for their analysis. A requirement to give reasons assists decision-makers in reaching their decisions, as initial impressions must be explained, and decisions must be justified. More generally, reasons serve the purpose of helping to ensure the quality of decision-making. This, in turn, promotes public trust and confidence in the decision-making process.

[4.87] The Supreme Court in *Nano Nagle School v Daly*[146] discussed the scope of the duty to give reasons in adjudicative bodies, in this case the Labour Court.[147] The Court highlighted that any decision-maker which is under a duty to give reasons for a decision should give some outline of the relevant facts and evidence on which the reasoning is based.[148] However, this does not mean that all evidence must be included in the reasons but rather only material which is "fundamentally relevant to the decision".[149] Similarly, in *Mallak v Minister for Justice, Equality and Law Reform*[150] the Supreme Court stated that "several converging legal sources strongly suggest an emerging commonly held view that persons affected by administrative decisions have the right to know the reasons on which they are based, in short to understand them".[151] Additionally, the Court referenced article 296 of the Treaty on the Functioning of the European Union which provides that "legal acts shall state the reasons on which they are based".[152]

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[144] *Connelly v An Bord Pleanála [2018] IESC 31, [2021] 2 IR 752 per Clark CJ.* See generally Biehler, "The Rationale for the Obligation to Provide Reasons for Administrative Decisions" (2019) 61(6) The Irish Jurist 148.

[145] *National Museum of Ireland v Minister for Social Protection* [2016] IEHC 135 at para 57.

[146] *Nano Nagle School v Daly* [2019] IESC 63, [2019] 3 IR 369.

[147] The Labour Court has a statutory duty to provide reasons for decisions, see Section 88(1) of the Employment Equality Act 1998.

[148] *Nano Nagle School v Daly* [2019] IESC 63, [2019] 3 IR 369 at paras 74 and 75.

[149] *Nano Nagle School v Daly* [2019] IESC 63, [2019] 3 IR 369 at paras 74 and 75.

[150] *Mallak v Minster for Justice, Equality and Law Reform* [2012] IESC 59, [2012] 3 IR 297.

[151] *Mallak v Minster for Justice, Equality and Law Reform* [2012] IESC 59, [2012] 3 IR 297 at para 69.

[152] *Mallak v Minister for Justice, Equality and Law Reform* [2012] IESC 59, [2012] 3 IR 297 at para 71; Article 296 of the Treaty on the Functioning of the European Union and Article 41 of the Charter of Fundamental Rights of the European Union.

[4.88] *Mulholland v An Bord Pleanála*[153] concerned whether the reasons given by the board were adequate. The Court found that under section 34(10)(a) and (b) of the Planning and Development Act 2000, there is an obligation:

> (a) To give reasons irrespective of whether the decision is to grant or refuse permission;
>
> (b) To state the main reasons and considerations on which a decision is based and;
>
> (c) To state the main reasons for not accepting the recommendation of the respondent's inspector.[154]

The Court added that while there is no obligation to provide 'a discursive judgment',[155] a decision-making body must give its reasons in a "cogent way" so that an interested party can assess whether the decision is reasonably capable of challenge.[156]

[4.89] There are some limited exceptions to the duty to give reasons and where they apply, the affected party should be told why full reasons have not been provided.[157] For example, decision-makers might not be required to give reasons for their decisions if the outcome is self-evident or there is an overriding public interest that outweighs the need to provide reasons.[158]

[4.90] There may be a statutory duty to give reasons in some instances. This may arise from a body's parent statute. For example, Coimisiún na Meán must give reasons alongside any decision as to whether a contravention occurred.[159] An adjudicator

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[153] *Mulholland v An Bord Pleanála (No 2)* [2005] IEHC 306, [2006] 1 IR 453.

[154] *Mulholland v An Bord Pleanála (No 2)* [2005] IEHC 306, [2006] 1 IR 453 at para 30 at page 464.

[155] *Mulholland v An Bord Pleanála (No 2)* [2005] IEHC 306, [2006] 1 IR 453 at para 32.

[156] *Mulholland v An Bord Pleanála (No 2)* [2005] IEHC 306, [2006] 1 IR 453 at para 26.

[157] *Mallak v Minister for Justice, Equality and Law Reform* [2012] IESC 59, [2012] 3 IR 297 at para 76; *Paponette v Attorney General* [2010] UKPC 32, [2012] 1 AC 1, [2011] 3 WLR 219.

[158] *Meadows v Minister for Justice* [2010] IESC 3, [2010] 2 IR 701 at page 732. Murray CJ held that "[a]n administrative decision affecting the rights and obligations of persons should at least disclose the essential rationale on foot of which the decision is taken. That rationale should be patent from the terms of the decision or capable of being inferred from its terms and its context. Unless that is so then the constitutional right of access to the courts to have the legality of an administrative decision judicially reviewed could be rendered either pointless or so circumscribed as to be unacceptably ineffective. See also *Kelly v Garda Commissioner* [2013] IESC 47 at para 36 where O'Donnell J held that reasons should be given for a decision, unless the reasons were so self-evident and narrow that the mere fact of the decision disclosed the reason.

[159] Section 139ZT(2) of the Broadcasting Act 2009 as inserted by section 47 of the Online Safety and Media Regulation Act 2022.

appointed by the Commission for Communications Regulation, must give the reasons when making a decision as to whether a person has committed, or is committing, a regulatory breach.[160] The Council of the Pharmaceutical Society of Ireland must give reasons when making a decision in relation to the recognition of third country qualifications.[161] Additionally, the Workplace Relations Act provides that an adjudication officer to whom a complaint or dispute is referred in the Labour Court must give the parties to the complaint or dispute a copy of its decision in writing.[162]

[4.91] Regarding the duty to include avenues of appeal, section 31 of the Housing (Regulation of Approved Housing Bodies) Act 2019 covers the content that must be included in a notice of a decision. Section 31(1)(b) provides that the applicant's entitlement to appeal must be included in the decision sent to the parties.[163] Similarly, section 27 of the Private Security Services Act 2004 deals with notification to the applicant of refusal of a licence.[164] Section 27(2) states that if the Authority decides to refuse, grant or renew a licence, it shall notify the applicant or licensee of the decision and the grounds for it and of the procedure for appealing against it.[165]

[4.92] In other cases, the Freedom of Information Acts may create a statutory duty to give reasons in certain circumstances. If a party is affected by an act of a public body and requests reasons for this action, the public body could be required to give these reasons and "any findings on any material issues of fact made for the purpose of the act'" within four weeks of this request.[166] Certain bodies that exercise adjudicative functions, such as government departments, fall within the statutory definition of a public body.[167] This statutory duty sets out a time limit of four weeks in which reasons should be provided.[168]

[4.93] The Victorian Civil and Administrative Tribunal Act 1998 governs adjudication in Victoria, Australia. Division three, subdivision one of the Act provides the

[160] Section 90(4)(a) of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

[161] Section 19(6) of the Pharmaceutical Society of Ireland (Registration) (Amendment) Rules 2023 (SI No 452 of 2023).

[162] Section 41(5)(a)(iv) of the Workplace Relations Act 2015.

[163] Section 31(1)(b) of the Housing (Regulation of Approved Housing Bodies) Act 2019.

[164] Section 27 of the Private Security Services Act 2004.

[165] Section 27(2) of the Private Security Services Act 2004.

[166] Section 10(1) of the Freedom of Information Act 2014.

[167] Section 6 of the Freedom of Information Act 2014. See also Schedule 1 of the Freedom of Information Act 2014.

[168] Section 10(1) of the Freedom of Information Act 2014.

direction on obtaining reasons for decisions of adjudicative bodies.[169] Section 45 of the Act provides that a person entitled to a decision under the Act may request the decision-maker to give the person a written statement of reasons for the decision.[170] Additionally, the person must make this request within 28 days after the decision has been made.[171]

[4.94] After receiving the request under section 45, the decision-maker must respond within 28 days. The statement must set out:

(a) The reasons for the decision; and

(b) The findings on material questions of fact that led to the decision referring to the evidence or other material on which those findings were based.[172]

[4.95] The legislation in New South Wales is similar, except that the statement of reasons must include the administrator's understanding of the applicable law.[173] It is of note that section 50 of the same legislation also provides for cases where an administrator may refuse to give reasons for their decision.[174] Under the Act, an administrator may refuse to provide reasons if the administrator is of the opinion that a person is not entitled to be given the statement or if the request was not made within 28 days.[175]

[4.96] In Ontario, section 17 of the Statutory Powers Procedure Act 1990 states that a tribunal shall give its final decision and order, if any, in any proceedings in writing and shall give reasons in writing if requested by a party.[176] Additionally, the parent statutes of some larger tribunals in Ontario include a section on notice of decision in their governing legislation.[177] In Québec, administrative procedures are governed by the Act Respecting Administrative Justice.[178] Section 8 of the Act

[169] Division 3, subdivision 1 of the Victorian Civil and Administrative Tribunal Act 1998 (Victoria).

[170] Section 45(1) of the Victorian Civil and Administrative Tribunal Act 1998 (Victoria).

[171] Section 45(2) of the Victorian Civil and Administrative Tribunal Act 1998 (Victoria).

[172] Section 46(2) of the Victorian Civil and Administrative Tribunal Act 1998 (Victoria).

[173] Section 49(3) of the Administrative Decisions Tribunal Act 1997 (New South Wales).

[174] Section 50 of the Administrative Decisions Tribunals Act 1997 (New South Wales).

[175] Section 50 of the Administrative Decisions Tribunals Act 1997 (New South Wales).

[176] Section 17 of the Statutory Powers Procedure Act 1990 (Ontario).

[177] For example, section 208 of the Residential Tenancies Act 2006 provides that the Landlords and Tenants Board shall send each party that participated in the proceedings a copy of its order, including the reasons for the decision if any has been given. The scope of the reasoning is not outlined in the legislation.

[178] Act respecting administrative justice 1996 (Québec).

states that a decision-maker shall give reasons for all unfavourable decisions it makes and shall indicate any non-judicial proceedings available under the law and the time limits applicable. Section 13 of the Act states that every decision by an adjudicative body must be communicated in clear and concise terms to the parties and must be in writing.[179]

[4.97] Therefore, in most jurisdictions there is a general acceptance of a duty to give reasons. However, the extent of this duty and whether it is a duty on the adjudicative body or the right of a party to request reasons differs between jurisdictions. The first issue is whether there is an automatic obligation on the decision-maker to give reasons for their decision to the parties or whether the obligation should be on the parties to request reasons for a decision. Secondly, if it is the case where a party must request the body's reasons, the legislation potentially must include how long the party has to do so and how long the decision-maker has to respond. In other jurisdictions this is generally 28 days.

[4.98] When dealing with the scope of the reasons for the decision, generally throughout other jurisdictions the decision must include:

(a) Any findings on material questions of fact including reference to any evidence or other material which the decision is based on;

(b) Any right to appeal or review that is available to a party;

(c) Timelines for the appeals or review process if there is a deadline before which the applicant must apply.

[4.99] Other jurisdictions have given guidance on how adjudicators should write decisions, emphasising the need for the decision to be clear, concise and understandable. Essentially, a party should be able to decide from the reasons for a decision whether they want to pursue an appeal and if they have any prospect of succeeding in an appeal.

[4.100] The Commission invites views on whether adjudicative bodies should be under a duty to give reasons for their decisions.

(i) Reconsideration of Decisions

[4.101] There is a clear public interest in the finality of a determination, subject only to an appeal. Once they have made a decision, their role is finished – they are *functus officio*. The advantage of the *functus officio* principle is that it ensures finality. All parties know where they stand once a decision has been made. However, the disadvantage of this principle is that it prevents clearly erroneous decisions from being corrected otherwise than by way of appeal or, if no route of appeal is available, by way of judicial review. As Hogan J stated in *Danske Bank v Macken*

[179] Section 13 of the Act respecting administrative justice 1996 (Québec).

and Watson "This point is so firmly embedded in our system of civil procedure that it is actually difficult to find direct authority on the point."[180] This statement referred to High Court decisions but the same applies to decisions made by adjudicators. Even if there is consent to have the erroneous decision set aside by way of judicial review, the procedure is likely to be cumbersome, time-consuming, and costly, and may involve the decision being remitted for correction rather than finalisation of the decision.

[4.102] Some adjudicative decisions can be reviewed in light of new information. For example, if the Department of Social Welfare[181] makes a decision and new information arises subsequently, the same decision-maker in the Department can review this information and decide whether they will change their decision in light of it.[182] This does not prevent the applicant from seeking a full rehearing on appeal to the Social Welfare Appeals Office.[183]

[4.103] However, in other contexts, the ability to review decisions may be constrained. In the courts, the 'slip rule' allows for the correction of clerical mistakes or errors without the need for an appeal.[184] Some adjudicative bodies can also do this. For example, the International Protection Appeals Tribunal can "correct any error or omission" in any decision made by it under the 2015 Act,[185] although the High Court has held that the International Protection Appeals Tribunal is not authorised to set aside a decision in full and to hold a rehearing once the decision has been made.[186] Similarly, the Irish Financial Services Appeal Tribunal has the power to correct obvious errors in the text of a decision or statement of reasons.[187]

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[180] Danske Bank v Macken and Watson [2017] IECA 117 at para 11.

[181] The number of pending social welfare appeals was reduced by more than 50% in 2025, falling from over 22,000 in January to approximately 11,000 in October. Average processing time for social welfare appeals fell from 23.5 weeks in 2024 to 21.2 weeks by the third quarter of 2025. By October 2025, 44,307 appeals had been finalised, representing a 96% increase in productivity compared to the same period in 2024; Social Welfare Appeals Office, *Social Welfare Appeals Office Annual Report 2024* (2024) at 3.1-3.2; Dara Calleary, Dáil Éireann Debate (13 November 2025) <https://www.oireachtas.ie/en/debates/question/2025-11-13/80/#> accessed 17 December 2025.

[182] Section 301 of the Social Welfare Consolidation Act 2005.

[183] Section 311 of the Social Welfare Consolidation Act 2005.

[184] Order 28 Rule 11 of the Rules of the Superior Courts.

[185] Regulation 10(1) of the International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017 (SI No 116 of 2017).

[186] *N.D. (Albania) v The International Protection Appeals Tribunal* [2020] IEHC 451 at para 22.

[187] Section 57AG of the Central Bank Act 1942, as inserted by section 28 of the Central Bank and Financial Services Authority of Ireland Act 2003.

[4.104] The ability to review a decision in light of new information may be particularly useful for adjudicative bodies that make decisions based on factual circumstances that change quickly, for example, decisions that depend on financial factors. It may or may not be more efficient for bodies which grant or deny a benefit based on the financial status of a person (such as the Legal Aid Board or the Social Welfare Appeals Office) to reconsider a decision if that financial status changes, such as through a loss of employment, rather than the applicant starting a new application. A review of a decision in light of new information may also reduce the workload of the Office of the Ombudsman.[188]

[4.105] There is already some precedent for the ability to reconsider a decision. The Oireachtas has provided for such reconsideration in several statutes. Under section 60(7) of the Civil Registration Act 2004, an tArd-Chláraitheoir may revise a decision of an tArd-Chláraitheoir or an appeals officer if they believe the decision was erroneous by reason of a mistake of law or fact.[189] Similarly, regulation 14 of the Teaching Council (Registration) Regulations 2016 provides for an applicant for registration to request an internal review of a decision of the Council.[190] The regulation also notes that this does not affect the applicant's rights of appeal under the Act.

[4.106] Section 301(1)(a) of the Social Welfare Consolidation Act 2005 provides that a deciding officer may, at any time revise a decision of a deciding officer if it appears to him that:

> "…(a) the decision was erroneous in the light of new evidence or of new facts which have been brought to the notice of the deciding officer since the date on which it was given or by reason of some mistake having been made in relation to the law or the facts, or where it appears to the deciding officer that there has been any relevant change of circumstances since the decision was given, or
>
> (*b*) revise any decision of an appeals officer where it appears to him or her that there has been any relevant change of circumstances which has come to notice since the decision was given."

[4.107] Similarly, an appeals officer of the Agriculture Appeals Office may revise decisions in light of new evidence or facts, and the Director of Agricultural Appeals may revise a decision due to mistake of law or fact.[191]

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[188] Cane, *Administrative Tribunals and Adjudication* (London: Hart Publishing 2009) at page 256.

[189] Section 60(7) of the Civil Registration Act 2004.

[190] Regulation 14 of the Teaching Council (Registration) Regulations 2016 (SI No 444 of 2016).

[191] Section 10 of the Agriculture Appeals Act 2001.

[4.108] However, the Commission is not currently persuaded that this model can be applied across the board, not least because the process outlined above involves benefits payable by the State and does not engage the interest of any other party (other than the applicant).

Other jurisdictions

[4.109] In the United Kingdom, the Tribunals, Courts and Enforcement Act 2007 provides that when establishing the rules of a tribunal the Committee must "consider whether the Rules should include a right for the parties to proceedings in which a decision is made by an authorised person exercising the function to have the decision reconsidered by a judicial office holder".[192] The Tribunal Procedure (Upper Tribunal) Rules 2008 provide that the Upper Tribunal may reconsider a decision but may only do so if:

> "(a)when making the decision the Upper Tribunal overlooked a legislative provision or binding authority which could have had a material effect on the decision; or (b) since the Upper Tribunal's decision, a court has made a decision which is binding on the Upper Tribunal and which, had it been made before the Upper Tribunal's decision, could have had a material effect on the decision."[193]

[4.110] In Québec, the law provides that if a situation is re-examined or a decision is reviewed at the request of a citizen, the administrative authority "shall give the citizen the opportunity to present observations and, where necessary, to produce documents to complete his file."194

[4.111] The Commission suggests that it would be useful for adjudicators to have a set of procedural rules that provide for the limited circumstances where a decision can be reopened and reconsidered. A good example of such rules can be seen in section 154 of Québec's Act respecting administrative justice:

> "The Tribunal, on an application, may review or revoke any decision it has made

[192] Section 67C(2) of the Courts Act 2003 (UK) as inserted by section 4(3), sch. para 32 of the Courts and Tribunals (Judiciary of Staff) Act 2018, SI 2020/24, regs 2(b)(iii), 3(b).

[193] Section 45(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (UK).

[194] Section 7 of the Act respecting administrative justice (Québec).

1) where a new fact is discovered which, had it been known in time, could have warranted a different decision;

2) where a party, owing to reasons considered sufficient, could not be heard;

3) where a substantive or procedural defect is of a nature likely to invalidate the decision.

In the case described in subparagraph 3, the decision may not be reviewed or revoked by the members who made the decision."[195]

[4.112] Modelling the rules for reconsideration in this jurisdiction on those of Québec would allow defects affecting the validity of a decision to be corrected, rather than requiring a party to come before an adjudicative body again on because previous decision was wrong on the merits. This would promote the public interest in the finality of decision-making. In *Fitzgibbon v Law Society*,[196] the Supreme Court considered the principle of *functus officio* and stated that it would "entirely defeat the purpose of a limited appeal, if the exercise before the High Court routinely became a re-run of what transpired before the committee".[197]

[4.113] The Commission also considers that, in the interests of legal certainty, it would be appropriate to ensure that these grounds could only be raised within a specified period of time. This period could be extended at the discretion of the decision-maker in question. An individual who receives any decision made by an adjudicator acting fairly should be made aware of the ability to seek reconsideration on these grounds.[198]

[4.114] In principle, this provision could operate in favour of or against the interests of an individual. The Commission has no firm view on whether such a provision should only be capable of being used in favour of the individual. However, it notes that there is strong authority for the proposition that the principle of *res judicata* (a matter judged) should be applied in a pro-individual manner in planning cases.[199] *Res judicata* prevents a matter that has already been adjudicated from being re-litigated.

[4.115] In the Commission's view, it is appropriate for adjudicators administering justice to be able to reconsider their decisions. However reconsiderations should be

[195] Section 154 of the Act respecting administrative justice (Québec).

[196] *Fitzgibbon v Law Society* [2014] IESC 48, [2015] 1 IR 516.

[197] *Fitzgibbon v Law Society* [2014] IESC 48, [2015] 1 IR 516 at para 66.

[198] *Thrasyvoulou v Secretary of State for the Environment* [1990] 2 AC 273 at 289.

[199] *Thrasyvoulou v Secretary of State for the Environment* [1990] 2 AC 273 at 289.

subject to greater formality as it is important to incentivise bodies administering justice to reach correct decisions at the outset.

[4.116] Another issue that arises is whether seeking reconsideration should become a prerequisite to exercising a right of appeal or seeking judicial review. Academic work in the United Kingdom has cast serious doubt on the appropriateness of so-called "mandatory reconsideration". Mandatory reconsideration has significantly reduced the volume of appeals and judicial review in the areas of social welfare and immigration, making it more difficult for appellate bodies and the courts to make pronouncements of general principle about the functioning of the systems in question.[200]

[4.117] The Commission does not suggest that individuals should be required to seek mandatory reconsideration as a prerequisite for seeking judicial review. Moreover, the Commission is of the view, given the British experience, that seeking reconsideration should not be a prerequisite for taking advantage of rights of appeal. In some cases of manifest injustice or errors that are attributable to systemic failings, it is appropriate to have recourse to an external body that can sanction the adjudicator to ensure that the same mistakes are not replicated in the future.

(i) Internal Appeals

[4.118] In contrast, the option of an internal appeal would allow a party to appeal to a different adjudicator, or potentially a more senior adjudicator, within the same adjudicative body. Although an internal appeal may be less cumbersome, time-consuming and costly, it will still involve many of these issues, though usually to a lesser degree than court proceedings. Section 21 of the Freedom of Information Act 2014 provides for internal reviews of decisions under chapter one and two of the Act.[201] This section provides that the head of the Freedom of Information body concerned, on application to him or her:

(a) May review a decision, and

(b) Following the review, may as he or she considers appropriate –

(i) Affirm or vary the decision, or

(ii) Annul the decision and, if appropriate, make such decision in relation to the matter as he or she considers proper.[202]

[200] Thomas and Tomlinson, "A Different Tale of Judicial Power: Administrative Review as a Problematic Response to the Judicialisation of Tribunals" [2019] Public Law 537.

[201] Section 21 of the Freedom of Information Act 2014.

[202] Section 21(2) of the Freedom of Information Act 2014.

[4.119] Additionally, section 38 of the Control of Exports Act 2023 provides for an internal appeal of the decision of the decision-maker. A party who has been given notice of a decision may, no later than 14 days after the decision has been given, request in writing a review of the relevant decision.[203] The Minister will then appoint a reviewer, and the reviewer "shall not be the decision-maker who made the relevant decision being reviewed and shall be of a grade senior to the grade of the decision-maker".[204]

[4.120] An internal appeal offers another step between the original decision and a statutory appeal or judicial review. However, it is important to note that this places an added burden on the adjudicating body, especially if an internal review is a mandatory requirement before a statutory appeal, an approach the Commission is not suggesting.

3. Procedures under an Administrative Justice Council

[4.121] This Consultation Paper suggests that adjudicative bodies be granted the power to draft rules of procedure.[205] While adjudicative bodies may require procedures adapted to their specific needs, the drafting of rules should not go unsupervised. Currently, this oversight role is carried out by a relevant Minister.[206]

[4.122] The Commission is of the tentative view that it would be appropriate to give an administrative justice council an oversight role similar to the role the former Administrative Justice and Tribunals Council had in the United Kingdom. An adjudicative body would have to make a case for why it needs a particular procedure and explain how it is linked to the statutory functions or objectives of the body in question. This requirement may help maintain a degree of uniformity while still allowing for necessary flexibility.

[4.123] Furthermore, the Commission suggests that, like its Québec equivalent, an administrative justice council should also be responsible for general oversight of adjudicative procedures and powers, the creation of an annual report, and should be empowered to make recommendations about legislative change.

[203] Section 38(1) of the Control of Exports Act 2023.

[204] Section 38(4) of the Control of Exports Act 2023.

[205] See the Chapter on Powers, under the heading "Power to Make Procedural Rules".

[206] Section 6(5) of the Finance (Tax Appeals) Act 2015 and Section 11(1) Schedule 2 of the Valuation Act 2001. See also section 109(1) of the Residential Tenancies Act 2004.

4. Request for Views

Q. 4.1 The Commission considers that it might be useful to have procedural rules for adjudicative bodies in the following areas:

(a) good administration

(b) the duty to give notice and relevant information

(c) ability to receive submissions

(i) ability to admit evidence

(ii) oral evidence and examination of witnesses

(d) right to access

(i) recording of proceedings

(e) transparency and past decisions

(f) right to representation

(g) timely decision-making

(h) the duty to give reasons

(i) reconsideration of decisions

(i) internal appeals

The Commission invites views on the above suggestions and asks whether there are any additional areas or issues that should be dealt with in the procedural rules of adjudicative bodies?

Q. 4.2 The Commission invites views on whether there should be additional duties of good administration enshrined in the framework statute. If so, what should these additional duties include?

The Commission is of the view that publication of decisions should be the default for bodies administering justice (with redacted versions being utilised to preserve anonymity in sensitive cases). What is your view on this?

Do you agree that a party appearing before an adjudicator who is administering justice should have the right to legal representation?

The Commission suggests that individuals should have a right to be represented, or to represent themselves in appropriate cases before a body exercising adjudicative functions and that the body has discretion to determine whether legal representation should be permitted. The Commission invites views on this suggestion.

Q. 4.3 Should a general duty to give reasons be provided for in legislation?

Q. 4.4 Should an administrative justice council have a role in oversight of adjudicative procedures and therefore monitor the implementation of procedures by adjudicative bodies?

The Commission invites views on whether there are procedural rules so fundamental that they have to be approved by an outside body, such as an administrative justice council?

The Commission is interested in hearing any other views on the contents of this Chapter.

CHAPTER 5
POWERS OF ADJUDICATIVE BODIES

[5.1] While adjudicative bodies consider a wide variety of issues, they all exercise a similar function – they adjudicate on matters that come before them. Adjudicative bodies need powers to support the exercise of this function, in particular, powers to manage their proceedings and allow them to perform their functions effectively and independently.

[5.2] In Ireland, the powers conferred on adjudicative bodies, their scope, and the circumstances under which they can be exercised vary significantly depending on the body in question. The Supreme Court's decision in *Zalewski* underscored the constitutional necessity for bodies that are considered to be administering justice to possess powers akin to those exercised by the courts, emphasising that these bodies need to ensure fair and effective adjudication. There is clear inconsistency when it comes to adjudicative bodies and the powers which they have been granted, regardless whether they are deemed to be administering justice or simply acting fairly.

[5.3] This Chapter seeks to build on the discussion of adjudicative procedures[1] by identifying the powers that adjudicative bodies may need to perform their functions effectively. While there may be some overlap with the discussion on procedures, the powers discussed are intended to complement these procedures but would be more formal and be held to a higher standard than the procedures. This Chapter also discusses the possible inclusion of these powers within a framework statute.

[5.4] While this Chapter discusses a wide range of powers, the Commission is not suggesting that all adjudicative bodies be granted all of the powers listed. The default position is that all adjudicative bodies are required to act fairly. All bodies will need certain powers in order to act fairly. Bodies that administer justice, and may look more similar to a court, will need additional powers, such as a power to administer oaths or a power to compel witnesses.

[1] See the Chapter on Procedural Requirements.

[5.5] The Commission envisages that while permission from the relevant Minister would be required before additional powers are granted to any adjudicative body, this could, in time, be done in consultation with an administrative justice council.

[5.6] This range of powers may be assigned to particular bodies in a framework statute, if implemented. However, the Commission notes that the utility of the discussion on powers is not confined to their use in a framework statute. This discussion is important in its own right and may still serve to inform policy in the absence of a framework statute.

1. Powers in a Proposed Framework Statute

[5.7] As administrative decision-makers are creatures of statute, their powers must be granted by legislation, either expressly or by necessary implication.[2] Where the exercise of a power is coercive or carries significant legal consequences, the power must be granted expressly in statute, by clear and unambiguous language.[3] This principle is significant for the powers exercisable by administrative bodies. Powers such as the ability to compel testimony, exclude witnesses, order sanctions, and order the payment of costs are all coercive in nature. If they are not provided for explicitly by statute, it is relatively unlikely that a court will find that they are somehow implicitly authorised. A statutory basis for these powers is therefore desirable.

[5.8] The Commission considers that there are two options for reforming the powers granted to non-court adjudicative bodies. The first option is to amend the individual statutes that establish adjudicative bodies. However, as each statute formulates the powers of each adjudicative body differently, amending the statutes individually will not lead to clarity, ease of access to decisions or the harmonisation of wording across decision-making bodies.

[5.9] The second potential option for reform is through a framework statute which contains powers within its provisions and designates the bodies to which it applies. Implementing a framework statute could address existing discrepancies by establishing a template of powers for adjudicative bodies. Such a statute would delineate the scope of these powers and outline the procedural norms for their exercise. This standardisation would enhance predictability, thereby reducing the potential number of legal challenges to the decisions of these bodies. It would also streamline the adjudication process by providing a clear, codified set of powers and procedural guidelines. Each body in the framework

[2] Hogan, Morgan and Daly, *Administrative Law in Ireland* 5th ed (Roundhall, 2019) at paras 12-09 to 12-11.

[3] Hogan, Morgan and Daly, *Administrative Law in Ireland* 5th ed (Roundhall, 2019) at para 12-15.

would be expected to follow the guidelines which would reduce discrepancies in the way each body functions. Moreover, a framework statute could serve as a comprehensive reference for the Oireachtas when legislating for new adjudicative bodies. By providing a general list of powers deemed appropriate for adjudicative bodies, the statute would offer a valuable resource for lawmakers. Although different adjudicative bodies will require different powers, a structured template would ensure that all new bodies are appropriately empowered and suitably regulated This approach would ensure that the authority and responsibilities of new adjudicative bodies are clearly established. This in turn contributes to a more coherent and effective adjudicative system.

[5.10] The Commission is of the view that it would be extremely valuable for a framework statute to explicitly set out the powers of administrative bodies exercising adjudicative functions. A framework statute could provide a list of available powers for adjudicative bodies, although some might only be available to bodies administering justice. Powers which may be exercised by any adjudicative body must comply with the base level requirements of the standard of acting fairly discussed in this Consultation Paper. This category contains a large variety of bodies with different levels of formality and different functions.

[5.11] The range of suggested powers reflects the diverse specialised roles of the different adjudicative bodies. Not all bodies will require every power listed; instead, powers will be allocated according to the particular needs and functions of each body. For bodies that are administering justice, the appropriate Minister can cooperate with the relevant adjudicative body to tailor the procedure or any power granted to ensure that it is sufficiently formal. These powers would resemble those of courts, ensuring that bodies with the highest adjudicative responsibilities adhere to rigorous, court-like processes.

2. Powers of Adjudicative Bodies

[5.12] The need for appropriate powers is particularly acute for bodies that engage in the administration of justice. As noted elsewhere in this Consultation Paper, the Supreme Court made clear in *Zalewski* that the standard of justice of adjudicators administering justice must be similar to that administered in courts of law. Adjudicators who are administering justice are subject to more demanding procedural requirements than other adjudicators, as a result of the interpretation of Articles 34.1 and 37 of the Constitution. Although Article 37 of the Constitution authorises such bodies to exercise judicial functions of a limited, non-criminal nature, they are nonetheless engaged in the administration of justice, such that "the function being performed and the power being exercised must comply with the fundamental components of independence, impartiality, dispassionate application of the law, openness, and, above all, fairness, which are understood to

be the essence of the administration of justice".[4] In the majority decision in *Zalewski*, one general principle was said to follow from the analysis of Articles 34 and 37, namely that as far as adjudicators administering justice are concerned, "it is necessary to respect the essence of the fact-finding processes and capacity for legal analysis that can be found in courtrooms".[5] In the final analysis, "[t]he standard of justice administered under Article 37 cannot be lower or less demanding than the justice administered in courts under Article 34".[6]

[5.13] It is necessary, therefore, to identify the powers required by the Constitution in respect of adjudicators who are administering justice. A range of other powers may also be appropriate such as the power to hold oral hearings, make case management type decisions, issue practice directions, refer questions of law to court, and enforce procedural rules and sanction parties for non-compliance.

[5.14] Of course, many other powers could be conferred. These include the power to award legal costs, compel the attendance of witnesses, and compel disclosure by the parties involved (and possibly third parties). However, these powers raise more difficult policy considerations than those listed in the above paragraph.

[5.15] The Commission notes that the requirements that attach to the administration of justice exceed the requirements that attach to acting fairly.[7] Therefore, all the powers, procedures and structural requirements provided for in relation to bodies exercising adjudicative functions also apply to adjudicators who are administering justice.

(a) Power to Make Procedural Rules

[5.16] The power to make rules of practice and procedure is sometimes given to adjudicative bodies to provide for matters not directly addressed by the establishing statute of an adjudicative body. This power is necessary when the establishing statute of the adjudicative body does not prescribe procedure in sufficient detail. Statutes often contain broad provisions, leaving the details of how the provision is to be implemented in practice to be determined by the adjudicative body. This power is not usually unlimited, and statutes generally restrain its use by requiring the approval of a relevant Minister, mandating that

[4] *Zalewski v The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421 at para 138.

[5] *Zalewski vs The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421 at para 139.

[6] *Zalewski vs The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421 at para 138.

[7] *Zalewski vs The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421 at para 138.

certain matters be dealt with by the rules, or by reference to the functions and objectives of the body.

[5.17] Some Irish statutes already authorise certain bodies to create their own rules of practice and procedure. The provision granting this power often requires that the adjudicative body in question provide for specific matters in the rules of procedure. For example, the Valuation Tribunal has the general power to determine its own rules of procedure. The provision granting it the power to do so enumerates certain matters it must provide for in these rules,[8] including notice of hearings, presentation of cases, examination of witnesses, and recording of proceedings. This is a non-exhaustive list and the Valuation Tribunal is authorised to create rules of procedure in other matters. These rules must be presented to the Minister for Finance for their consent. The Residential Tenancies Tribunal also has the power to make procedural rules in relation to its function of dispute resolution.[9] The relevant provision specifies a non-exhaustive list of matters it must provide for in those rules.[10] These rules are also subject to the consent of a Minister, in this case, the Minister for Housing, Local Government and Heritage.[11]

[5.18] A power similar to the judicial power to issue practice directions has, on occasion, been granted to bodies that also have the power to make rules of procedure. For example, the Chairperson of the CervicalCheck Tribunal has the power to issue practice directions,[12] including any related or follow-up matters, and information about the consequence of a failure to comply with a practice direction.[13] The CervicalCheck Tribunal can also issue pre-claim protocols which are the procedures that need to be complied with before claims are brought.[14] These requirements may be issued to promote timely communication between parties, facilitate the early identification of the parties to claim and the issues in respect of a claim, and facilitate the hearing and determination of claims in a manner which is just and expeditious.[15] The power to issue practice directions or 'pre-claim' protocols (procedures governing requirements that shall be complied with before claims are brought) does not limit the power of the tribunal to make rules to

[8] Section 11(1) Schedule 2 of the Valuation Act 2001.

[9] Section 109(1) of the Residential Tenancies Act 2004.

[10] Section 109(2) of the Residential Tenancies Act 2004.

[11] Section 109(1) of the Residential Tenancies Act 2004.

[12] Section 25(2) of the CervicalCheck Tribunal Act 2019.

[13] Section 25(3) of the CervicalCheck Tribunal Act 2019.

[14] Section 25(1) of the CervicalCheck Tribunal Act 2019.

[15] Section 25(1)(a) to (d) of the CervicalCheck Tribunal Act 2019.

regulate the practice and procedure of the tribunal and the conduct of claims before the tribunal.[16]

[5.19] A power to make procedural rules could be included in a schedule of powers. A practice of consulting with an administrative justice council[17] regarding the exercise of this power could be developed over time.

(b) Case Management Powers

[5.20] Case management consists of "the systematic management process by which a court supervises the progress of its cases from beginning to end".[18] Adjudicative bodies could be granted case management powers in order to manage cases proactively, ensuring that proceedings are conducted smoothly and within reasonable timeframes. These powers may be utilised to streamline processes and address procedural matters, such as the order in which evidence is presented and the way in which it may be challenged, and, where appropriate, expedite the resolution of disputes.[19]

[5.21] Case management powers could include the power to convene a pre-hearing or case management conference, the power to group similar cases, the power to adjudicate via mediation or conciliation and the power to adjourn proceedings.

(i) Case Management Conferences

[5.22] A case management conference or pre-hearing involving the adjudicator and parties could set out a road map for progression in the case. This could include clarifying or deciding any potential issues and providing timelines for the completion of various steps in the process.

[5.23] Many adjudicative bodies already have discretion to manage their own work practices. For example, the Legal Practitioners Disciplinary Tribunal can designate a case for a case-management hearing;[20] the Medical Council's Fitness to Practice Committee can convene "call overs" or case management meetings at regular

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[16] Section 25(5) of the CervicalCheck Tribunal Act 2019. The power to make rules is contained in section 26 of the CervicalCheck Tribunal Act 2019.

[17] For more on an Administrative Justice Council, see the Chapter on the Composition of Adjudicative Bodies.

[18] Sub-committee on Access to Justice (Trial Courts) of the Administration of Justice Committee, "Access to Justice: Report on Selected Reform Initiatives in Canada" (Canadian Judicial Council, 2008) at page 15 <https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1090&context=cfcj > accessed 30 October 2025.

[19] This point is addressed further in this Chapter, under the heading "Alternatives to Adjudication" at para 5.25.

[20] Regulation 8 of the Legal Practitioners Disciplinary Tribunal Regulations 2021 (SI No 786 of 2021).

intervals;[21] the Tax Appeals Commissioners can give a direction to a party to attend a case management conference;[22] and the Labour Court can, at its discretion, require parties to attend a case management conference if they have failed to file their submissions in accordance with the procedural rules or for any other purpose.[23]

[5.24] The Commission sees great merit in the concept of case management conferences and suggests that adjudicative bodies be granted a power to convene these conferences.

(ii) Alternatives to Adjudication

[5.25] Adjudicators can encourage parties to resolve their disputes between themselves through alternative dispute resolution. Mediation and conciliation could be used to resolve disputes where the relevant parties agree to such processes. Alternative dispute resolution affords the opportunity for solutions to be reached outside the parameters of formal decision-making. These solutions can include terms that take account of the wider relationship between parties rather than being confined to immediate and narrow issues. They can also prove to be less expensive and faster than other forms of dispute resolution, and have the potential to offer more tailored remedies than litigation.[24]

[5.26] **Mediation** is a confidential, facilitative and voluntary process where parties try to resolve their dispute with the help of a mediator.[25] Usually, the parties lead the process and the mediator does not offer a recommendation.[26] Parties may

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[21] Regulation 6 of the Rules for the Fitness to Practise Committee and Subcommittees of the Fitness to Practise Committee 2020 (SI No 355 of 2020).

[22] Section 949T(1) of the Finance (Tax Appeals) Act 2015.

[23] Rules 13 and 15 of the Labour Court Rules 2024.

[24] For example, mediation agreements can involve acknowledgements of certain facts, apologies, accepting that the other side acted in good faith based on their interpretation of events, positive references being given to employees, destroying offensive emails or texts on which the dispute began, paying money to charity, or offering to train someone. See also Law Reform Commission, *Consultation Paper on Alternative Dispute Resolution* (LRC CP 50-2008) at para 4.51 and 4.52.

[25] Section 2 of the Mediation Act 2017. See also section 10(1) of this Act which states that "[s]ubject to *subsection (2)* and *section 17*, all communications (including oral statements) and all records and notes relating to the mediation shall be confidential and shall not be disclosed in any proceedings before a court or otherwise."

[26] Law Reform Commission, *Consultation Paper on Alternative Dispute Resolution* (LRC CP 50-2008) at paras 2.34 to 2.41. The "mediation process consists of the neutral and independent third party meeting with the parties who have the necessary authority to settle the dispute" and the "third party then meets with each party privately to discuss their respective positions and their own underlying needs and interests." The "mediator will try to establish areas of common ground and provide the parties with the opportunity of exploring proposals for a mutually acceptable settlement. When an agreement is reached between the parties, the mediator will draft the terms of agreement". This explanation is similar to the

withdraw from the mediation at any time and may have representation or seek legal advice if they wish.[27] If a mediation agreement is reached, then it is a binding contract unless otherwise agreed.[28] Usually, the parties agree in advance how they will pay the mediator,[29] but in some settings the State will pay for the mediator. For instance, the Residential Tenancies Board and Workplace Relations Commission offer free mediation for tenancy disputes and employment disputes.[30]

[5.27] **Conciliation** is essentially the same process as mediation, except the neutral third party takes a more interventionist role in bringing the two parties together. A recommendation is made by the conciliator at the end of the process setting out a non-binding suggestion for how to resolve the dispute.[31] Even if no agreement is made during these processes, these processes can help to clarify what the issues are which can help in a later, more binding process. The Workplace Relations Commission recommends both mediation and conciliation.[32]

[5.28] The Commission sees merit in adjudicative bodies having the power to make alternative dispute resolution available through mediation and conciliation. Furthermore, the availability of mediation and conciliation should be context-

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explanation of these processes available on the websites of the Workplace Relations Commission and Residential Tenancies Board. See Workplace Relations Commission, "Mediation" <https://www.workplacerelations.ie/en/complaints_disputes/mediation/> accessed 30 October 2025 and Residential Tenancies Board, "Dispute Resolution Services" <https://www.rtb.ie/dispute-resolution-services> accessed 30 October 2025.

[27] Section 6(4) of the Mediation Act 2017.

[28] Section 11(2) of the Mediation Act 2017.

[29] Section 20 of the Mediation Act 2017.

[30] See Residential Tenancies Board, "Dispute Resolution Services" https://www.rtb.ie/dispute-resolution-services> accessed 30 October 2024 and Workplace Relations Commission, "Mediation" <https://www.workplacerelations.ie/en/complaints_disputes/mediation/> accessed 30 October 2024.

[31] Law Reform Commission, *Consultation Paper on Alternative Dispute Resolution (*LRC CP 50-2008) at para 2.43 and 2.44. "Conciliation is a process similar to mediation but the neutral third party takes a more interventionist role in bringing the two parties together. In the event of the parties are unable to reach a mutually acceptable settlement, the conciliator issues a recommendation, which is binding on the parties unless it is rejected by one of them. While the conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, it is not a determinative role. A conciliator does not have the power to impose a settlement. This interpretation of conciliation mirrors the Model Law on International Commercial Conciliation of the United Nations Commission on International Trade Law. Article 6 (4) of the Model law states that —The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute.""

[32] Mediation powers are given to the Workplace Relations Commission under section 38 of the Workplace Relations Act 2015 and conciliation is mentioned in Workplace Relations Commission, "Conciliation" <https://www.workplacerelations.ie/en/complaints_disputes/conciliation/> accessed 30 October 2025.

specific, and that these tools are most effectively used in inter partes disputes rather than disputes between the individual and the state.

[5.29] Adjudicative bodies could retain a discretion regarding the form it deems appropriate and provide for this within its rules. However, applicants before an adjudicative body cannot be compelled to participate in the alternative dispute resolution processes provided by the body, unless this is provided for in the body's statutory framework. Moreover, the Commission is of the view that, where an adjudicative body compels applicants to participate in such processes, these dispute resolution processes should be provided free of charge. Adjudicative bodies that wish to provide for compulsory mediation or conciliation processes could consult with an administrative justice council.

(iii) Grouping Cases

[5.30] Consistent and coherent decision-making is an important component of quality adjudication.[33] Therefore, tribunals should consider whether similar cases can be heard or decided together to encourage consistency between cases and to reduce delays and costs.

[5.31] The International Protection Appeals Tribunal has the power to hear two or more oral hearings together. This power can be exercised where the Tribunal is of the opinion that the cases relate to the same common matter, involve members of the same family, or that it would be reasonable and just for them to be heard together.[34] Although the cases may be heard together, each appellant is asked to give evidence separately to ensure best evidence and to provide the opportunity to address the Tribunal in private.[35]

[5.32] It is necessary to balance the advantages of grouping cases together with any potential impact on the applicant. One possible method to do this is to restrict the exercise of this power to the chair of the adjudicative body in question.

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[33] In the landmark Canadian decision of *Canada (Minister of Citizenship and Immigration) v Vavilov* 2019 SCC 65, [2019] 4 SCR 653 at para 129, the Supreme Court of Canada usefully addressed this as follows: "[A]dministrative decision makers and reviewing courts alike must be concerned with the general consistency of administrative decisions. Those affected by administrative decisions are entitled to expect that like cases will generally be treated alike and that outcomes will not depend merely on the identity of the individual decision maker — expectations that do not evaporate simply because the parties are not before a judge".

[34] Regulation 8 of the International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017.

[35] The International Protection Appeals Tribunal, *Chairperson's Guidelines No: 2022/1 on Taking Evidence from Appellants and Other Witnesses* (2022) at paragraph 6.3

(c) Power to Hold Hearings

[5.33] There is no general rule that adjudicative hearings must be held orally, and in the absence of an express power the courts may be slow to find that there was an inherent power to hold an oral hearing.[36] Even with respect to international protection applications, which determine issues of life and liberty, the Court of Justice of the European Union has held that the right to be heard does not mean that there must be an interview or that witnesses have to be called. [37] An interview must be held only if it is "necessary in order to examine that application with full knowledge of the facts…".[38]

[5.34] Whether an adjudicating body holds an oral hearing will principally be a matter of discretion. For instance, the International Protection Appeals Tribunal has the discretion in certain circumstances to dispose of an appeal against a decision on written submissions only.[39] An Coimisiún Pleanála has an "absolute discretion" as to whether a hearing is held,[40] the Tax Appeals Commission has a broad discretion as to whether a hearing is held,[41] and the Consumer Protection Commission may conduct an oral hearing if it considers it "necessary to resolve an issue of fact".[42] Therefore, it is necessary to consider whether adjudicative bodies should be granted a power to hold hearings, as opposed to imposing a duty on them to hold hearings.

[5.35] However, oral hearings will be required as a matter of law in two situations. First, a statute may explicitly or by necessary implication require an oral hearing. For example, the Mental Health Act 2001 is premised on the basis that the Mental Health Tribunal will hold oral hearings, although during the outbreak of Covid-19, its parent legislation was amended to allow for paper-based adjudication

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[36] See *Martin v Data Protection Commissioner* [2016] IEHC 479.

[37] *Case C-560/14, M v Minister for Justice and Equality, Ireland, Attorney General* ECLI:EU:C:2017:101 at 56 and 57.

[38] *Case C-560/14, M v Minister for Justice and Equality, Ireland, Attorney General* ECLI:EU:C:2017:101.

[39] Section 43 of the International Protection Appeals Act 2015.

[40] Section 134 of the Planning and Development Act, 2000.

[41] Sections 949U, 949AN, 949E(2)(b) and 949E(10) of the Taxes Consolidation Act 1997. Generally, under section 949U(3) of this Act, the Appeal Commissioners are under a duty to hold an oral hearing if requested by a party to proceedings. However, under section 949AN of the Act, where an appeal raises an issue that is common or related to an issue that has already been decided in a previous decision, the Appeal Commissioners can, notwithstanding section 949U of this Act, decide the case without an oral hearing if "not persuaded that it would be appropriate to disregard the previous determination". An Appeals Commissioner may give directions to the parties as regards the "consolidating or hearing together 2 or more appeals raising common or related issues". In relation to this, it is worth emphasising that the commissioner may do this of their own volition.

[42] Section 61(4) of the Digital Services Act 2024.

temporarily from March 2020 until November 2021.[43] Secondly, Irish law may require an oral hearing, for instance where credibility or other issues relating to the veracity of evidence arise, making an oral hearing necessary in the interests of fairness.[44] The Supreme Court considered this issue in *J & E Davy v Financial Services Ombudsman*.[45] The Court concluded that it would be appropriate for the Financial Services Ombudsman (as it then was) to "consider directing an oral hearing in the interests of fairness, where there is a conflict of material fact".[46] Moreover, the Court was satisfied that the Ombudsman is empowered to proceed by way of examination and cross-examination of witnesses, where appropriate.[47] This reasoning was applied in *O'Shea v Financial Services Ombudsman*, where the High Court determined that the interests of fairness demanded an oral hearing in the case at hand. The Court ordered the case to be remitted to the Ombudsman for oral hearing due to the significant differences of fact alleged by both parties.[48]

[5.36] These considerations could be merged and provided for by statute by providing for oral hearings in cases where facts are in dispute[49] or fairness requires it.[50]

[5.37] Additionally, there is no reason in principle why oral hearings cannot be conducted using a virtual platform. Online platforms were used to facilitate virtual hearings during the COVID-19 pandemic. Section 11 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 provides for the remote hearing of civil proceedings. Some adjudicative bodies followed suit. For instance, from 2 June

[43] The relevant section of the Mental Health Act 2001 prior to 30 March 2020 was temporarily suspended by sections 21 and 23(b) of the Emergency Measures in the Public Interest (Covid-19) Act 2020 until the 9 November 2021.

[44] *MM v Minister for Justice and Equality* [2018] IESC 10.0, [2018] 1 ILRM 361 at paras 26 to 30.

[45] *J & E Davy v Financial Services Ombudsman* [2010] IESC 30, [2010] 3 IR 324.

[46] *J & E Davy v Financial Services Ombudsman* [2010] IESC 30, [2010] 3 IR 324 at 364 at para 109.

[47] The Supreme Court referred to section 57CE(5) of the Central Bank Act 1942 in its discussion of this power, which has since been repealed by the Financial Services and Pensions Ombudsman Act 2017. Section 47(8) of the Financial Services and Pensions Ombudsman Act 2017 confers, for the purposes of an investigation of a complaint, onto the Financial Services and Pensions Ombudsman "all the powers, rights and privileges vested in the High Court or a judge of that court on the hearing of civil proceedings in respect of the examination of witnesses, including the administration of oaths and affirmations and the examination of witnesses outside the State".

[48] *O'Shea v Financial Services Ombudsman* [2016] IEHC 6 at 11-13.

[49] See section 85(2) of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

[50] See sections 139ZR(3)-(4) of the Broadcasting Act 2009, as inserted by section 47 of the Online Safety and Media Regulation Act 2022, section 44(1) of the Control of Exports Act 2023, and section 28(1) of the Screening of Third Country Transactions Act 2023.

2020, the Labour Court hosted online hearings.[51] Also in June 2020, the Workplace Relations Commission used "written procedure where possible and in line with fair procedures",[52] and as of July 2020, it began to offer online hearings.[53]

[5.38] The Commission sees merit in adjudicative bodies having the power to hold an oral hearing. The range of administrative decision-making encompassed extends beyond *inter partes* adjudication and includes individual and State adjudication. Adjudicative bodies should have discretion as to the level of formality involved and should also be empowered to hold such hearings virtually. Procedural rules adopted by the body could make further provision for the holding of hearings.[54]

[5.39] The Commission suggests that adjudicative bodies may have the discretion to make decisions based solely on written documents and only hold oral hearings where necessary. However, this would have to be provided for in the statute of the adjudicative body in question. The scheme of each body must set out the default position, in other words, whether decisions are made on the written documents or via an oral hearing, and whether the body in question has a discretion to move from the default position in certain circumstances.

(i) Adjournments and Deferrals

[5.40] Sometimes hearings may not be able to proceed due to the ill-health of a party, a failure to retain legal services or the unavailability of a witness. In such circumstances, an adjournment may be necessary to preserve fairness. In other circumstances, it may be necessary to defer a decision pending the result of another case.

[5.41] The Supreme Court concluded in *RB v AS*[55] that the "grant or refusal of an adjournment is essentially a matter within the discretion of a trial judge".[56] In

[51] Miley, "Labour Court to begin virtual case hearings from 2 June" RTÉ News (18 May 2020) <https://www.rte.ie/news/ireland/2020/0518/1139139-labour-court/> accessed 31 October 2025.

[52] Workplace Relations Commission, "Workplace Relations Commission: Mediation and Adjudication During Covid19" at page 2 <https://www.workplacerelations.ie/en/news-media/workplace_relations_notices/revised-matrix-for-dealing-with-complaints-revised-18-06-2020-.pdf> accessed 31 October 2025.

[53] Workplace Relations Commission, "COVID-19 Update – 18 June 2020" <https://www.workplacerelations.ie/en/news-media/workplace_relations_notices/covid-19-update.html> accessed 31 October 2025.

[54] See the discussion of this power in this Chapter under the heading "Power to Make Procedural Rules".

[55] *RB v AS* [2001] IESC 106, [2002] 2 IR 428.

[56] *RB v AS* [2001] IESC 106, [2002] 2 IR 428 at page 447.

Lawlor v Geraghty,[57] Kearns P. indicated that it would be justifiable to interfere with this discretion where the decision-maker had not acted judicially, failed to employ fair procedures, or "where there is a real, manifest or potential prejudice to the applicant".[58] Similarly, the Court of Appeal in *Promontoria (Oyster) DAC v Greene*[59] set out the parameters within which a judge is to exercise this discretion. The Court adopted a test from English and Welsh caselaw which questioned whether the decision on the adjournment of proceedings was unfair.[60] It also added a caveat that:

> "any unfairness must be significant and that any assessment of unfairness must not focus narrowly on the interests of the party seeking the adjournment but must also be sensitive to the interests of the other party or parties and wider considerations of the proper administration of justice".[61]

[5.42] In considering adjournments among adjudicative bodies, the Workplace Relations Commission has detailed guidelines for postponing a scheduled hearing.[62] The Guidelines distinguish between "Postponements", which are sought in advance of the hearing date, and applications made on the day of the hearing, which are referred to as "adjournment" applications. Under its first postponement process, applications on consent which are received within ten working days from the date of the hearing notification are generally automatically granted. Each party is limited to one application per case under this process. Under its second postponement process, applications made without the other party's consent, or that do not fall under the straightforward process, should be furnished with reasons and relevant supporting documentation. The Workplace Relations Commission will consider whether there are "exceptional circumstances and substantial reasons" evidenced. If a postponement or adjournment application has been refused, a new application will not be considered unless supported by new relevant facts not previously available to the applicant. In case of a refusal, the applicant may request an appeal of the decision within two days. The appeal is a paper-based appeal decided by an Adjudication Officer. The Workplace Relations Commission retains discretion over all postponement decisions and

[57] *Lawlor v Geraghty* [2010] IEHC 168, [2011] 4 IR 486.

[58] *Lawlor v Geraghty* [2010] IEHC 168, [2011] 4 IR 486 at para 52(4).

[59] *Promontoria (Oyster) DAC v Greene* [2021] IECA 93 paras 63 to 65.

[60] *Terluk v Berezovsky* [2010] EWCA 1345 at para 18.

[61] *Promontoria (Oyster) DAC v Greene* [2021] IECA 93 at para 63.

[62] These guidelines, updated in January 2024, are divided into two processes: Postponement Process 1 (straightforward applications) and Postponement Process 2 (applications requiring evidence of "exceptional circumstances and substantial reasons").

parties are reminded that seeking changes to scheduled hearings can impact other parties and cause delays.[63]

(ii) Public Hearings

[5.43] In accordance with Article 34.1 of the Constitution, justice should be administered in public as a general rule. This principle applies only to adjudicative bodies that are deemed to be administering justice and was reiterated in *Zalewski*, where the majority stated that "public hearings are of the essence of the administration of justice".[64] Publicity can serve the additional function of facilitating or prompting the emergence of witnesses or relevant evidence. In addition, the public nature of a hearing will ensure public vindication for at least one of the parties. It follows, therefore, that the starting point should be that adjudicators administering justice have the power to conduct a hearing in public.

[5.44] It should be noted that the Supreme Court's analysis does not necessarily mean that a public hearing is required in all instances: in *Zalewski*, the argument was directed against an absolute prohibition on public hearings.[65] The majority of the Supreme Court confirmed that an absolute prohibition on public hearings is unconstitutional. However, the majority also recognised that hearings in private can be justifiable in some instances, as there is "a justification for calm, quiet, and private resolution of many disputes which may be of particular sensitivity for the participants".[66] Indeed, the majority even suggested that it might be permissible for there to be a presumption in favour of private hearings. However, the Court did not express a definitive view on this point.

[5.45] A relevant example of this exception can be found in the statute of the Residential Tenancies Board. While proceedings are to be conducted in public, the Board may make an order directing that the identities of the parties involved not be disclosed.[67] As the power to hold public hearings is related to the concepts of transparency and publication of past decisions,[68] it may be more appropriate for bodies to publish redacted decisions following a private hearing, where proceedings involve the disclosure of sensitive or private information.

[5.46] The Commission suggests that adjudicators required to act fairly be granted a power to hold public hearings, to be exercised at the body's discretion. The

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[63] Workplace Relations Commission Postponement Guidelines (SI No of 2024).

[64] *Zalewski v The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421 at para 142.

[65] Section 41(13) of the Workplace Relations Act 2015.

[66] *Zalewski v The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421 para 143.

[67] Section 106(1)-(2) of the Residential Tenancies Act 2004.

[68] These concepts are discussed in greater detail in the Chapter on Procedural Requirements.

Commission envisages that adjudicative bodies that are not administering justice may make use of this power on occasion.

[5.47] In relation to adjudicators administering justice, the Commission suggests that hearings should generally be held in public. The Commission is also of the view that where a body is exercising a power during a hearing, such as compelling a witness, administering an oath or ordering the production of documents,[69] the hearing should be in public. However, the Commission acknowledges that a body's statute may provide for circumstances in which a hearing may be held in private. Therefore, the Commission suggests that bodies administering justice that often deal with sensitive or private information publish redacted decisions.[70]

(d) Power to Refer a Question of Law

[5.48] During the adjudication process, it is not uncommon for a specific question of law to arise that necessitates clarification or interpretation before the adjudicative body can reach a final decision. In such instances, the adjudicative body may use a legal procedure known as a 'consultative case stated'.[71] This procedure allows the adjudicative body to refer a specific question of law to a higher court, typically the High Court, for determination before finalising the adjudication. The purpose of this referral is to seek the court's authoritative interpretation or ruling on the matter in question. Once the High Court has provided its opinion, the adjudicative body is then obliged to make a decision in a manner that aligns with the court's guidance. This procedure ensures that adjudicators can obtain definitive legal guidance on complex or contentious legal issues before reaching a final decision. This procedure is distinct from an appeal as the matter is referred to the courts before the adjudication concludes.[72]

[5.49] A power to refer questions of law to the courts through the consultative case stated procedure has been conferred upon numerous adjudicative bodies by statute. For instance, under the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023, adjudicators within the Commission for Communications Regulation are empowered to refer legal questions that arise during a hearing to the High Court. Importantly, the adjudicator is legally bound by the decision of the High Court, thereby ensuring that their final determination is consistent with the court's interpretation of the

[69] For a more detailed discussion on these powers, see the section on "Power to Give Directions".

[70] This proposal was originally considered when discussing transparency and past decisions in the Chapter on Procedural Requirements.

[71] Section 52 of the Courts (Supplemental Provisions) Act 1961.

[72] Appeals are discussed in the Chapter on Judicial Oversight.

law.[73] The Competition (Amendment) Act 2023 contains similar provisions allowing an adjudication officer of the Consumer Protection Authority to refer questions of law to the High Court.[74] The Fisheries (Amendment) Act 1997 also includes a provision allowing the Aquaculture Licences Appeal Board to refer questions of law to the High Court.[75]

[5.50] In some instances, the right to initiate the consultative case stated procedure is not limited to the adjudicative body itself but is also available to the parties involved in the proceedings. For example, under the Minerals Development Act 2017, a party to the proceedings may apply to the Mining Board to refer a question of law to the High Court.[76] If the Mining Board refuses to state a case, the aggrieved party has the right to appeal to the High Court. The High Court can issue an order directing the Board to state a case.[77] Similarly, the Competition (Amendment) Act 2022 permits either the competent authority or a party to the proceedings to request that the adjudication officer refer a legal question to the courts.[78]

[5.51] The power to refer questions of law to the courts during adjudicative proceedings is a very useful tool. This procedure not only allows for the clarification of legal issues that are crucial to the determination of a case but also provides the courts with an opportunity to develop the law without the need for the entire matter to be appealed. By addressing legal questions in a timely and authoritative manner, the consultative case stated procedure can lead to a more efficient adjudicative process, resulting in decisions that are better aligned with established legal principles. Moreover, it ensures that adjudicative bodies can make informed decisions that reflect the current state of the law, thereby enhancing the overall fairness and integrity of the adjudication process. In turn, this can reduce the likelihood of subsequent appeals, particularly those based solely on points of law.

[5.52] Therefore, the Commission is of the view that the power to refer a question of law could be granted to adjudicative bodies as it has the potential to improve the decision-making process. This power should only be exercised by the body itself (not applicants or the parties involved) and such questions ought to be referred to the High Court.

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[73] Section 111(1) of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

[74] Section 15AAA(1)(a) of the Competition (Amendment) Act 2022.

[75] Section 58 of the Fisheries (Amendment) Act 1997.

[76] Section 177(1) of the Minerals Development Act 2017.

[77] Section 177(2) of the Minerals Development Act 2017.

[78] Section 15AAA(1)(a) of the Competition Act 2022 as inserted by section 13 of the Competition (Amendment) Act 2022.

(e) Power to Give Directions

[5.53] In order to ensure that the administration of justice runs smoothly, adjudicators need powers to aid them in overseeing proceedings. These powers could include the ability to compel the attendance of witnesses, administer oaths, and order the production of documents.

[5.54] The Commission envisages that these powers would be primarily suitable for adjudicative bodies that are administering justice, as these powers are similar to those exercised by a court and consider third party rights. However, adjudicative bodies that consider one or all of these powers necessary to manage their proceedings may request such powers from the relevant Minister.

(ii) Compelling Witnesses

[5.55] Witness testimony can be important evidence for adjudicative bodies when exercising their function as decision-makers. Granting bodies the power to compel witnesses would allow them to effectively discharge this function. While bodies may use this power sparingly, witnesses may be more likely to attend if they know they can be compelled to do so.

[5.56] The International Protection Appeals Tribunal may direct, in writing, any person to give oral testimony before the Tribunal. This power cannot be used to compel the Minister or an officer of the Minister to give evidence.[79] Witnesses before the Tribunal are entitled to privileges and immunities similar to those of court witnesses.[80]

[5.57] The Valuation Tribunal has a similar power to compel witnesses. However, this power is exercisable by the chairperson of the Tribunal only.[81] Witnesses before the Tribunal are entitled to the same expenses as witnesses before the District Court. The Tribunal states who is to pay these expenses in its direction.[82] If someone fails to attend the Tribunal after being directed to and expensed, they are guilty of an offence.[83] In the event that the Tribunal makes an order for costs, expenses incurred by a witness for the purposes of or relating to attendance at a hearing may be paid by the paying party.[84]

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[79] Section 42(8)(a) of the International Protection Act 2015.

[80] Section 42(10) of the International Protection Act 2015.

[81] Section 12 schedule 2 paragraph 8(a) of the Valuation Act 2001. See also Rule 71 of the Rules of the Valuation Tribunal (Appeals) 2019.

[82] Rule 73(a) of the Rules of the Valuation Tribunal (Appeals) 2019.

[83] Section 12 schedule 2 paragraph 9(a) of the Valuation Act 2001.

[84] Rule 165 of the Rules of the Valuation Tribunal (Appeals) 2019.

[5.58] The Commission suggests that adjudicative bodies that administer justice should be given a general power to compel witnesses, entitling them to the same privileges and immunities as court witnesses. This power could be exercisable only by the chair of a body, and where it is considered necessary in the context of the proceedings to safeguard against abuse.

[5.59] In relation to the cost of witness attendance, the Commission recognises that this is linked to the power of adjudicative bodies to award costs. Therefore, the Commission queries whether adjudicative bodies administering justice should have a power to award costs, including the cost of witness attendance.[85]

(ii) Administering Oaths

[5.60] One of the determinations made by the Supreme Court in the case of *Zalewski v Workplace Relations Commission* was that adjudicators administering justice must be able to administer oaths to witnesses and sanction untruths.[86] Therefore, it is necessary to consider whether all adjudicative bodies should be granted the power to administer oaths. The power to compel witnesses could be strengthened by also granting adjudicative bodies the power to administer oaths. By administering oaths, witnesses are reminded of the gravity of the proceedings.

[5.61] The International Protection Appeals Tribunal can take evidence on oath or on affirmation and can require witnesses to swear an oath or make an affirmation when giving evidence before the Tribunal.[87] The Chairperson or deputy chairperson of the Valuation Tribunal may administer an oath or affirmation.[88] A person who has been directed to attend before the Tribunal and refuses to take an oath when required to do so shall be guilty of an offence.[89]

[5.62] Many of the most recently established or reformed non-court adjudicative bodies have been granted the power to receive evidence on oath with only one, the Pyrite Resolution Board, not being given that power.[90] Therefore, the Commission

[85] A more detailed discussion available in this section under the heading "Power to Establish a Scheme for Payment".

[86] *Zalewski vs The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421 at para 144.

[87] Section 42(8)(d) of the International Protection Act 2015.

[88] Rule 95 of the Rules of the Valuation Tribunal (Appeals) 2019.

[89] Section 12 schedule 2 paragraph 9(b) of the Valuation Act 2001.

[90] These bodies include an Coimisiún Pleanála, Coimisiún na Meán, the CervicalCheck Tribunal, the Financial Services Ombudsman, the International Protection Appeals Tribunal, the Tenancy Tribunal, the Tax Appeals Commission, the Charity Appeals Tribunal, the Workplace Relations Commission, the Competition and Consumer Protection Commission, and the Student Grant Appeals Board. The Workplace Relations Commission was only given the power to administer oaths in 2021, following the *Zalewski* case.

suggests that adjudicative bodies that administer justice should have the power to administer an oath or affirmation, and receive evidence on oath or affirmation.

(iii) Ordering Production of Documents

[5.63] Documentary evidence may also be an important part of evidence that an adjudicative body needs in order to carry out its function as a decision-maker. Granting bodies the power to order the production of documents may result in greater cooperation.

[5.64] The Chairperson of the Valuation Tribunal may direct a party appearing before it to discover or produce a document which is considered relevant and necessary to the proceedings.[91] The test applied in such circumstances is the same test of relevance and necessity applied by the Superior Courts, in that the disclosure of documents should be necessary for disposing fairly of the cause or matter.[92] The Chairperson or deputy chairperson can also direct, in writing, any third party to produce any document in their possession or control.[93] Such a direction can only be made in relation to documents that could also be ordered for production in a court of law.[94] A party that receives a document under a disclosure order may only use the document for the purpose of the appeal in question and must not disclose any confidential information enclosed within the document.[95]

[5.65] The International Protection Appeals Tribunal may order the production of documentary evidence.[96] The use of this power is subject to national security or public policy exceptions.[97]

[5.66] The Commission suggests that adjudicative bodies that administer justice should be given a power to order the disclosure of evidence by parties or third parties. This power could be exercisable by the chair of a body only, where the chair considers it necessary for disposing fairly of the cause or matter. The order should state that the documentation disclosed should be used only for the purposes of the proceedings in question.

[5.67] In relation to the cost of producing such documents, the Commission recognises that this is also linked to the power of adjudicative bodies to award costs.

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[91] Rule 64 of the Rules of the Valuation Tribunal (Appeals) 2019.

[92] Order 31 rule 12 of the Rules of the Superior Courts, as per Rule 65 of the Rules of the Valuation Tribunal (Appeals) 2019.

[93] Section 12 schedule 2 paragraph 8(b) of the Valuation Act 2001. See also Rules 71 of the Rules of the Valuation Tribunal (Appeals) 2019.

[94] Rule 72 of the Rules of the Valuation Tribunal (Appeals) 2019.

[95] Rule 68 of the Rules of the Valuation Tribunal (Appeals) 2019.

[96] Section 42(8) of the International Protection Act 2015.

[97] Section 42(9) of the International Protection Act 2015.

Therefore, the Commission queries whether adjudicative bodies administering justice should have a power to award costs, including the cost of the production of documents.

(f) Power to Manage Proceedings

[5.68] To ensure the effective administration of justice, adjudicators need powers to maintain order and control during proceedings. Such powers could include the ability to order the exclusion of disruptive people from proceedings, which could be supported by the creation of offences and imposition of sanctions. Additionally, a power to apply for an enforcement order could encourage compliance with decisions of adjudicative bodies.

(i) Offences and Sanctions

[5.69] Aside from the body of case law dealing with 'contempt in the face of court', the High Court has also grounded the power to manage proceedings in the right to fair procedure.[98] Some statutes establishing adjudicative bodies create offences of failing to comply with the direction or requirement of the adjudicator.[99] For instance, both the Financial Services and Pensions Ombudsman Act 2017 and the Broadcasting Act 2009 create an offence similar in nature to 'contempt in the face of court'. This applies where, during an oral hearing, a person does or fails to do anything that would constitute contempt of court if the adjudicator were a court with the power to commit for contempt. In these circumstances, the person is guilty of an offence.

[5.70] The Legal Services Regulation Act 2015 currently provides for a range of offences before an adjudicator, such as disobeying a witness summons without just cause or excuse,[100] refusing to take an oath or make an affirmation,[101] refusing to produce requested documents,[102] refusing to answer any question the adjudicator legally requires an answer to,[103] wilfully giving evidence which is material to a claim which the person knows to be false or does not believe to be true,[104] obstructing or hindering the adjudicator by act or omission,[105] and failing,

[98] See *Burke v An Adjudication Officer and Ors* [2023] IEHC 360 at para 24 and *Walsh v Minister for Justice, Equality and Law Reform* [2019] IESC 15 [2020] 1 IR 488.

[99] Section 59(1) of the Financial Services and Pensions Ombudsman Act 2017 and section 139ZK(8) of the Broadcasting Act 2009.

[100] Section 80(7)(a) of the Legal Services Regulation Act 2015.

[101] Section 80(7)(b) of the Legal Services Regulation Act 2015.

[102] Section 80(7)(b) of the Legal Services Regulation Act 2015.

[103] Section 80(7)(b) of the Legal Services Regulation Act 2015.

[104] Section 80(7)(c) of the Legal Services Regulation Act 2015.

[105] Section 80(7)(d) of the Legal Services Regulation Act 2015.

neglecting, or refusing to comply with the provisions of an order made by the adjudicator.[106]

[5.71] Some adjudicators may apply to the courts for orders in relation to acts or omissions of an individual before an adjudicator. For example, the Financial Services and Pensions Ombudsman may apply to the Circuit Court for an order against a person who has refused or failed to do an act instructed by the Ombudsman. The Circuit Court may then make an order requiring the person to do the act after hearing such an application.[107] Other statutes allow for the adjudicative bodies themselves to bring and prosecute the offences if they are of a summary nature.[108]

[5.72] Sanctions for offences before adjudicators can range in severity from a class A fine or imprisonment for a term not exceeding three months, or both, on summary conviction,[109] to a fine not exceeding €500,000 or imprisonment for a term not exceeding 10 years or both, on conviction on indictment.[110] For example, an offence of this type under the Financial Services and Pensions Ombudsman Act can carry a punishment ranging from a Class A fine or imprisonment for a term not exceeding three months, or both, on summary conviction.[111]

[5.73] The Commission is of the view that all adjudicative bodies should have powers to manage their proceedings. Therefore, they should be granted the power to exclude disruptive individuals from proceedings. Moreover, where a body has powers such as a power to compel witnesses, a power to administer oaths and a power to order the production of documents, it should have a power to sanction disobedience. However, such powers of sanction should be set out in the statute establishing the body in question.

(ii) Enforcement of Decisions

[5.74] The compliance with decisions of adjudicative bodies may be strengthened by granting a power to apply for the enforcement of decisions. For instance, if an employer or respondent fails to comply with a decision of an adjudication officer

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[106] Section 80(7)(e) of the Legal Services Regulation Act 2015.

[107] Section 59(2)-(5) of the Financial Services and Pensions Ombudsman Act 2017.

[108] Section 9(3) of the Residential Tenancies Act 2004, section 43 of the Communications Regulation Act 2002, section 139ZZI(1) of the Broadcasting Act 2009, section 7(3) of the Workplace Relations Act 2015, section 31(4) of the Pyrite Resolution Act 2013 and section 199 of the Minerals Development Act 2017.

[109] Section 59(1) of the Financial Services and Pensions Ombudsman Act 2017.

[110] Sections 139F and 139ZZH(1) of the Broadcasting Act 2009. [111] Section 59(1) of the Financial Services and Pensions Ombudsman Act 2017.

[111] Section 59(1) of the Financial Services and Pensions Ombudsman Act 2017.

of the Workplace Relations Commission, an employee or complainant may apply directly to the District Court for an order directing compliance with the decision. If a complainant wishes the Workplace Relations Commission to assist in this process, the Commission may make an apply to the Court on the complainant's behalf.[112] The Residential Tenancies Board has a similar power, which can be exercised if it is satisfied that a party has failed to comply with one or more terms of a determination order.[113]

[5.75] The Commission is of the view that only bodies that are administering justice should have the ability to enforce justice, in the form of a power to enforce decisions. As such a power could be exercised internally or externally, the Commission invites views on what would be the most appropriate formulation for such a power.

[5.76] The Commission is of the view that such bodies should be granted a power to enforce their own decisions. Moreover, the Commission envisages that an administrative justice council may have a role in recommending methods of enforcement particular to the body in question. However, it should be noted that it is not suggesting that a council would be given a power to enforce an adjudicative body's decision.

[5.77] The Commission is also of the view that bodies that are administering justice should be granted a power to apply to the District Court for an enforcement order on behalf of the applicant. This power may be exercised following an internal process, at the discretion of the body in question.

(g) Power to Grant Legal Aid

[5.78] Civil legal aid is a service for those who cannot afford to pay for legal advice or representation privately. At present, civil legal aid may be granted during the decision-making processes before some adjudicators, and/or during an appeal on a point of law or judicial review of the decision. However, in general, there is no entitlement to legal aid for those appearing before adjudicators, reflecting the fact that many such bodies were designed to avoid legal costs. Where a party is not granted civil legal aid, they may represent themselves. However, lay persons may be at a disadvantage and cases may progress more slowly due to a lack of representation. Moreover, decision-makers may also be at a disadvantage where a participant is not represented, as lay persons may be less familiar than a legally trained person with the procedural rules of an adjudicative body and the relevant law.

[5.79] The report of the Civil Legal Aid group notes that

[112] Section 43 of the Workplace Relations Act 2015.

[113] Section 124 of the Residential Tenancies Act 2004.

> the overwhelming majority of stakeholder submissions argued that legal aid should be available for quasi-judicial fora given that "...very significant and tangible rights are being decided and arbitrated in fora outside of traditional court settings." It was argued that proceedings like those before the RTB, Social Welfare Appeal Tribunals and WRC are losing any informality they may have once had as the issues become increasingly complex and inaccessible to the average individual who may be required to represent themselves.[114]

[5.80] A power to grant civil legal aid may be designated to adjudicative bodies in one of two ways: either the Minister for Equality and Law Reform, with the consent of the Minister for Finance, may designate certain tribunal proceedings as being proceedings for which applicants should be entitled to apply for civil legal aid under the Civil Legal Aid Act 1995;[115] or a bespoke legal aid scheme may be established.

[5.81] Applicants before the International Protection Appeals Tribunal may apply for civil legal aid under the Civil Legal Aid Act 1995.[116] Where an applicant before the International Protection Appeals Tribunal applies for legal aid, the Legal Aid Board will assess whether civil legal aid should be granted. The test for granting civil legal aid depends on the means of the applicant, the merits of the case, and the likelihood of success, and involves weighing the cost to the taxpayer against the benefit to the applicant if they were to win.[117] The courts do not have a discretion to grant civil legal aid.[118] In most cases where civil legal aid has been granted, the Legal Aid Board requires applicants to pay a small fee[119] which can be waived depending on the applicant's circumstances.[120]

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[114] *Civil Legal Aid Review 2025: A Review of the Civil Legal Aid Scheme in Ireland Appendix 8* <https://www.gov.ie/en/department-of-justice-home-affairs-and-migration/press-releases/minister-jim-ocallaghan-publishes-historic-review-of-civil-legal-aid-scheme/> accessed 5 November 2025.

[115] Section 27(2)(b) of the Civil Legal Aid Act 1995.

[116] Civil Legal Aid (International Protection Appeals Tribunal) Order 2017 (SI No 81 of 2017).

[117] Sections 24, 26 and 28 of the Civil Legal Aid Act 1995. See also Legal Aid Board "Can I get legal aid and advice?" <https://www.legalaidboard.ie/our-legal-aid-service/> accessed 3 November 2025.

118 See the Civil Legal Aid Act 1995.

119 Legal Aid Board, "Civil Legal Aid and Advice for International Protection Cases" <https://www.legalaidboard.ie/en/our-legal-aid-service/how-we-can-help-you/international-protection/> accessed 3 November 2025.

120 Legal Aid Board, "Paying for your civil legal aid and advice" <https://www.legalaidboard.ie/en/our-legal-aid-service/frequently-asked-questions/> How much Does Legal Aid cost?>accessed 3 November 2025.

[5.82] The Mental Health Act 2001 establishes a right to legal aid for involuntary patients before a Mental Health Tribunal under a bespoke legal aid scheme. The Mental Health Commission arranges for civil legal aid to be provided for involuntary patients in Mental Health Tribunals. The Mental Health Commission chooses a panel of qualified legal representatives, and all involuntary patients are entitled to be represented by one of these lawyers for free, regardless of their income or means. Patients may decide to hire a legal representative who is not on this panel list, but this representation will not be funded by the Mental Health Commission. [121] The Commission understands that it is very unusual to refuse an application for legal aid to appeal a decision of the Mental Health Commission to the Circuit Court.

[5.83] These exceptions highlight the general absence of legal aid. The Free Legal Advice Centre has raised concerns about the lack of civil legal aid for people who are appearing before adjudicative bodies. In particular, it has raised concerns about "the exclusion of the Workplace Relations Commission from the scope of the civil legal aid system in a blanket manner, without allowing for any examination of the particular facts of a given case". [122] In the Workplace Relations Commission in 2017, 42% of respondents and 53% of complainants were represented. [123] While these figures do not show how representation was distributed across individual cases, they suggest that a significant number of proceedings may have involved only one represented party. In such situations, the parties do not occupy equal positions and this may create a perception of unfairness.

[5.84] In light of Ireland's obligations at a European level, it is necessary to discuss the jurisprudence from the European Court of Human Rights and the Court of Justice of the European Union in this context. Article 6 of the European Convention on Human Rights provides for the protection of a right of access to the courts to vindicate civil rights, in a way that is practical and effective. [124] The European

[121] Section 33(3)(c) of the Mental Health Act 2001. The Mental Health Commission "appoints a legal representative to act for the patient (which is funded by legal aid) and an independent consultant psychiatrist to review them (also funded by legal aid)." See Mental Health Commission, "Mental Health Tribunals" <https://www.mhcirl.ie/what-we-do/mental-health-tribunals/mental-health-tribunals> accessed 3 November 2025.

[122] "The European Court of Human Rights has also ruled that the blanket exclusion of any area of law from a civil legal aid scheme breaches Article 6(1) of the Convention." FLAC, Submission to inform the Department of Justice and Equality's consultation on a new National Women's Strategy 2017 – 2020, (2017) at page 8< https://www.flac.ie/assets/files/pdf/final_flac_submission_on_new_national_womens_strategy.pdf?issuusl=true> accessed 3 November 2025.

[123] See Workplace Relations Commission, *Annual Report 2017* at page 22 <https://www.workplacerelations.ie/en/Publications_Forms/Workplace_Relations_Commission_-_Annual_Report_2017.pdf> accessed 3 November 2025.

[124] European Court of Human Rights, *Guide to Article 6 of the European Convention on Human Rights: Right to a fair trial (civil limb)* (2013).

Court of Human Rights confirmed that in order for this right to have substance, there needed to be an effectual way a party could bring their case before a court.[125] The case of *Airey v Ireland*[126] considered whether Article 6 could be interpreted as containing a right to the provision of civil legal aid. The Court in this case held that the refusal of legal aid equated to a refusal of access to the courts. In subsequent caselaw, the Court held that an absolute right of access to the courts cannot be implied from Article 6. Instead, this right of access is triggered where the "very essence of the right is impaired".[127] In other words, where the lack of legal aid would deny an applicant their right to a fair trial. The Court will then assess the degree to which the right of access to the courts has been impaired before arriving at a decision.

[5.85] The Court of Justice of the European Union has been influenced by this jurisprudence in its interpretation of the Charter of Fundamental Rights of the European Union and the Treaty of the Functioning of the European Union.[128] Article 47(2) provides that "legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice". In *Deutsche Energiehandels- und Beratungsgesellschaft mbH v Bundesrepublik Deutschland*, the CJEU was tasked with determining whether the denial of legal aid in this case resulted in an ineffectual application of the right of access to the courts. In holding that it was a matter for the national court to ascertain whether the limitation on legal aid for a legal person constituted a limitation on the right of access to the courts, the CJEU concluded that a domestic court should consider the subject-matter of the litigation; whether the applicant has a reasonable prospect of success; the importance of what is at stake for the applicant in the proceedings; the complexity of the applicable law and procedure; and the applicant's capacity to represent themselves effectively. It further stated that national courts should apply a proportionality test when tasked with determining whether the right to legal aid has been breached.[129]

[5.86] The Commission considers that it may be necessary to extend the current civil legal aid scheme to include certain proceedings before adjudicative bodies in order to meet European standards. However, the Commission does not suggest that adjudicative bodies should have a power to grant legal aid.

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[125] *Golder v United Kingdom* no 4451/70 (ECtHR 21 February 1975).

[126] *Airey v Ireland* no 6289/73 (ECtHR 9 October 1979).

[127] *Ashingdane v United Kingdom* (1985) 7 EHRR 528, (1985) ECHR 8225/78 at para 57.

[128] Síofra O'Leary, 'The Legacy of Airey v Ireland and the Potential of European Law in Relation to Legal Aid' (2019) 42 Dublin University Law Journal 93.

[129] Case 279/09 *Deutsche Energiehandels- und Beratungsgesellschaft mbH v Bundesrepublik Deutschland* EU:C:2010:811.

[5.87] The Commission notes that the question of the provision of legal aid for applicants before adjudicative bodies is a question about legal aid generally, and not one specific to adjudicative bodies. In that regard, the Commission defers to the recently published report by the Civil Legal Aid Review Group which makes up-to-date recommendations for the reform of the current civil legal aid scheme.[130] In particular, the Commission notes the comments of the Civil Legal Aid Review Group:

> Under the current Scheme, legal representation is not provided at these fora, which, in effect, is a blanket ban or overall prohibition on accessing the Scheme for a variety of legal issues. While the Review Group notes that one of the intentions behind the development of these bodies was to permit self-representation by users and provide a non-litigious, cost effective and user-friendly route for people to solve their legal issues, there has been an increase in the complexity of cases and the associated law in some areas and the use of legal representation by some parties appearing at these fora. In this context, it may not always be possible for people to represent themselves. The Review Group recognise that quasi-judicial fora play an important role in ensuring that certain legal issues can be dealt with effectively, quickly and in a low cost manner and any proposal should seek to ensure these elements are retained. Not every case will require legal representation but the Review Group note that in particular areas of EU law, access to legal aid may be required, irrespective of the adjudicating body.[131]

(h) Power to Establish a Scheme for Payment Towards Legal Expenses

[5.88] The legal fees of the successful party are typically paid by the losing party in a court case. The courts have noted that this practice ensures that the successful party is not disadvantaged when enforcing their legal rights, and may discourage an abuse of process, blackmail, and frivolous cases.[132] Sections 168 and 169 of

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[130] *Civil Legal Aid Review 2025: A Review of the Civil Legal Aid Scheme in Ireland* <https://www.gov.ie/en/department-of-justice-home-affairs-and-migration/press-releases/minister-jim-ocallaghan-publishes-historic-review-of-civil-legal-aid-scheme/> accessed 23 October 2025.

[131] *Civil Legal Aid Review 2025: A Review of the Civil Legal Aid Scheme in Ireland* <https://www.gov.ie/en/department-of-justice-home-affairs-and-migration/press-releases/minister-jim-ocallaghan-publishes-historic-review-of-civil-legal-aid-scheme/> accessed 23 October 2025 at page 31.

[132] *Farrell v Governor and Company of Bank of Ireland* [2013] 2 ILRM 183, [2012] IESC 42 at para 4.12, Clarke J in *Skeffington v Ireland* [2020] IEHC 296 at para 60.

the Legal Services Regulation Act 2015 set out criteria for the exercise of the courts' power to award costs. Factors which a court may have regard to include the nature and circumstances of the case, the parties' conduct before and during the case, the reasonableness of the issues contested, how the parties managed their cases, whether claims were exaggerated, any payment or settlement offer made, and the parties' reasonableness if they were unwilling to settle.[133] The Supreme Court has also held that it is appropriate to consider whether the individual concerned was seeking a private personal advantage, and whether the legal issues raised were of special and general public importance.[134] Costs decisions must be reasoned and it should also be noted that the courts retain an exceptional jurisdiction regarding awarding costs. A court may choose to depart from the general rule where the proceedings raise issues of general importance,[135] including the awarding of costs to a party that has not been "entirely successful".[136]

[5.89] It should also be noted that there are different types of costs awards. There does not seem to be a standard approach among non-court adjudicative bodies to payment of representatives. Some costs orders resemble those of court and are made against another party, and some are given to a party by the body out of its own funds. The Residential Tenancies Board only awards costs of legal or other professional representation in exceptional circumstances or with the consent of the Board and up to a fixed maximum sum.[137] The Commission for Communications Regulation has a general prohibition against awarding costs but permits the awarding of costs where an adjudicator finds that a person or the Commission has engaged in "improper, irregular, unfair, or unsatisfactory conduct in connection with the investigation".[138] Additionally, the Irish Financial Services Appeals Tribunal,[139] CervicalCheck Tribunal[140] and the Hepatitis C and HIV Compensation Tribunal[141] all have the power to award costs. The Act establishing the CervicalCheck Tribunal provides for taxation by the Legal Costs

[133] Section 169(1) of the Legal Services Regulation Act 2015.

[134] *Dunne v Minister for the Environment* (No 2) [2008] 2 IR 775 at page 780.

[135] *Lee v Revenue Commissioners* [2021] IECA 114 at para 6.

[136] Chubb European Group SE v Health Insurance Authority [2020] IECA 183 at para 37. Higgins v Irish Aviation Authority [2020] IECA 277 at para 10.

[137] Section 5(4) of the Residential Tenancies Act 2004.

[138] Section 88 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023. See in this Chapter, Powers to Aid Oversight of Proceedings for discussion on the imposition of sanctions and creation of offences.

[139] Section 57AH of the Central Bank Act 1942 as inserted by section 28 of the Central Bank and Financial Services Authority of Ireland Act 2003.

[140] Section 19 of the CervicalCheck Tribunal Act 2019.

[141] Section 5 of the Hepatitis C Compensation Tribunal Act 1997.

Adjudicator.[142] However, the Commission considers that taxation is not a feasible option for adjudicative bodies generally.

[5.90] By contrast, the statutes setting up the Labour Court, Workplace Relations Commission, Coimisiún na Meán, Equality Tribunal, Tax Appeals Commission, and the Criminal Injuries Compensation Tribunal do not grant these bodies the ability to award costs. However, where a decision of these adjudicative bodies is appealed to the courts, costs may be awarded at that stage of the proceedings.

[5.91] To take the example of the Labour Court, Order 105 of the Rules of the Superior Courts deals with costs in relation to appeals and references from the Labour Court. Rule 7 provides that "no costs shall be allowed of any proceedings under this order unless the court shall by special order allow such costs". Rule 7 acts as a type of "costs protection" as each side bears their own costs of the appeal, save in the circumstances of a special order being granted.[143]

[5.92] One argument in favour of a power to award costs is that it would encourage applicants to only pursue valid claims. The possibility of payment orders may deter applicants from bringing frivolous claims before adjudicative bodies.

[5.93] On the other hand, an argument against a power to award costs is that, if the general rule that payment follow the event were applied, it could inhibit an applicant's access to justice. In addition to greater accessibility, adjudicative bodies generally offer a more informal and faster process, a specialised expertise and, importantly for this discussion, a reduced financial burden for applicants. The risk of a financial penalty may discourage genuine applicants from bringing claims before adjudicative bodies.

[5.94] The Commission suggests that adjudicative bodies be granted a power to create a scheme of payment, instead of a power to award costs. This scheme could be created in consultation with the relevant Minister, and in time, an adjudicative justice council. Such a scheme could set out a scale of payment, with the maximum payment order specified. This payment could include payment for representation (legal or otherwise).

[5.95] In considering whether such a power should be granted to adjudicative bodies, the Commission notes the Oireachtas' legislative response to the Zalewski judgment.[144] In particular, it notes that the Workplace Relations Commission was not granted the power to award costs, despite being considered a body administering justice. On the other hand, it can be argued that granting an

[142] Section 19(2) of the CervicalCheck Tribunal Act 2019.

[143] *Power v HSE* [2021] IEHC 454 at para 19.

[144] The Workplace Relations (Miscellaneous Provisions) Act 2021 and the Criminal Justice (Perjury and Related Offences) Act 2021.

adjudicative body a power to award costs indicates that the body administers justice.

[5.96] The Commission is of the view that this power to create a scheme of payment should be granted only to adjudicative bodies that administer justice but invites views about whether all adjudicative bodies that administer justice should be granted this power. For instance, the Commission considers that this power may be inappropriate for individual and State disputes, such as those coming with the remit of the International Protection Appeals Tribunal.

3. Powers under an Administrative Justice Council

[5.97] As discussed in the Chapter on Responding to the Problem, an administrative justice council could be established with general oversight responsibility for the exercise of non-court adjudicative functions in the State. The Commission envisages that an administrative justice council could have a consultative or advisory function with regard to the powers exercised by adjudicative bodies.

[5.98] Québec's Administrative Justice Council has a similar function, in that it reports to the relevant Minister with recommendations regarding the administration of justice by adjudicative bodies. A council in this jurisdiction could exercise such a function by consulting with both the relevant Minister and the body (or bodies) in question with regard to the granting of new powers or powers to be granted to newly established adjudicative bodies. The Commission contemplates that this could be a suitable function of an administrative justice council.

4. Request for Views

Q. 5.1 The Commission suggests the following powers for all adjudicative bodies:

(a) a power to make procedural rules

(b) case management powers, including:

(i) a power to convene case management conferences

(ii) a power to make available alternative dispute resolution, via mediation and conciliation

(c) a power to hold a hearing, including:

(i) a power to hold an oral hearing, either in person or virtually

(ii) a power to decide without an oral hearing

(iii) a power to refer a question of law to the High Court

Q. 5.2 The Commission suggests the following additional powers for adjudicative bodies that administer justice:

(a) a power to give directions, including:

(i) a power to compel witnesses

(ii) a power to administer oaths or affirmations

(iii) a power to order the production of documents

(b) powers to manage their proceedings:

(i) a power to remove disruptive individuals from proceedings

(ii) a power to sanction disobedience which such directions

(iii) a power to enforce decisions

Q. 5.3 The Commission invites views on the above suggestions and queries whether there are any additional powers it should consider.

Q. 5.4 The Commission is interested in hearing any other views on the contents of this Chapter.

CHAPTER 6
COMPOSITION OF ADJUDICATIVE BODIES

1. Introduction

[6.1] This Chapter considers the composition of adjudicative bodies and teases out the implications of the requirements of competence and independence in an adjudicative setting. The Commission acknowledges that composition, which encompasses competence and independence, is a complicated issue. Therefore, general principles cannot necessarily be applied widely and across the range of adjudicative bodies established within this jurisdiction. Some adjudicative members operate on a full-time basis, whereas others operate on a part-time basis. Moreover, some members are selected for their independence, whereas others are selected because they represent a sector or category.

[6.2] The Chapter also considers the potential benefits of clustering and shared services. The Commission believes it may be useful to discuss these suggestions for reform in this Chapter as they also relate to composition. The first suggestion is known as 'clustering' and entails similar adjudicative bodies being grouped in a cluster. The second is a 'shared services' model which involves sharing support services between adjudicative bodies.

[6.3] In both instances, the Commission envisages that a body, such as an administrative justice council, could be empowered to provide for clustering and/or the development of shared services. The Chapter discusses whether the tools of a framework statute and an administrative justice council could help

achieve consistency on matters such as composition, independence and competence.

2. Composition in a Framework Statute

[6.4] The composition of each non-court adjudicative body is set out in its parent statute, as is its structure. The Commission recognises that some bodies have bespoke requirements. However, others have very similar requirements but because they are established by different statutes, there are variations and differences in structure which may be unnecessary but which have arisen due to the *ad hoc* creation of bodies which have similarities with each other. The Commission suggests that a legislative intervention, such as the creation and implementation of a framework statute containing model clauses, may provide some consistency regarding the organisational structure and composition of such bodies.

[6.5] Ontario's Adjudicative Tribunals, Accountability, Governance and Appointments Act,[1] provides an example of such a framework statute. The Act deals with appointment, such as the selection process for tribunal members,[2] the requirement of tribunal-specific qualifications,[3] and appointment and reappointment recommendations by the chair of the tribunal.[4] It also requires tribunals to enter into a memorandum of understanding with the relevant Minister,[5] addressing financial and staffing arrangements, accountability, recruitment and training, and reporting requirements.[6] The Act also provides for the clustering of tribunals.[7]

[6.6] The Commission envisages that some provisions about the composition of adjudicative bodies in Ireland could be provided for in a framework statute.

[1] Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009, S.O. 2009, c. 33, Sched. 5 (Ontario).

[2] Section 14(1) of the Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009, S.O. 2009, c. 33, Sched. 5 (Ontario).

[3] Section 14(2) of the Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009, S.O. 2009, c. 33, Sched. 5 (Ontario).

[4] Section 14(4) of the Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009, S.O. 2009, c. 33, Sched. 5 (Ontario).

[5] Section 11(1) of the Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009, S.O. 2009, c. 33, Sched. 5 (Ontario).

[6] Section 11(2) of the Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009, S.O. 2009, c. 33, Sched. 5 (Ontario).

[7] Sections 15-18 of the Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009, S.O. 2009, c. 33, Sched. 5 (Ontario).

3. Competence

[6.7] In *Zalewski,* the Supreme Court made reference to a requirement of competence: the parties to an administration of justice "are entitled to no less than a competent resolution in any and every case".[8] In order to ensure that adjudicators have the expertise necessary to discharge their functions effectively robust, merit-based appointment processes can be put in place. Such processes should specify that appointees have the requisite skills to work as adjudicators. After appointment, ongoing training and mentoring are required to maintain and enhance adjudicative ability.

[6.8] The Commission's view is that a statutory commitment to such processes would be appropriate for all adjudicative functions, with perhaps some variation in the formality of the process depending on the function in question. The Commission suggests that an administrative justice council could play a leading role in monitoring appointments and ensuring that adjudicators receive appropriate training and mentoring.[9]

(a) Appointment

[6.9] The first step in ensuring that adjudicators are competent is to look at the appointment process for adjudicators of adjudicative bodies. This process can be split into three categories: recruitment, expertise and qualifications, and panel composition.

(i) Recruitment

[6.10] Adjudicators must be competent: they need to be impartial in their decision-making and also bring skills and understanding to their role based on their backgrounds, experience, and qualifications. A merit-based recruitment process has the potential to help ensure that competent adjudicators are appointed. According to the Commission for Public Service Appointments, 'merit' consists of the appointment of the best person to any given post.[10]

[6.11] A gold standard model of merit-based recruitment in this jurisdiction is provided by the Judicial Appointments Commission Act 2023. This legislation commits explicitly to merit-based appointments, which are also to be gender-balanced, reflect the population as a whole and ensure a sufficient number of Irish-speaking

[8] *Zalewski v The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421 at para 136 and see also para 142.

[9] See the Chapter on Responding to the Problem , under the heading "An Administrative Justice Council" for more detail on this proposal.

[10] Commission for Public Service Appointments, *Code of Practice for the Appointment to Positions in the Civil and Public Service* (5 September 2024) at page 11.

judges.[11] At least as importantly, the Act makes extensive provision for the procedures that will be followed in order to realise this objective.[12] The procedures are robust and establish a clear process. However, not all these elements need to be replicated in the recruitment and appointment processes of all non-court adjudicative bodies.

[6.12] Other statutes do not specify in their parent statute that they employ a merit-based recruitment process. For instance, the Workplace Relations Act 2015 states that the relevant Minister may appoint the Director General of the Workplace Relations Commission,[13] and adjudication officers as they consider appropriate.[14] This usually follows an open competition run through the Public Appointments Service. The International Protection Appeals Tribunal appoints its members through a similar competition.[15]

[6.13] However, as these competitions are run by the Public Appointments Service, they must adhere to a standard of merit and the principles set out in the Code of Practice of the Commission for Public Service Appointments.[16] The Commission for Public Service Appointments states that by assessing candidates on their qualifications, personal attributes and skills required to fulfil the duties and responsibilities assigned to the relevant post, the best match for the needs of the organisation will be appointed.[17]

[6.14] As the Commission has noted, general principles may not necessarily be applied across the various compositions of adjudicative bodies. However, given the principles set out by the Commission for Public Service Appointments, the Commission is of the view that merit-based recruitment would be the most appropriate standard to apply to recruitment by adjudicative bodies.

[11] Section 39 of the Judicial Appointments Commission Act 2023.

[12] See Part 4, Chapter 2 of the Judicial Appointments Commission Act 2023.

[13] Section 12(2) of the Workplace Relations Act 2015.

[14] Sections 40(1), (2) of the Workplace Relations Act 2015.

[15] Section 62(4) of the International Protection Act 2015.

[16] Section 34(1)(b) of the Public Service Management (Recruitment and Appointments) Act 2004. The Commission for Public Service Appointments is the principal regulator of recruitment and selection in the Irish public service. Their role is to ensure that appointments to the civil and public service are fair, transparent and merit-based. The Public Appointments Service is the centralised provider of recruitment, assessment and selection services for a variety of roles throughout the Civil and Public Service.

[17] Commission for Public Service Appointments, *Code of Practice for the Appointment to Positions in the Civil and Public Service* (5 September 2024) at page 11.

(ii) *Expertise and Qualifications*

[6.15] The Oireachtas may choose to appoint decision-makers based on their subject-related expertise rather than requiring legal qualifications.[18] The Commission has previously noted that the expertise of decision-makers in non-court adjudicative bodies forms part of the basis for the courts' tendency to defer to the decisions of such bodies.[19]

[6.16] The decision to prioritise subject matter expertise over legal expertise may be a choice based on past experience. For example, previously, the chairperson of an Coimisiún Pleanála originally had to be a sitting or retired High Court judge[20] but today there is no requirement for any member of an Coimisiún Pleanála to hold a legal qualification.[21] The legislation governing an Coimisiún Pleanála contains an elaborate provision on the expertise required of ordinary planning commissioners. It states that ordinary planning commissioners must have satisfactory experience of, or a satisfactory mix of experience and knowledge of one or more planning-related topics.[22] This reflects the view that the factual disputes in the cases before an Coimisiún Pleanála require subject matter expertise more than legal expertise.

[6.17] Decision-makers could also be selected on the basis that they are representative of a particular group and have relevant experience. For example, decision-makers in the Labour Court are representative of both employee and employer interests.[23] The decision-makers in the Labour Court are nominated by the Minister for Business, Enterprise and Innovation, the Irish Business and Employers' Confederation, and the Irish Congress of Trade Unions.[24] This reflects the unique interests at play in applications before the Labour Court.

[6.18] Some adjudicators must have legal qualifications. Appeals officers appointed to adjudicate on appeals for the refusal of various fishing licences must have at least 5 years' experience as a practising barrister or practising solicitor.[25] Members of

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[18] *Zalewski v Workplace Relations Commission* [2020] IEHC 178 at para 148.

[19] Law Reform Commission, *Issues Paper on Regulatory Enforcement and Corporate Offences* (LRC IP 8–2016) at para 6.07.

[20] Section 4 of the Local Government (Planning & Development) Act 1976. This was repealed by section 25 of the Local Government (Planning & Development) Act 1983.

[21] *Zalewski v Workplace Relations Commission* [2020] IEHC 178 at para 148.

[22] Section 507(2)(a) of the Planning and Development Act 2024.

[23] Section 10(4) of the Industrial Relations Act 1946, as substituted by section 75(c) of the Workplace Relations Act 2015.

[24] Labour Court, "Structure of the Court" <Structure of the Court - The Labour Court> accessed 14 November 2025.

[25] Section 6(1) of the Fisheries (Amendment) Act 2003.

the CervicalCheck Tribunal must hold or have held judicial office in the Superior Courts, or be a practising barrister or solicitor of not less than 10 years' practice.[26]

[6.19] However, legal qualification requirements are not universal. The Workplace Relations Commission consists of eight ordinary members and a chairperson. Only three of the ordinary members must be appointed by the Minister from among persons who, in the opinion of the Minister, have experience and expertise in relation to workplace relations, resolution of disputes in the workplace, employment law or equality law.[27] Appeals officers appointed to hear appeals against the refusal to grant archaeological licences must have knowledge or experience relevant to a matter to which a licence may relate, or may be legal practitioners.[28] Nomination as a commissioner of the Commission for Communications Regulation is open to legally qualified persons and to those with other qualifications sufficient to enable the person to effectively perform the functions of an adjudicator in the areas of regulation, including regulation of utilities, economics, law, accounting or finance, telecommunications engineering, and the electronic communications industry.[29]

[6.20] The ability to rely on legally trained adjudicators is particularly advantageous in areas where adjudicators may be asked to disapply Irish law where it is in conflict with EU law. Due to the supremacy of EU law, adjudicators have the power to disapply Irish law if it conflicts with EU law insofar as it is necessary to give effect to the EU law.[30] In addition, in appropriate cases, if an adjudicator has a question about the interpretation of the EU Treaties, an EU law or a national law based on or derived from EU law, they can refer a question to the CJEU.[31] If adjudicators do

[26] Section 6(4) of the CervicalCheck Tribunal Act 2019.

[27] Schedule 3, section 2(3)(d) of the Workplace Relations Act 2015.

[28] Section 156(1) of the Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023.

[29] Section 3(1)(b) of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (Part 7) Regulations 2023 (SI No 500 of 2023).

[30] Case C-378/17 *The Minister for Justice and Equality and Commissioner of the Garda Síochána (Equal treatment in employment - age - Judgment)* EU:C:2018:979 at para 38, the Grand Chamber held that bodies created by legislation, like the Workplace Relations Commission created by the Workplace Relations Commission Act 2015, who enforce EU law in a certain area, must have the power to disapply national law which conflicts with EU law. "As the Court has repeatedly held, that duty to disapply national legislation that is contrary to EU law is owed not only by national courts, but also by all organs of the State — including administrative authorities — called upon, within the exercise of their respective powers, to apply EU law". At para 33, the Grand Chamber noted that disapplying a law is different from striking down a law. See discussion of this point in the Irish Supreme Court judgement *An Taisce v an Bord Pleanála* [2020] IESC 39 at paras 153-164.

[31] Article 267 of the Treaty on the Functioning of the European Union; Case 6/64 *Costa v ENEL* EU:C:1964:66; Case 103/88 *Fratelli Costanzo Spa v Commune di Milano* EU:C:1989:256; Case C-210/06 *Cartesio Oktató és Szolgáltató bt* EU:C:2008:723; Case C-378/17 *The Minister for*

not have legal training, there is a concern that decision-makers might mistakenly disapply Irish national law. The Irish Supreme Court noted in *An Taisce v An Bord Pleanála*[32] that the "inconsistent and sometimes incorrect application of EU law principles by administrative decision-makers had resulted in a stream of strange case law coming before the Irish courts".[33]

[6.21] The Supreme Court also suggested that a High Court judgment might be the easiest way for adjudicators to ensure consistency across cases regarding EU legal issues, even if these bodies may have the power to decide such issues themselves.[34] This would involve the use of the domestic case stated procedure.

[6.22] The Commission suggests that requirements for appropriate expertise and qualifications be embedded into the statute governing adjudicative bodies. This would ensure that there is a clear statement of basic competency required, in addition to providing a framework against which to measure candidates for merit. Furthermore, a proportion of adjudicative bodies have to interpret and apply EU law on a regular basis. Such bodies, or some of them, may require special provisions for fixity of tenure, or resources or autonomy. The Commission invites views on this subject.

(b) Panel Composition

[6.23] Panel composition concerns the number and mix of members that sit in a particular case, as opposed to the total number of members assigned to an adjudicative body. This can be an important consideration in ensuring competence.

[6.24] Governing statutes of adjudicative bodies can be very prescriptive regarding panel composition. For instance, a Tenancy Tribunal, constituted by the Residential Tenancies Board, shall consist of three members.[35] These members must also be members of the Residential Tenancies Board's Dispute Resolution Committee.[36] The Mental Health Commission may appoint a Mental Health Tribunal to decide matters. Such a tribunal shall be made up of three members – at least one consultant psychiatrist, at least one practising barrister or solicitor

Justice and Equality and Commissioner of the Garda Síochána (Equal treatment in employment - age - Judgment) EU:C:2018:979.

[32] *An Taisce v An Bord Pleanála* [2020] IESC 39, [2021] 1 IR 119.

[33] Fahey, *EU Law in Ireland* (Clarus Press 2010); *An Taisce v An Bord Pleanála* [2020] IESC 39, [2021] 1 IR 119 at para 165.

[34] *An Taisce v An Bord Pleanála* [2020] IESC 39, [2021] 1 IR 119 at para 166.

[35] Section 103(1) of the Residential Tenancies Act 2004.

[36] Section 103(2) of the Residential Tenancies Act 2004.

with at least seven years' experience and/or a registered medical practitioner or a registered nurse.[37]

[6.25] The Commission is of the view that the ability to convene multi-member panels, such as those utilised by Mental Health Tribunals, may be advantageous. Multi-member panels could permit bodies exercising adjudicative functions to bring a variety of perspectives to bear on a particular case. For example, a three-member panel could feature a lawyer member who would be able to deal with questions of legal principle; a member with subject-matter expertise relevant to the issue at hand; and a member with knowledge and experience in procedural matters.

[6.26] In most circumstances, the operational details could be left to the managers of the bodies in question, as they would be best placed to determine whether a variety of perspectives would be valuable in a particular interest and, if so, the right blend. Where the body's parent statute already requires or permits multi-member panels, no legislative change would be needed. In addition, as discussed, managers of these bodies could have the ability to designate certain decisions by multi-member panels as having precedential value and/or to group matters to be addressed by multi-member panels.

[6.27] However, larger panel sizes do not invariably ensure competence. The Commission has previously noted that if "panels sit only infrequently and with different members on each occasion, they will have little opportunity to develop a greater familiarity with the regulatory regime than a High Court judge".[38] Panels which sit infrequently might not have the advantage of institutional memory.[39]

(c) Training

[6.28] While appointing adjudicators based on merit is an important first step in equipping bodies that exercise adjudicative functions to fulfil their statutory mandates, training must also be provided on an ongoing basis. It is essential for members of adjudicative bodies to continue to develop their skills, as well as keep up to date on developments in the subject matter of the body.

[6.29] An evaluation of the Immigration and Refugee Board of Canada helpfully breaks down training needs into four categories:

[37] Section 48(1)-(3) of the Mental Health Act 2001.

[38] Law Reform Commission, *Report on Regulatory Powers and Corporate Offences* vol 1 (LRC 119-2018) at para 7.18.

[39] Law Reform Commission, *Report on Regulatory Powers and Corporate Offences* vol 1 (LRC 119-2018) at para 7.40.

> (a) **Orientation and training for new members** – All new members…undergo new member training specific to the division to which they have been appointed/hired.
>
> (b) Ongoing training for current members relating to the **substantive law and knowledge required for decision-making** – Members receive regular updates, often monthly, on recent court decisions and their jurisprudential implications (referred to as jurisprudential updates). These briefings are usually in the form of presentations during monthly professional development sessions ("PD Days") provided to members in each division and region.
>
> (c) Ongoing training for current members relating to **skills in conducting hearings and making decisions** (e.g. reviewing evidence, writing decisions).
>
> (d) Ongoing training for current members relating to **skills in managing caseloads and workflows** (e.g. case management, time management).[40]

[6.30] While this guidance is helpful for categorising various types of training that may be required within adjudicative bodies, the Commission is doubtful that this can serve as a universal template.

[6.31] In this jurisdiction, adjudicative bodies tend to provide for training in codes of conduct and guidelines. For instance, the Code of Conduct for members of Mental Health Tribunals states that panel members are responsible for maintaining the competence and expertise required in order to fulfil their duties and responsibilities. This includes, but is not limited to, training which the Mental Health Commission provides, as well as up-to-date knowledge on the Mental Health Act of 2001.[41]

[6.32] Another example can be seen in the Guidelines of the International Protection Appeals Tribunal, which ensures that its members and support staff receive training for dealing with child applicants. This includes awareness regarding age

[40] Immigration and Refugee Board of Canada, "Evaluation of Member Training Immigration and Refugee Board of Canada: Planning, Evaluation and Performance Measurement Directorate" (23 April 2018) <https://www.irb-cisr.gc.ca/en/transparency/reviews-audit-evaluations/Pages/evaluation-member-training.aspx> accessed 14 November 2025.

[41] Mental Health Commission, *Mental Health Tribunals – Code of Conduct for Panel Members* (Version 1 – September 2023) at page 4.

and gender vulnerabilities, receiving evidence from children and evaluating claims from children who may have suffered trauma and/or loss.[42]

[6.33] While the Commission is of the view that ongoing training and development should be provided to members of adjudicative bodies, it invites views as to whether this obligation should be provided for in statute.

4. Accountability

[6.34] Another element of competence relating to decision-makers of adjudicative bodies is accountability for their decision-making. This can be achieved by imposing obligations and duties on members to follow fair procedures, as well as establishing effective complaint mechanisms.

[6.35] The statutes of adjudicative bodies contain a range of duties in this regard. Adjudication officers for the Workplace Relations Commission are under an obligation to run hearings and investigations in accordance with fair procedures and in the interests of justice.[43] Similarly, the Financial Services and Pensions Ombudsman is under a duty to deal with complaints regarding financial services and pension providers "fairly",[44] as is the Social Welfare Appeals Office.[45]

[6.36] The current complaint regime among bodies exercising adjudicative functions is characterised by an ascending scale of escalation. This scale usually ends with a referral to the Office of the Ombudsman, where all attempts at resolution by the body in question have not satisfied the consumer. However, this is only in situations where the Office of the Ombudsman has jurisdiction. Some bodies exercising adjudicative functions do come within its jurisdiction, such as the Residential Tenancies Board and the Tax Appeals Commission.[46]

[6.37] However, a significant number of bodies that exercise adjudicative functions are exempt from the Office of the Ombudsman's jurisdiction. These include an Coimisiún Pleanála, the Central Bank of Ireland, various economic regulators

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[42] The International Protection Appeals Tribunal, *Chairperson's Guideline No. 2025/3 on Appeals from Child Applicants* (2025) at para 6.1 to 6.2.

[43] Workplace Relations Commission, *WRC Procedures in the Adjudication and Investigation of all Employment and Equality Complaints and Disputes* (16 September 2024) at page 5 <https://www.workplacerelations.ie/en/publications_forms/procedures_employment_and_equality_complaints.pdf> accessed 14 November 2025.

[44] Section 12 of the Financial Services and Pensions Ombudsman Act 2017.

[45] Social Welfare Appeals Office, Customer Charter (last updated 24 February 2025) <https://www.gov.ie/en/social-welfare-appeals-office/organisation-information/customer-charter/> accessed 14 November 2025.

[46] See Office of the Ombudsman, "Bodies under the remit of the Ombudsman" (last updated 22 October 2025) <https://www.ombudsman.ie/en/publication/7e9c8-bodies-under-remit-of-the-ombudsman/> accessed 14 November 2025 for a list of bodies which the Ombudsman can receive complaints regarding. However, note that this is not an exhaustive list.

(such as the Commission for Communications Regulation), the Financial Services and Pensions Ombudsman, the Garda Síochána Ombudsman Commission, the Irish Financial Services Appeals Tribunal, the Labour Court, the Residential Institutions Redress Board, the Social Welfare Tribunal, the Valuation Tribunal and refugee decision-makers. Presumably, these bodies are exempted to protect their institutional and adjudicative independence.

[6.38] It has been suggested that an effective complaints system would save public bodies money and time in the long run, provide useful feedback, and improve the quality of services, staff morale and the relationship between the public and these bodies.[47] The processes within bodies could be improved by establishing clear rules and their interpretation, disseminating information to relevant parties, identifying individual and systemic problems, their causes and solutions, and ensuring ongoing oversight and amendment of rules.[48]

[6.39] If complaint practices vary significantly, this can prevent the development of overarching generic procedures for ensuring fairness or transparency of the administrative process.[49] The availability of too many avenues by which to complain may prevent applicants from knowing how or where to complain about services.[50]

[6.40] The Commission sees great merit in the creation of a consistent complaints procedure. Standardisation could provide clarity to adjudicators, applicants and representatives alike. The Commission welcomes views as to appropriate steps that should be included in an effective complaints procedure.

5. Independence

[6.41] The guiding principle of the Legatt Report was that adjudicative bodies should have a similar degree of independence and impartiality as that enjoyed by the courts.[51] Independent processes can help to encourage faith in decision-making

[47] Office of the Ombudsman, "Getting it Wrong and Putting It Right" at page 3 <https://assets.ombudsman.ie/media/285099/eae88f54-8e72-4860-8594-ca33deaf1464.pdf> accessed 14 November 2025.

[48] Hodges and Voet, *Delivering Collective Redress* (Hart Publishing 2018) at page 9. These authors discussed regulatory systems. The same point applies for many decision-making bodies.

[49] OECD, *Regulatory Reform in Ireland* (2001) at page 152.

[50] Hodges, *Delivering Dispute Resolution: Recent review on the resolution of disputes in England and Wales* (The Foundation for Law, Justice and Society, 2019) at page 9.

[51] Andrew Leggatt, *Tribunals for Users – One System, One Service* (Report of the Review of Tribunals, 2001) at para 2.18.

and "ensure against undue influence by special interests".[52] Independence adds legitimacy to decisions and removes the suggestion that these decisions may be dependent on political considerations.[53] It is just as important that adjudicative bodies have the ability to exercise their functions independently as it is that they are perceived to be exercising their functions independently. This is to ensure the freedom of members of adjudicative bodies to make decisions uninfluenced by resources or other external pressures.[54] It should be noted that independence could also be improved by the implementation of suggestions made at other points in this Paper, such as procedures and competence, as this could lead to adjudicative bodies operating in a more consistent and fair manner.[55]

[6.42] This section will consider independence in terms of the independence of members of adjudicative bodies as well as the independence of adjudicative bodies themselves. It is essential that members of adjudicative bodies make decisions based on the facts before them and by applying the correct standards. Therefore, decision-making should be done in the absence of any personal interest or bias on the part of the decision-maker. With regard to the independence of adjudicative bodies, this refers to the structural or institutional framework in place that encourages impartial decision-making and supports public confidence in that fact.[56]

(a) Need for independence

[6.43] In *Zalewski,* the Supreme Court commented on the importance of independence, describing it as one of the "fundamental components of the capacity to administer justice".[57] The point was only touched on, but the Court nonetheless identified a "troubling" feature of the statutory scheme relating to the independence of adjudicators at the Workplace Relations Commission and noted

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[52] OECD, *Regulatory Reform in Ireland* (2001) at page 148 <https://read.oecd-ilibrary.org/governance/oecd-reviews-of-regulatory-reform-regulatory-reform-in-ireland-2001_9789264193352-en> accessed 14 November 2025.

[53] OECD, *Creating a Culture of Independence: Practical Guidance Against Undue Influence* (The Governance of Regulators 2017) at page 18. <https://www.oecd.org/en/publications/creating-a-culture-of-independence_9789264274198-en.html> accessed 14 November 202524. See also OECD, *Being an Independent Regulator* (The Governance of Regulators 2016). <https://www.oecd.org/en/publications/being-an-independent-regulator_9789264255401-en.html> accessed 14 November 2025.

[54] Council on Tribunals, *Tribunals: their organisation and independence* (The Stationery Office, 1997) at page 3.

[55] Council on Tribunals, *Tribunals: their organisation and independence* (The Stationery Office, 1997) at page 3.

[56] Genevra Richardson and Hazel Genn "Tribunals in Transition: resolution or adjudication?" [2007] Public Law 116 at pages 120 to 121.

[57] *Zalewski vs The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 42 at para 147.

that arrangements to secure independence could require "careful scrutiny" in future cases.[58] The Court stressed that adjudicators who are administering justice must have guarantees of independence approximating to those enjoyed by judges.

[6.44] The discussion that follows is directed to adjudicators administering justice, as the Commission does not believe that it is necessary, or possible, to legislate for that same level of independence of all adjudicators who act fairly. However, it considers that it may be possible to apply some of the following supports for independence to some formal adjudicative bodies, even if they are not considered to be administering justice.

(b) Independence and Article 6 ECHR

[6.45] Article 6(1) of the European Convention on Human Rights entitles individuals to a consideration of their case by an "independent and impartial tribunal". The European Court on Human Rights considers these two concepts to be closely connected and often considers both concepts together.[59]

[6.46] For a tribunal or decision-making body to be "independent", it must be independent both from other governmental powers (i.e. the executive and legislature),[60] and the parties involved in the dispute.[61] However, the Court has held that the fact that a decision-maker has been appointed, and may also be removed from this appointment, by the government, does not inherently result in a violation of Article 6(1).[62]

[6.47] When determining whether a tribunal is independent, in accordance with Article 6(1), the Court will consider the manner of the appointment of the members of the tribunal, the duration of their term of office, the existence of guarantees against outside pressure, and whether the tribunal presents an appearance of independence.[63]

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[58] *Zalewski vs The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421 at para 147.

[59] *Kleyn and Others v the Netherlands* App nos 39343/98, 39651/98, 43147/98, 46664/99 (ECtHR 6 May 2003) at para 192; *Sacilor-Lormines v France* App no 65411/01 (ECtHR 9 November 2006) at 62; *Oleksandr Volkov v Ukraine* App no 21722/11 (ECtHR 9 January 2013) at para 107.

[60] *Beaumartin v France* App no 15287/89 (ECtHR 24 November 1994) at para 38.

[61] *Sramek v Austria* App no 8790/79 (ECtHR 22 October 1984) at para 42.

[62] *Decision as to the Admissibility of Clarke v United Kingdom* App no 2369/02 (ECtHR 25 August 2005).

[63] *Langborger v Sweden* App no 11179/84 (ECtHR 22 June 1989) at para 32; *Kleyn and Others v the Netherlands* App nos 39343/98, 39651/98, 43147/98, 46664/99 (ECtHR 6 May 2003) at para 190.

[6.48] For a tribunal or decision-making body to be considered "impartial", there must be an absence of prejudice or bias.[64] Impartiality will be determined by applying a subjective test (i.e. whether the decision-maker held any personal prejudice or bias in a particular case), and an objective test (i.e. whether the tribunal or decision-making body itself had sufficient safeguards against impartiality in place).[65] However, it should be noted that there is no watertight distinction between these two tests. Applying the subjective test, the Court has held that the participation of lay judges in decision-making tribunals is not in itself contrary to Article 6(1), and that "the personal impartiality of a judge must be presumed until there is proof to the contrary".[66]

[6.49] According to Hogan, Morgan and Daly, many decisions in Ireland are not taken with sufficient independence and impartiality to achieve compliance with Article 6, which necessitates that there is rigorous oversight by an independent and impartial body.[67] In Ireland, this comes from the supervisory jurisdiction of the High Court. This has led to a greater willingness on the part of courts to judicially review for factual error.[68] Addressing the issue several decades ago, the Constitution Review Group concluded that it would not be feasible to ensure that bodies, other than courts, could be provided with a guarantee of court-like independence in the performance of their functions.[69]

[6.50] The Commission agrees in principle with this conclusion. However, there are multiple safeguards for independence that could be put in place without giving adjudicators in non-court bodies the same protections as judges. Therefore, the Commission's tentative view is that, for bodies required to act fairly (which in some situations would include bodies in the executive), the current law relating to bias and impartiality is an adequate safeguard for the independence of non-court bodies.

[6.51] As for bodies administering justice, the Commission is of the view that more rigorous protections are needed. The following discussion elaborates on some suggested rigorous protections.

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[64] *Wettstein v Switzerland* App no 33958/96 (ECtHR 21 December 2000) at para 43; *Micallef v Malta* App no 17056/06 (ECtHR 15 October 2009) at 93.

[65] *Micallef v Malta* App no 17056/06 (ECtHR 15 October 2009) at 93.

[66] *Le Compete, Van Leuven and De Meyere v Belgium* App nos 6878/75, 7238/75 (ECtHR 23 June 1981) at paras 57 to 58.

[67] Hogan, Morgan and Daly, *Administrative Law in Ireland* 5th ed (Roundhall, 2019) at para 10-113.

[68] Hogan, Morgan and Daly, *Administrative Law in Ireland* 5th ed (Roundhall, 2019) at para 10-113.

[69] Constitution Review Group, *Report of the Constitution Review Group* (1996) at page 155; Law Reform Commission, *Issues Paper on Regulatory Enforcement and Corporate Offences* (LRC IP 8–2016) at para 6.20.

(c) Independence of Members

[6.52] On an individual level, consistent with the common law adage of "(s)he who hears must decide", an adjudicator must, generally speaking, base decisions only on evidence and argument submitted by the parties. This adage has been developed and enforced by the courts as part of the principles relating to bias and impartiality. These principles are well settled and, though they occasionally give rise to difficulties in practice,[70] the Commission does not at this point see a need for statutory intervention in this regard.

[6.53] The statutes governing adjudicative bodies generally have a provision for independence included within them. For instance, the Workplace Relations Act 2015 states that adjudication officers shall be independent in the performance of their functions.[71]

[6.54] Many statutes go further and provide for the use of statutory declarations of impartiality. Members of the Tax Appeals Commission must make a statutory declaration promising to act impartially and honestly when they are first appointed.[72] With respect to the Residential Tenancies Board, mediators and adjudicators must disclose any potential conflict of interest, and parties may choose to ask the Board to select a different decision-maker.[73] Members of an Coimisiún Pleanála must make an annual statutory declaration disclosing whether they have certain property and business interests which could create a conflict with their role as decision-makers:[74] it is an offence for a decision-maker in an Coimisiún Pleanála to knowingly fail to disclose these interests.[75]

[6.55] In the Commission's view, these statutory requirements are valuable, and the Commission therefore suggests that all adjudicators should be required to make a statutory declaration of impartiality.

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[70] Hogan, Morgan and Daly, *Administrative Law in Ireland* 5th ed (Roundhall, 2019) at para 15-86.

[71] Section 40(8) of the Workplace Relations Act 2015.

[72] Section 12 and Schedule 1 of the Finance (Tax Appeals) Act 2015.

[73] Sections 101(1) and 101(2) of the Residential Tenancies Act 2004.

[74] Section 147 of the Planning and Development Act 2000.

[75] Section 147 of the Planning and Development Act 2000.

(d) Appointing adjudicators

[6.56] The process of appointing or removing adjudicators may be susceptible to political pressure, and therefore should be done in a transparent and accountable manner.[76] The use of open competition processes can reduce this risk:

> [m]anagerial autonomy and freedom from general rules regarding the hiring and remuneration of staff can attract skilled staff in core government bodies and also increase opportunities for corruption and patronage.[77]

[6.57] Legislation sometimes provides that the relevant Government Minister shall appoint decision-makers on the basis of competitions held by another body. For example, competitions may be held by the committee on Top Level Appointments in the Civil Service or the Commission for Public Appointments Service. Then the relevant Minister will appoint decision-makers in light of the recommendations made by these bodies. There is a statutory requirement that a competition should be held when appointing adjudication officers to the Workplace Relations Commission.[78] It may not be possible for the relevant Ministers to appoint all decision-makers without delegating certain recruitment tasks.

[6.58] The Commission's view is that independence regarding the means of appointment of adjudicators should be ensured. This could be achieved by vesting the powers of appointment and reappointment of staff in the management of administrative bodies with a view to strengthening the perception of independence. Alternatively, this task of appointment of adjudicators could be assigned to an independent body, such as the Commission for Public Appointments Service or some other designated body. This might alleviate the risk of a self-perpetuating cultural approach to appointments.

(e) Reappointing adjudicators

[6.59] Where appointments are for a term of years and renewable, the reappointment process becomes a pressure point, as an adjudicator who is desirous of being reappointed might seek to make decisions favourable to the holder of the reappointment power. Even an initial appointment can be a pressure point: if appointments are made based on a perception of how the adjudicator is

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[76] OECD, *Creating a Culture of Independence: Practical Guidance Against Undue Influence* (The Governance of Regulators 2017) at pages 20 to 21 <https://www.oecd.org/en/publications/creating-a-culture-of-independence_9789264274198-en.html> accessed 17 November 2025.

[77] OECD and Sigma, *Drafting a Concept Paper on the Organisational Structure of the Executive's Public Administration* (June 2008) at page 10.

[78] Section 40(2) of the Workplace Relations Act 2015.

expected to decide cases, this too might influence public perception of how cases are decided. When the same person holds the appointment and reappointment power, there is a heightened risk that an adjudicator will not apply the law dispassionately.

[6.60] Adjudicators may be eligible to reapply to be reappointed after their term ends. Reappointment processes should also be conducted independently and be robust. Continuous internal review, pursuant to codes of conduct setting standards, can achieve an objective guarantee that reappointments will be made on merit.[79]

[6.61] In the Commission's view, an administrative justice council could potentially be tasked with the functions of ensuring independent and robust reappointment processes.[80]

(f) Panelling/rostering of adjudicators

[6.62] It is also worth considering the prospect of establishing rosters or panels of adjudicators. For example, decision-makers in the Mental Health Tribunal are appointed from rotating panels of decision-makers rather than being a fixed-term, permanent board. Appointments to these panels are made every three years by the Mental Health Commission. Rotating panels of decision-makers may encourage quality decision-making and may suit decision-makers who want flexibility to pursue a career in their area of expertise as well as being decision-makers in non-court adjudicative bodies. Fixed-term panels of decision-makers may be perceived as more independent because they are not subject to reappointment. Whether a fixed or rotating panel of decision-makers is appropriate may vary depending on the following factors:

(a) whether the independence of decision-makers and quality of decision-making is better served by a rotating or fixed panel of decision-makers, in light of the unique function and subject matter in question,

(b) the experience gained by hearing more applications,

[79] OECD, *Creating a Culture of Independence: Practical Guidance Against Undue Influence* (The Governance of Regulators 2017) at pages 29, 30 and 31. <https://www.oecd.org/en/publications/creating-a-culture-of-independence_9789264274198-en.html> accessed 24 October 2024.

[80] See the Chapter on Responding to the Problem, under the heading "Establishing an Administrative Justice Council in Ireland" for a discussion of an administrative justice council's role in this context.

(c) the likelihood of an applicant who makes multiple applications appearing before a different or the same decision-maker,

(d) the need to train or discuss issues with decision-makers if similar issues arise repeatedly, and

(e) in bodies with more than one decision-maker, the changing dynamics of having multiple decision-makers, who may not have worked together before, making decisions together.

[6.63] The interplay of these factors in a particular adjudicative setting is best assessed by those involved. The Commission envisages that an administrative justice council could have the power to create and manage rosters of qualified adjudicators who could be assigned as necessary to different bodies. Alternatively, the relevant Minister could be granted this power.

(g) Removal of adjudicators

[6.64] It is necessary to consider who, if anyone, should have the power to remove adjudicators and on what grounds. Security of tenure can be protected by providing for a life appointment, or an appointment for a term of years, subject to good behaviour and appropriate training. Short of these safeguards, an adjudicator might feel pressure to reach decisions favourable to the holder of the removal power.

[6.65] As the majority of the Supreme Court noted in *Zalewski*, an "unqualified power of revocation of appointment" is "troubling".[81] The Oireachtas took heed of this warning and amended the Workplace Relations Act 2015 to provide that an appointment can only be revoked on specified grounds. The Government may revoke an appointment of an adjudication officer of the Workplace Relations Commission on the following grounds:

(i) [The member] has become incapable through ill-health of performing his or her functions;

(ii) has engaged in serious misconduct;

(iii) has failed without reasonable cause, in the opinion of the Government, to perform his or her functions for a continuous period of at least 3 months beginning not

[81] *Zalewski vs The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421.

earlier than 6 months before the date of the giving of the notice under paragraph (c);

(iv) has contravened to a material extent a provision of the Ethics in Public Office Acts 1995 and 2001 that, by virtue of a regulation under section 3 of the Ethics in Public Office Act 1995, applies to him or her.[82]

[6.66] In other statutes, however, the power of removal is stated in relatively unqualified terms. In respect of the International Protection Appeals Tribunal, for example, section 62(13) of the International Protection Act 2015 states that "[a] member of the Tribunal may be removed from office by the Minister for stated reasons". Good reasons for removal may include bankruptcy, undisclosed conflicts of interest, unapproved absences from work, or unjustified refusals to accept cases.[83] To provide another example, the Minister for Justice and Equality may remove a member of the Legal Aid Board if the Minister views this member as being incapacitated through ill-health, for stated misbehaviour or if it is necessary for the Board to function.[84] In the Residential Tenancies Board, the Minister for Justice or the Board itself may remove a decision-maker.[85]

[6.67] The Commission sees the grounds for the removal of an adjudicator within the Workplace Relations Act 2015 as a helpful model provision. However, the Commission would be concerned about the general application of such removal grounds to all non-court adjudicative bodies, as there are significant legal and constitutional differences between bodies administering justice and other non-court adjudicative bodies. Therefore, the Commission invites views on whether the application of these removal grounds should be for all, or select, non-court adjudicative bodies.

(h) Financial security

[6.68] Financial security relates to the ability of an external party to lower or to raise the salary of an adjudicator, or to credibly threaten to do so. Adjudicators can be appointed to full-time or part-time positions. Where they are appointed to full-time positions, they will receive a salary. Where the position in question is a part-time position, the adjudicator will generally be paid either on a daily rate or for

[82] Section 40(7) of the Workplace Relations Act 2015, as substituted by sections 3(b)(i)-(iii), (c)(i), (ii), (d) of the Workplace Relations (Miscellaneous Provisions) Act 2021.

[83] Cane, *Administrative Tribunals and Adjudication* (London: Hart Publishing 2009) at pages 101 and 102.

[84] Sections 4(4)(e) and 4(5)(a) of the Civil Legal Aid Act 1995.

[85] Sections 154(2) and 158(2) and of the Residential Tenancies Act 2004.

each individual case. Evidently, the salary or daily/per case payment must come out of funds appropriated for that purpose.

[6.69] Most statutes provide that terms and conditions for adjudicators shall be established by the responsible minister with the consent of the Minister for Public Expenditure and Reform. This is the case for tribunal members of the International Protection Appeals Tribunal[86] and the Social Welfare Appeals Tribunal.[87]

[6.70] The Commission believes that it is important to ensure that the terms and conditions of appointment of adjudicators include a measure of financial security and independence. The Commission is also of the view that they would apply with equal force to full-time and part-time work, although the level of remuneration would vary according to the function being exercised. It could also be possible to give an administrative justice council an oversight role in relation to the measures aimed at ensuring financial independence.

[6.71] The Commission invites suggestions about appropriate and effective mechanisms which could be introduced to ensure financial security and independence for adjudicators.

(i) Case assignment

[6.72] The power to assign cases to an adjudicator can also be a pressure point. This power is vested in an officer of an adjudicative body. Some statutes create the position of a registrar to manage the administration and business of the tribunal. The registrars of the International Protection Appeals Tribunal and the Legal Practitioners Disciplinary Tribunal have the ability to assign cases to adjudicators.[88]

[6.73] Other statutes grant the power of assignment to the chairperson of the tribunal, or equivalent officer.[89] For example, the Director General of the Workplace Relations Commission manages the administration and business of the Workplace Relations Commission generally[90] and has the power to refer complaints for adjudication to adjudication officers.[91]

[6.74] Other statutes take the approach of authorising a specific staff member with the power of assignment. For instance, in relation to the investigation of compliance

[86] Section 61(4) of the International Protection Act 2015.

[87] Section 333(9) of the Social Welfare Consolidation Act 2005.

[88] Section 67(2) of the International Protection Act 2015 and regulation 3(4) of the Legal Practitioners Disciplinary Tribunal Regulations 2021 (SI No 786 of 2021).

[89] Section 38 of the Valuation (Amendment) Act 2001.

[90] Section 14(1) of the Workplace Relations Act 2015.

[91] Section 41(4) of the Workplace Relations Act 2015.

with online safety codes, Coimisiún na Meán has the authority to empower any Commissioner or staff member to direct an authorised officer to investigate any suspected contraventions.[92] This power is not exercisable by the Government or by the Oireachtas and so does not give rise to concerns about political interference in the adjudicative process. Nonetheless, the Commission considers that it may be appropriate to guard against the risk that a chair will exercise their power of assignment so as to direct cases to a particular adjudicator.[93]

[6.75] At the same time, the Commission is conscious of the fact that the manager of a body exercising adjudicative functions will typically be the person who is best placed to assess the capacities and competencies of adjudicators and to distribute workload in the most effective and efficient way possible. Therefore, the Commission seeks consultees' views on the assignment of cases to adjudicators.

[6.76] It may be appropriate to provide that the administrative justice council should exercise an oversight role in relation to assignment disputes that arise between adjudicators and managers. The Commission also seeks consultees' views on this matter.

(j) Post-service restrictions

[6.77] A potential pressure point also exists in relation to post-service restrictions. An adjudicator coming to the end of their time in office may feel the need - or, again, be reasonably perceived as feeling the need- to curry favour with potential future employers.

[6.78] There is currently no provision in Irish law, as far as the Commission is aware, for the imposition of post-service restrictions on adjudicators to ensure that they are not tempted to make decisions that will make them attractive to potential future employers. The Commission invites views on whether provision should be made for such restrictions and how such restrictions might look in practice.

6. Independence of Adjudicative Bodies

[6.79] On an institutional level, objective guarantees of independence protect adjudicators from external influence. The independence of a decision-making institution in this sense relates to its ability and that of its members to apply law dispassionately to the facts as found, without actual or perceived external influence.

[92] Section 47(139ZI)(1) of the Online Safety and Media Regulation Act 2022.

[93] See also *Shuttleworth v Ontario (Safety, Licensing Appeals and Standards Tribunals)* 2019 ONCA 518.

[6.80] It is important to note that the guarantees against the exertion of pressure must be meaningful. Often, the parent legislation of a body exercising adjudicative functions will include an explicit statutory obligation for the relevant body to act independently. However, the Supreme Court expressed scepticism about the utility of such provisions in *Zalewski*:[94]

> Section 40(8) does contain a guarantee that an adjudication officer "shall be independent in the performance of his or her functions". However, the Act does not reconcile this with the power under the preceding subsection which gives to the Minister unqualified power of revocation of appointment. This is troubling, particularly as it is likely that the adjudication officers will be civil servants in the Minister's department with other responsibilities where they will routinely be required to accept direction.[95]

[6.81] The experience in the Canadian province of Ontario is instructive in this context. The Adjudicative Tribunals Accountability, Governance and Appointments Act[96] provides for a competitive, merit-based appointment process, including the development of criteria relating to subject-matter expertise and aptitude for adjudication. The responsible minister must, in addition, publish the criteria for this process.[97] However, the quality of tribunal appointments in Ontario has been subject to criticism, with the relative open-endedness of the statutory appointment criteria a particular target of critics: a vast pool of candidates will be capable of meeting these vague criteria, giving the provincial government a relatively free hand in making appointments.[98] In addition, the statutory criteria apply only to appointment, not to reappointment, and there is no statutorily-mandated term of appointment (such that a member can be appointed for a very short period of time).

[6.82] The Commission's view is that objective guarantees of independence must go beyond generic statutory statements. The recently commenced legislation in Australia is a helpful model in this regard. The Administrative Review Tribunal Act

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[94] *Zalewski v The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421.

[95] *Zalewski vs The Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] 1 IR 421 at para 148 on pages 511 to 512.

[96] Section 14(1) of the Adjudicative Tribunals Accountability, Governance and Appointments Act 2009, SO 2009, c 33, Sch 5 (Ontario). See also section 2 of the Administrative Tribunals Act, SBC 2004, c 45 (British Columbia).

[97] Section 14(3) of the Adjudicative Tribunals Accountability, Governance and Appointments Act 2009, SO 2009, c 33, Sch 5 (Ontario).

[98] Tribunal Watch Ontario, "Statement of Concern about Tribunals Ontario" (14 May 2020) <https://tribunalwatch.ca/wp-content/uploads/2020/05/statement-of-concern-may-14.pdf> accessed 17 November 2025 .

2024, introduces a transparent and merit-based selection process for tribunal members to ensure independence and high-quality decision-making.[99] The President of the tribunal has the ability to direct members,[100] investigate conduct of members,[101] and temporarily restrict a member's duties if there is a concern about performance or conduct.[102] The Governor-general can terminate a member's appointment for serious breaches of the code of conduct, performance standard, serious misconduct, or conviction of an indictable offence.[103]

[6.83] In that regard, there are several 'pressure points' to be aware of: security of tenure, financial security and administrative autonomy. Adjudicators may feel – or may reasonably be perceived by the public as feeling – a need to conform to the expectations of third parties who can apply pressure to these points.[104] Most often, the third party in question is the government, which may be able to remove adjudicators (or fail to reappoint them), raise or lower salaries, and increase or decrease the autonomy of a body exercising adjudicative functions. Similarly, the Oireachtas is also in a position to exert pressure by virtue of its ability to pass legislation. At each of these points, adjudicators might make decisions favourable to those who can exert pressure for fear of provoking an adverse reaction or in the hope of provoking a positive reaction.

[6.84] Another related issue under this broad heading is that of reporting requirements. This includes the extent to which adjudicative bodies must account for how they spend the money allocated to them. Reporting requirements have implications for independence. Their frequency and whether audits will be internal or external are all important factors to consider.[105]

(a) Administrative autonomy

[6.85] Administrative autonomy relates to access to the resources necessary for the institution to function effectively. Funding must be provided for the provision of hearing rooms, support staff, technology, and computer equipment and much more. However, funding is invariably provided by Government from

[99] Sections 205, 207, 208 and 227 of the Administrative Review Tribunal Act 2024 (No. 40, 2024) (Australia).

[100] Section 200 of the Administrative Review Tribunal Act 2024 (No. 40, 2024) (Australia).

[101] Section 203 of the Administrative Review Tribunal Act 2024 (No. 40, 2024) (Australia).

[102] Section 203(3) of the Administrative Review Tribunal Act 2024 (No. 40, 2024) (Australia).

[103] Section 221 of the Administrative Review Tribunal Act 2024 (No. 40, 2024) (Australia).

[104] OECD, *OECD Regulatory Policy Outlook 2018* (2018) at page 113 <https://www.oecd.org/en/publications/2018/10/oecd-regulatory-policy-outlook-2018_g1g90cb3.html> accessed 17 November 2025.

[105] Reporting requirements are discussed in more detail in this Chapter under the heading "Independence 'Pressure Points': Reporting Requirements".

appropriations made by Dáil Éireann. This raises the prospect of potential interference, either by promising more resources to pliant adjudicators or cutting off the supply to adjudicators who displease their funders. Therefore, this is a pressure point. Matters such as resourcing requirements and staff turnover are beyond the Commission's remit. However, as discussed below, an administrative justice council could have a role in resource management support.

(b) Reporting requirements

[6.86] It is self-evident that any body in receipt of public funding should give an account of how the public funding is used. However, accountability can have implications for independence: for example, the frequency of internal and external audits could impact how an adjudicator uses its resources.[106]

[6.87] Generally speaking, adjudicative bodies have a statutory obligation to submit an annual report to the Government. The Civil Legal Aid Board,[107] an Coimisiún Pleanála,[108] the Social Welfare Tribunal,[109] the Tax Appeals Commission,[110] the Residential Tenancies Board,[111] the International Protection Appeals Tribunal,[112] and the Workplace Relations Commission[113] are all under an obligation to make a report to the relevant Minister of their activities of the previous year. These reports inform governmental planning and budgeting.[114]

[6.88] The Commission supports a culture of accountability for the use of public funds and carefully balanced mechanisms for ensuring that public money is spent effectively and efficiently. Therefore, the Commission invites views on imposing reporting requirements on adjudicative bodies.

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[106] OECD, *Creating a Culture of Independence: Practical Guidance Against Undue Influence* (The Governance of Regulators 2017) at pages 27 and 28. <https://www.oecd.org/en/publications/creating-a-culture-of-independence_9789264274198-en.html> accessed 24 October 2024.

[107] Section 9 of the Civil Legal Aid Act 1995.

[108] Section 118 of the Planning and Development Act 2000.

[109] Section 308 of the Social Welfare Consolidation Act 2000.

[110] Section 21 of the Finance (Tax Appeals) Act 2015.

[111] Section 180 of the Residential Tenancies Act 2004.

[112] Section 63(8) of the International Protection Appeals Act 2015.

[113] Section 23 of the Workplace Relations Act 2015.

[114] The OECD notes that scrutiny of the quality of legislation receives less attention than government scrutiny of budgets. OECD, OECD Regulatory Policy Outlook 2018 (2018) at page 24.

7. Clustering and Shared Services

[6.89] In addition to maintaining the competence and ensuring the independence of members of adjudicative bodies, the use of clusters and/or shared services between adjudicative bodies should be considered in the context of the composition of adjudicative bodies.

[6.90] The administrative justice system, as it presently stands, has been described as "an *ad hoc* assortment of isolated institutions", as opposed to "a coherent system of justice".[115] The use of either clustering and/or shared services could help to create consistency as well as promote efficiency among adjudicative bodies. Moreover, this newfound consistency and efficiency could result in an improvement in access to justice for users of the administrative justice system.

(a) Clustering

[6.91] A clustering model brings together a specific group of adjudicative bodies within a single organisation, while maintaining each body's statutory jurisdiction and membership. This model follows a trend of amalgamation, or providing a more coordinated framework in a number of jurisdictions, such as Australia, New Zealand, the United Kingdom and Canada.[116]

[6.92] One anticipated benefit of a clustering model includes subject matter effectiveness. Improved subject matter effectiveness can be achieved by clustering adjudicative bodies by their substantive subject areas or by the nature of the parties that encounter particular adjudicative bodies. This would help these adjudicative bodies to develop initiatives to meet user needs, as well as improving processes and adjudicator skills. Adjudicators would also have opportunities to share knowledge and enrich their expertise.[117]

[6.93] Another benefit of this method of reform is that there is no rigid template of a cluster to be applied and different levels of connectedness could be considered. For instance, one cluster could consist of bodies which deal with a similar subject matter, while another cluster could consist of a number of bodies which share

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[115] Sossin and Baxter, "Ontario's Administrative Tribunal Clusters: A Glass Half-full or Half-empty for Administrative Justice?" (2012) 12 Oxford University Commonwealth Law Journal 157 at page 160.

[116] Gottheil and Ewart, "Lessons from ELTO: The Potential of Ontario's Clustering Model to Advance Administrative Justice" (2011) 24 Canadian Journal of Administrative Law & Practice 161; Sossin and Baxter, "Ontario's Administrative Tribunal Clusters: A Glass Half-Full or Half-Empty for Administrative Justice?" (2012) 12 Oxford University Commonwealth Law Journal 157.

[117] Gottheil, "Clustering in Ontario: The DIY Tribunal" (2012) The Architecture of Justice in Transition at page 207 <https://ciaj-icaj.ca/wp-content/uploads/documents/import/2012/832.pdf?id=888&1733497307> accessed 6 December 2024.

similar membership and/or procedures. Additionally, clusters could be formed based on the types of disputes they consider – individual-State disputes or *inter partes* disputes.

[6.94] This reform can be practically applied in a number of ways. For example, the adjudicative bodies being clustered together could relocate to occupy the same physical location. Another method could be the creation of an organisational structure where leadership, administrative staff and members could be shared among the bodies within the cluster.[118]

(b) Clustering in Other Jurisdictions

[6.95] To take the unique approach of Ontario, the guiding principle of the Adjudicative Tribunals Accountability, Governance and Appointments Act 2009[119] is "clustering".[120] The "broad goal of clustering" is stated to be the improvement of "the quality of services offered to the public by sharing resources, expertise and administrative and professional support". [121] The goal of the Act was to "capture intersections in tribunals' logistical, procedural, and substantive adjudicatory features and to reinforce links between constituencies of tribunal users".[122]

[6.96] Under this legislation, the provincial cabinet is empowered to group administrative tribunals together where "the matters that the tribunals deal with are such that they can operate more effectively and efficiently as part of a cluster than alone".[123] The idea was to promote "flexibility and dynamism, with clusters afforded the freedom to develop their own organizational cultures and institutional mandates tailored to the particular needs, demands and capacities of the tribunals' users groups and memberships".[124] It has been argued that this

[118] Sossin and Baxter, "Ontario's Administrative Tribunal Clusters: A Glass Half-full or Half-empty for Administrative Justice?" (2012) 12 Oxford University Commonwealth Law Journal 157.

[119] Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009 (Ontario).

[120] The British Columbia legislation also provides for clustering though it seems that no administrative tribunals in the province have been clustered as yet. See section 10.1 of the Administrative Tribunals Act.

[121] Whitaker, *Final Report of the Agency Cluster Facilitator for the Municipal, Environment and Land Planning Tribunals* (2007).

[122] Sossin and Baxter, "Ontario's Administrative Tribunal Clusters: A Glass Half-full or Half-empty for Administrative Justice?" (2012) 12 Oxford University Commonwealth Law Journal 157.

[123] Section 15 of the Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009.

[124] Sossin and Baxter, "Ontario's Administrative Tribunal Clusters: A Glass Half-full or Half-empty for Administrative Justice?" (2012) 12 Oxford University Commonwealth Law Journal 157.

concept presents "an effective, user-focused strategy" which aims to address the fragmented nature of administrative justice systems.[125]

[6.97] Synergies were expected to emerge across administrative tribunals with similar subject-matter expertise, improving "the quality of services offered to the public by sharing resources, expertise and administrative and professional support".[126] All bodies within the cluster are required to create public accountability documents and governance accountability documents, in collaboration with one another.[127]

[6.98] Under this model, the benefits of a super tribunal would be generated, but in a more flexible framework. Initially, several clusters were created – Environment and Land Tribunals Ontario, Social Justice Tribunals Ontario and Safety License Appeals and Standards Tribunal Ontario. Environment and Land Tribunals Ontario consisted of five tribunals that share similar subject matter expertise - environment and land use. Clustering based on this could lead to improvements in the quality and consistency of decision-making.[128]

[6.99] Social Justice Tribunals Ontario consisted of six tribunals with similar functions. This cluster sought to create a 'single door' for individuals by covering a broad range of issues relating to social injustice. These include discrimination, mental and physical disabilities and economic disadvantages.[129]

[6.100] However, Ontario's tribunal structure was beset by delays, allegations of sub-par decision-making and concerns about patronage.[130] The Commission notes that these issues are perhaps not attributable to the clustering principle, but equally, the clustering principle did not prevent them. Consequently, there remains only one large cluster known as Tribunals Ontario.[131] This cluster encompasses a much

[125] Sossin and Baxter, "Ontario's Administrative Tribunal Clusters: A Glass Half-full or Half-empty for Administrative Justice?" (2012) 12 Oxford University Commonwealth Law Journal 157.

[126] Whitaker, *Final Report of the Agency Cluster Facilitator for the Municipal, Environment and Land Planning Tribunals* (2007).

[127] Section 18(1) of the Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009.

[128] Sossin and Baxter, "Ontario's Administrative Tribunal Clusters: A Glass Half-full or Half-empty for Administrative Justice?" (2012) 12 Oxford University Commonwealth Law Journal 157.

[129] Sossin and Baxter, "Ontario's Administrative Tribunal Clusters: A Glass Half-full or Half-empty for Administrative Justice?" (2012) 12 Oxford University Commonwealth Law Journal 157 at page 174.

[130] Editorial, "Editorial: Under Doug Ford, Ontario's tribunals are under severe attack" *Toronto Star* (21 March 2024).

[131] Ontario Regulation 126/10: Adjudicative Tribunals and Clusters.

wider range of bodies than the earlier clusters. Some of the bodies included are the Animal Care Review Board, the Fire Safety Commission, the Human Rights Tribunal of Ontario and the Ontario Parole Board.[132]

(c) Clustering in Ireland

[6.101] An example of 'clustering' which already operates in this jurisdiction is that of CORU, Ireland's multi-profession health and social care regulator. CORU was established under the Health and Social Care Professionals Act 2005 and consists of the Health and Social Care Professionals Council and various Registration Boards. The registration boards included are those for Clinical Biochemists, Dietitians, Medical Scientists, Occupational Therapists, Optical, Orthoptists, Physiotherapists, Podiatrists, Psychologists, Radiographers, Social Care Workers, Social Workers, and Speech and Language Therapists.[133]

[6.102] CORU is responsible for providing a Code of Professional Conduct and Ethics for these professionals, requiring that registered professionals undertake continuing professional development, publishing a register of names and investigating when a complaint is made about registered professionals.[134]

[6.103] The Commission sees clustering as an attractive alternative to the creation of a super tribunal, as the creation of a super tribunal would create constitutional issues in this jurisdiction. Clustering would have to be provided for in legislation, for instance, as part of a framework statute. The relevant Minister could then be granted the power to designate bodies to clusters. This process could be enhanced by consultation with an administrative justice council, which could recommend bodies for clusters and recommend the creation of new clusters.

[6.104] However, the Commission notes the wide variety of adjudicative bodies that exist in this jurisdiction. Therefore, it seeks views on whether this reform would work in practice, and if so, what adjudicative bodies may suitably be clustered and how?

8. Shared Services

[6.105] In order to create an efficient administrative justice system, available resources must be put to the best use. This could be achieved by sharing these resources or services among multiple adjudicative bodies, instead of allocating resources per

[132] Regulation 2 of the Ontario Regulation 126/10: Adjudicative Tribunals and Clusters.

[133] Section 26 of the Health and Social Care Professionals Act 2005 as inserted by section 12(a) of the Health (Miscellaneous Provisions) Act 2014.

[134] CORU, "What is CORU?" <https://coru.ie/about-us/what-is-coru/> accessed 19 November 2025.

adjudicative body. Such a reform could result in greater efficiency among adjudicative bodies and reduce waiting times for users.

(a) Shared Services in Other Jurisdictions

[6.106] At the federal level in Canada, there is a statutory umbrella organisation known as the Administrative Tribunals Support Service of Canada. The statute creating the organisation is skeletal but nonetheless clearly expresses its purpose as the "provision of the support services and the facilities that are needed by each of the [specified] administrative tribunals to exercise its powers and perform its duties and functions in accordance with the rules that apply to its work".[135] The Administrative Tribunals Support Service of Canada does not have any operational control over tribunals – "the chairperson of an administrative tribunal continues to have supervision over and direction of the work of the tribunal"[136] – but the Administrative Tribunals Support Service of Canada provides logistical support, such as web servers, secretarial services, teleconferencing facilities, legal analysis and review of draft decisions.[137]

(b) Shared Services in Ireland

[6.107] There is already a precedent for a similar arrangement in this jurisdiction in the form of the National Shared Services Office Act 2017, which may be given the authority to procure shared services and provide them to a list of specified public bodies. This Act provides for the establishment of the National Shared Services Office, the transfer of certain functions of the Minister for Public Expenditure and Reform to that Office, and the delegation to it of certain functions of public service bodies relating to those services.[138]

[6.108] While it may not be necessary to have statutory authority for an umbrella organisation of this nature in this jurisdiction, the Administrative Tribunals Support Service of Canada plays a coordinating and resourcing role and does not seek to control the day-to-day operations of administrative tribunals. British Columbia's equivalent is an agency within the Ministry of the Attorney General,

[135] Section 10 of the Administrative Tribunals Support Service of Canada Act.

[136] Section 14 of Administrative Tribunals Support Service of Canada Act.

[137] The Administrative Tribunals Support Service of Canada, *2022–2023 Departmental Results Report* (2023). *Departmental Results Report 2022-2023* (Ottawa, 2023) at page 23 lists the following areas: acquisition management services; communication services; financial management services; human resources management services; information management services; information technology services; legal services; material management services; management and oversight services; and real property management services.

[138] The National Shared Services Office Act 2017.

which provides an example of a relatively straightforward and inexpensive process to establish such a structure.

[6.109] The Commission notes that the office of the Ombudsman[139] encompasses six independent statutory offices: the Information Commissioner,[140] the Commissioner for Environmental Information,[141] the Standards in Public Office Commission,[142] the Commission for Public Service Appointments,[143] and the Protected Disclosures Commissioner.[144] These offices are all funded through a single vote and accountable to the Dáil through a single accounting officer, the Director General. The Commissions have one officeholder in common - the Ombudsman. Each statutory office has its own staff complement, but finance, human resources, legal services, communications, and IT functions are shared with the other statutory offices. These statutory bodies have a wide range of functions and exercise a wide range of adjudicative powers. All six are inquisitorial in nature. They are responsible for gathering and examining evidence in order to make a determination on that evidence such as whether a matter warrants further investigation, a hearing, or whether the relevant statutory scheme is satisfied. All of the bodies determine their own procedures and, with the exception of SIPOC investigatory hearings, the bodies make final decisions on the papers without the need for oral evidence. While the subject matter for each body varies, they share a common aim of ensuring transparency and accountability.

[6.110] The Commission sees merit in the creation of a shared services model. Services and resources such as IT systems, case management, training and knowledge sharing could be facilitated under such a model, with this potentially resulting in improved and consistent decision-making. Members with specialised skills, such as legally trained individuals, could share their skills with a number of bodies, as opposed to being a member of just one body. Administrative or support staff could be allocated to a number of bodies in order to facilitate case management and communications with individuals interacting with adjudicative bodies.

[6.111] The Commission tentatively suggests that the National Shared Services Office Act 2017 could be a useful template for the administrative justice council, with such a provision possibly being included in the framework statute. Moreover, the

[139] See the Ombudsman Act 1980.

[140] See the Freedom of Information Act 2014.

[141] See the European Communities (Access to Information on the Environment) Regulations 2007 - 2018.

[142] See the Electoral Act 1997, the Ethics in Public Office Act 1995, the Standards in Public Office Act 2001, the Regulation of Lobbying Act 2015, and the Ministerial and Parliamentary Officers Act 1938.

[143] See the Public Service Management (Recruitment and Appointments) Act 2004.

[144] See the Protect Disclosures (Amendment) Act 2022.

Commission invites views on what services could be appropriately shared among adjudicative bodies.

9. Composition under an Administrative Justice Council

[6.112] The Commission is of the view that an administrative justice council could have a role to play in maintaining the competence and ensuring the independence of members of adjudicative bodies. This includes oversight of appointments and reappointments, provision of training, oversight of complaints and disciplinary systems and responsibility for the functioning of independence safeguards.

(a) Maintaining Competence

(i) *Appointments and Reappointments*

[6.113] The Commission notes that many public service appointments are already made by an arm's length body, namely the Commission for Public Appointments Service. However, the Commission is of the view that an administrative justice council may have a role in the area of appointments.

[6.114] In particular, an administrative justice council could be tasked with creating a set of objective performance criteria against which adjudicators' performance would be assessed. The Council could, on the basis of these criteria, advise about the appointment or reappointment of an adjudicator.

[6.115] As far as the 'rostering' of adjudicators is concerned,[145] a Council could also have a role to play. The Council could have a statutory responsibility to maintain a roster of qualified adjudicators and, on request by the chair of a body exercising adjudicative functions, could have the power to assign an adjudicator to the body for a specified period of time.

(ii) *Training*

[6.116] Part of any shared services model should include the provision of training. An administrative justice council may be in a position to identify international best practice in the training of adjudicators and offer appropriate training modules. Again, the experience of common best practices could be shared and kept up-to-date. General training could be offered on matters such as managing proceedings, with specific training offered in respect of the specialist subject matter being addressed by adjudicators. The aim of standardising such training would be to improve decision-making processes at first instance, thereby reducing the number of unhappy applicants and the number of appeals.

[145] The concept of 'rostering' adjudicators is discussed in greater detail earlier in this Chapter under the heading "Appointment".

[6.117] The Commission anticipates that training currently offered by bodies exercising adjudicative functions could, going forward, be offered through an administrative justice council.

(b) Complaints and Discipline

[6.118] The Commission's tentative preference is to bring the complaints procedure for all non-court adjudicative functions under the umbrella of one body, namely an administrative justice council. Adjudicative functions could be vested in an administrative justice council, which could be modelled on disciplinary procedures in existing legislation. The Council could also be tasked, like its equivalent in Québec, with the creation and management of a code of conduct. This would ensure, on the one hand, a robust, independent system of complaint handling to increase public confidence in adjudication in Ireland and, on the other hand, fair treatment for adjudicators against whom complaints are made and perhaps, insofar as disciplinary measures are required.

[6.119] Beyond this, there may well be complaints in relation to matters that would not justify the imposition of disciplinary sanctions. Indeed, as noted above, many bodies exercising adjudicative functions already provide for complaints about handling procedures. Some complaints can be resolved simply by an apology or reassuring users that mistakes will not be repeated.[146] Adjudicators may seek to deal with complaints made to them by offering to quash the initial decision, having a new decision-maker rehear the dispute, and paying the costs to the complainant.[147]

[6.120] The Office of the Ombudsman has suggested that when public bodies offer an apology or explanation for wrong decisions or delay, they should include the reasons why the public body got it wrong, an apology for any hurt, inconvenience or hardship caused, an acceptance of responsibility for the fault which has occurred, an undertaking to make good any loss which may have resulted, and an acceptance that, where time limits apply, any undue delay on the part of the public body will be discounted where possible.[148]

[6.121] These appear to be valuable guidelines that bodies exercising adjudicative functions could abide by. The Commission does not have a strong view on whether an administrative justice council should have an oversight role in relation

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[146] Hodges, *Delivering Dispute Resolution: Recent review on the resolution of disputes in England and Wales* (The Foundation for Law, Justice and Society, 2019) at page 11. House of Commons Committee of Public Accounts, *Managing the costs of clinical negligence in trusts* (HC 305) (7 September 2017).

[147] *Zalewski v Adjudication Officer* (costs) [2018] IEHC 59 at para 15.

[148] Office of the Ombudsman, "Getting it Wrong and Putting It Right" at page 1 <https://assets.ombudsman.ie/media/285099/eae88f54-8e72-4860-8594-ca33deaf1464.pdf> accessed 19 November 2025.

to complaints about matters that do not justify disciplinary action against adjudicators. On the one hand, the Ombudsman is already well-equipped to deal with such matters. On the other hand, an administrative justice council could, by virtue of its close operational links to the bodies in question, play an effective mediative role.

(c) Ensuring Independence

[6.122] An administrative justice council could primarily have responsibility for ensuring that the independence safeguards described in this Consultation Paper function effectively.[149] It could have an oversight role in appointments and reappointments, fixing remuneration, and ensuring adjudicators have adequate budgets to perform their functions.

[6.123] The Council could set out and monitor expectations in relation to the hiring of competent members and compliance with performance standards. Removal of under-performing adjudicators could also be dealt with by the Council, subject to an appropriately rigorous and robust discipline process. In addition, the Council could function as a buffer between individual bodies and the Oireachtas or executive, providing professional audit services to ensure value for money.

(d) Shared Services under an Administrative Justice Council

[6.124] The Commission is of the view that an administrative justice council could also usefully provide shared services to bodies exercising adjudicative functions. At present, these bodies have their own registry services, IT support, legal counsel, and training services.

[6.125] Difficulties in this regard have been noted. For example, in 2016, during the proceedings of the Select Committee on Finance, Public Expenditure and Reform, and Taoiseach debate, it appeared that the Tax Appeals Commission did not have telephones capable of making or receiving phone calls, and there were calls for this body to have an updated IT system.[150]

[6.126] The Commission sees the potential for significant, cost-neutral benefits for individuals and adjudicators from moving to a shared services model under the

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[149] See the Chapter on Composition of Adjudicative Bodies, under the heading "Independence".

[150] Select Committee on Finance, Public Expenditure and Reform, and Taoiseach, Debate 30 Jun 2016 <https://www.oireachtas.ie/en/debates/debate/select_committee_on_finance_public_expenditure_and_reform_and_taoiseach/2016-06-30/6/?highlight%5B0%5D=tax&highlight%5B1%5D=appeals&highlight%5B2%5D=commission&highlight%5B3%5D=tax&highlight%5B4%5D=appeals&highlight%5B5%5D=commission&highlight%5B6%5D=appeals&highlight%5B7%5D=commission&highlight%5B8%5D=appeals&highlight%5B9%5D=tax&highlight%5B10%5D=appeals&highlight%5B11%5D=appeals&highlight%5B12%5D=commission> accessed 19 November 2025.

umbrella of a single body, such as an administrative justice council. The Council could have the resources to create individual-facing websites in both official languages, which would enhance accessibility. It could also be able to pool existing legal expertise so that adjudicators can obtain rapid and effective advice on difficult issues. In relation to recruitment, retention and training, the Council could function as a gold-standard hub, capable of providing advice to all adjudicative bodies on how to optimise their performance.

[6.127] The Commission provisionally considers that the shared services model in place federally in Canada, as discussed in this Consultation Paper,[151] could be replicated in this jurisdiction.

(i) *Coordination and Knowledge Management*

[6.128] An administrative justice council could serve a coordinating function. It is understood that a forum of several decision-making bodies (including the International Protection Appeals Tribunal, the Mental Health Tribunal, the Workplace Relations Commission, and the Residential Tenancies Board) has previously met to share common experiences. An administrative justice council could provide an appropriate forum to discuss issues such as overlapping jurisdiction, common administrative and procedural issues, and cross-cutting issues. As the Commission has previously noted, the sharing of information between bodies with similar interests and overlapping areas may develop greater levels of coordination, efficiency and effectiveness.[152]

[6.129] It is understood that the various Ombudsman bodies in Ireland meet several times a year to discuss issues of relevance to their work. This is a more systematic, regular arrangement than *ad hoc* meetings between bodies. This type of regular coordination between bodies has the benefit of sharing best practices, spotting potential systemic issues, building relationships and knowledge about similar services and could lead to the sharing of training between bodies.

[6.130] Coordination between bodies operating in the same area or with similar functions and subject matter could reduce duplication and gaps in systems. For example, the International Protection Appeals Tribunal (which assesses international protection applications) and the Reception and Integration Agency (which arranges accommodation for applicants seeking international protection status) could share information and resources to minimise logistical and translation problems for applicants.

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[151] See this Chapter under the heading "Clustering and Shared Services".

[152] Law Reform Commission, *Issues Paper on Regulatory Enforcement and Corporate Offences* (LRC IP 8–2016) at para 5.20.

(ii) *Research and Advocacy*

[6.131] An administrative justice council could have research and advocacy functions. This would fill a significant research gap and inform political debate on adjudication, while helping to ensure a rational approach to the creation of new adjudicative functions moving forward.

[6.132] Before creating new bodies with adjudicative functions, consideration should be given to whether an existing body can do the same work, and the size and scope of existing bodies. The Commission has previously noted that "[w]hen new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed".[153] The system as a whole should be considered before new bodies are established,[154] and the institutional capacities of existing bodies, such as the skills and experience of staff, should also be considered.

[6.133] Therefore, the Commission considers whether an administrative justice council could play a role in (a) keeping existing structures under review and reporting at fixed intervals to the Oireachtas on legislative changes that would be appropriate in terms of ensuring the adjudicative system is working optimally, and (b) giving advice to the Oireachtas on any bills that would create new adjudicative functions.

[6.134] The Commission also considers that an administrative justice council could prepare guidance designed to aid in navigating the legal frameworks within which public bodies in Ireland, including the Irish Government, make decisions. This guidance could be modelled along the lines of the English publication, "The Judge Over Your Shoulder".[155] This could provide a succinct summary of key legal principles relating to adjudication in an accessible format.

(iii) *Front- and Back-Office Services*

[6.135] An administrative justice council could be responsible for providing front- and back-office services, such as legal advice to adjudicators, creating easily-navigated and standardised websites, dealing with the public, handling document management, and implementing information technology. At present, these services are provided to individual bodies exercising adjudicative functions. They

[153] Law Reform *Commission, Report on Regulatory Powers and Corporate Offences* vol 1 (LRC 119-2018) at para 2.85.

[154] OECD, *Distributed Public Governance: Agencies, Authorities and Other Government Bodies* (OECD Publishing 2002) at 21-28.

[155] Government Legal Department, *The Judge Over Your Shoulder* (6th ed, 28 July 2022).

could usefully be grouped instead under the umbrella of an administrative justice council.

10. Request for Views

Q. 6.2 (a) a merit-based recruitment process

(b) appropriate expertise and qualifications embedded into statutes

(c) multi-member panels

(d) ongoing training and development provided to members

(e) a consistent complaints procedure

(f) statutory declarations of impartiality

(g) appointment of adjudicators by an independent body

(h) inclusion of financial security and independence in terms and conditions of appointment

(i) a shared services model.

Q. 6.4 The Commission invites views on whether the application of the removal grounds as set out in the Workplace Relations Act 2015 should be applied to all non-court adjudicative bodies administering justice.

Q. 6.5 The Commission invites suggestions about appropriate and effective mechanisms which could be introduced to ensure financial security and independence for adjudicators.

Q. 6.6 The Commission seeks consultees' views on the appropriate methods for assignment of cases to individual adjudicators.

Q. 6.7 The Commission invites views on whether provision should be made for post-service restrictions and how such restrictions might work in practice.

Q. 6.8 The Commission seeks views on whether clustering would work in practice. If so, what adjudicative bodies may suitably be clustered and how?

Q. 6.9 The Commission invites views on what services could be appropriately shared among adjudicative bodies.

Q. 6.10 The Commission suggests the following powers in relation to composition under an administrative justice council:

(a) ensuring independent and robust appointment processes

(b) creating and managing rosters of qualified adjudicators

(c) training of adjudicators

(d) creating a single complaints procedure

(e) ensuring independence safeguards function effectively

(f) recommending bodies for clusters and the creation of new clusters

(g) creating a forum to discuss issues among adjudicative bodies

(h) providing research and advocacy services

(i) providing front- and back-office services.

Q. 6.11 A proportion of adjudicative bodies have to interpret and apply EU law on a regular basis. Such bodies, or some of them, may require special provisions for fixity of tenure, or resources or autonomy. The Commission invites views on this subject.

Q. 6.12 The Commission is interested in hearing any other views on the contents of this Chapter.

CHAPTER 7
JUDICIAL OVERSIGHT

1. Introduction

[7.1] Judicial oversight of decision-making is exercised by the courts which hear appeals and judicial reviews from decisions made by adjudicative bodies. In the first part of this Chapter, the Commission discusses the current model of judicial oversight of adjudicative bodies, including common issues arising in the different types of oversight, where they may overlap and diverge, the array of remedies available as well as their suitability and the difficulties with the current system of judicial oversight. This oversight exists in addition to internal review and appeal mechanisms which are mentioned elsewhere in this paper. [1]

[7.2] The Commission is of the view that the current system for judicial oversight of the decisions of adjudicative bodies is unsatisfactory. The second part of this Chapter examines the complexity of the current system and the practical consequences of that complexity for parties, adjudicative bodies, and the courts. The unclear statutory provisions and inconsistent appellate mechanisms make it difficult for applicants to navigate the process effectively. This in turn leads to inefficiencies, delays and increased costs, ultimately hindering access to justice.

[7.3] From its consideration of the issue, the Commission considers it essential to develop a more streamlined, clear and coherent approach to judicial oversight of adjudicative bodies and review of adjudicative decisions. This will enhance first instance decision-making, legal certainty, procedural efficiency, and fairness. In the last part of this chapter, the Commission considers the various options for improving judicial oversight of decisions and sets out some suggestions for standardisation of judicial oversight to address the current issues. These suggestions include model types of appeal from which the Oireachtas can select the appropriate type of oversight required by an existing or new body.[2]

[1] See the Chapter on Procedural Requirements.

[2] To skip directly to these suggestions, go to paragraph 7.128.

2. Categorising Appeals

[7.4] As stated above, judicial oversight of adjudicative bodies is carried out by the courts in either appeal or judicial review proceedings and, in some cases, in both. Considerable time and resources are spent by the courts categorising the appeals that come before them because each category attracts a different treatment and standard of review, as discussed in more detail below. There is a lack of coherence in the caselaw about how to identify the different types of appeals, how to approach the decision which is being appealed or reviewed, the standard of review which should be applied, and the remedies available.

[7.5] In the context of statutory appeals from adjudicative bodies, the Supreme Court recently observed that there is a "somewhat bewildering array of formulations of appeals on the statute book, and it is not always clear why the Oireachtas chooses one rather than another, or what exactly is comprehended in some cases where an appeal is provided for".[3]

[7.6] Some statutes baldly provide for 'an appeal to the High Court', for example. In the absence of any further legislative direction, the courts have been left to interpret and determine the scope and operation of these statutory appeals. By way of illustration of the complexities and confusion reigning in the courts, *M&J Gleeson v Competition Authority*,[4] *Orange Ltd v Director of Telecoms*,[5] *Rye Investments v Competition Authority*,[6] *Ulster Bank v Financial Services Ombudsman,*[7] and *Chesnokov v an tArd-Chláraitheoir*[8] all involved disputes as to the nature and scope of a statutory appeal provided for in general terms. All of these cases involved statutes containing the general provision that applicants "may appeal to the High Court". In *M & J Gleeson v Competition Authority*, *Orange Ltd v Director of Telecoms* and *Ulster Bank v Financial Services Ombudsman*, the Court concluded that the appeal was an appeal against error (using the

[3] *An Bord Banistíochta (sic), Gaelscoil Moshíológ v The Department of Education & ors* [2024] IESC 38 at para 53.

[4] *M& J Gleeson v Competition Authority* [1999] 1 ILRM 401 related to the appeal provision provided for by section 9 of the Competition Act 1991, namely 'may appeal to the High Court'.

[5] *Orange Ltd v Director of Telecoms* [2000] 4 IR 159; [1999] 2 ILRM 81 related to the appeal provision provided for by section 111(2)(b)(i) of the Postal and Telecommunications Services Act 1983, as amended by regulation 4 of the European Communities (Mobile and Personal Communications) Regulations 1996, namely 'may… appeal to the High Court'.

[6] *Rye Investments v Competition Authority* [2009] IEHC 140; [2012] IESC 52 related to the appeal provision provided for by section 24(1) of the Competition Act 2002, namely '[a]n appeal may be made to the High Court against a determination of the authority'.

[7] *Ulster Bank Ireland DAC v Financial Services & Pensions Ombudsman* [2023] IEHC 350.

[8] *Chesnokov v an tArd-Chláraitheoir* [2017] IECA 19 related to an appeal provision in section 60(8) of the Civil Registration Act 2004, namely 'may appeal against it to the High Court'.

Fitzgibbon v Law Society classification which is set out in the following paragraph), whereas in *Chesnokov* the appeal was held to be an appeal on the record.

[7.7] In *Fitzgibbon v Law Society of Ireland*,[9] Clarke J suggested that there might be four different types of appeals: a *de novo* appeal, an appeal on the record, an appeal against error; and an appeal on a point of law. It is not always clear however, whether the Oireachtas intended to provide for a *de novo* rehearing, an appeal on the record, an appeal against error, an appeal on a point of law, or some variation in between.

[7.8] Finally, as was noted in *Fitzgibbon v Law Society*,[10] there may even be hybrid appeals, which consist of a combination of the different types of appeals. Recent legislative provisions have included such appeals. For example, both the Competition (Amendment) Act 2022[11] and the Communications Regulation and Digital Hub Development (Amendment) Act 2023[12] ('the Digital Hub Act') set out detailed appeal provisions. This concept blurs the distinction between different types of appeals even further.

[7.9] The Commission considers that a recurring issue in the current system, is in attempting (as the Court did in *Fitzgibbon v Law Society*)[13] to define various types of appeals. It notes that the Oireachtas does not necessarily legislate with reference to this typology. In fact, the only type of appeal with a formal definition, which is found in legislation as interpreted in the caselaw, is an appeal on a point of law. The remaining types consist of descriptions by the courts rather than formal legal terms or concrete categories and they are not always applied consistently by the courts.

[7.10] In *Nowak v Data Protection Commissioner*, O'Donnell J articulated the difficulties as follows

> **"**It is a remarkable feature of legislative drafting that Acts creating independent decision makers often provide for appeal to some court in the legal system as if that was an end in itself, and without specifying the nature of that appeal. There is a wide range of possible appeals, and the decision as to what form of appeal is appropriate in any case can have a very significant impact on the length, and therefore cost, of the proceedings in court. Failure to

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[9] *Fitzgibbon v Law Society of Ireland* [2014] IESC 48, [2015] 1 IR 516, [2016] ILRM 202.

[10] *Fitzgibbon v Law Society of Ireland* [2014] IESC 48, [2016] ILRM 202, [2015] 1 IR 516 at para 6.2.

[11] Section 15AY of the Competition Amendment Act 2022.

[12] Sections 17, 18, 28 and 106 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

[13] *Fitzgibbon v Law Society of Ireland* [2014] IESC 48, [2016] ILRM 202, [2015] 1 IR 516.

> specify what is meant by an appeal to a court can also lead to preliminary issues and the possibility of appeals. It is, in theory, possible that the legislation which provides for an appeal to court may require any of the following: a full appeal on the merits to a court; a rehearing (normally restricted to the information that was before the decision maker); an appeal by reference to the test applied by this court or the Court of Appeal in relation to appeals set out in the well known case of *Hay v. O'Grady* [1992] 1 I.R. 210; an appeal limited to a point of law; an appeal where the court is empowered to annul a decision, but not to substitute its own decision; an appeal by way of case stated; an appeal where a decision may be set aside if it was vitiated by a serious error or a series of errors; or, finally, a statutory appeal which is indistinguishable from the standard applied on judicial review. It appears that little attention is paid at the legislative level to these different types of appeals and their consequences, and courts are often left to deduce the nature of the appeal from the limited information that can be gleaned from the language used, the structure of the Act, and, sometimes, the subject matter of the decision."[14]

[7.11] It is clear from the above that there are different types of appeals and that there is often a considerable amount of court time and energy spent discussing the type of appeal that is before a court, with little or no legislative assistance to be found.

3. Different Types of Appeal – Why Does it Matter?

[7.12] The delineation between different types of appeals is not clear and because different types of appeal attract different treatment from the courts, this is the source of much debate and discussion in practice about the scope of particular appeals and related powers of the appellate courts. The Commission notes that the importance attached to defining the type of appeal which has come before a court arises because different types of appeal are approached differently in the following aspects:

a) First, the question as to how the appeal court deals with the evidence which was adduced at first instance and in particular, whether it can reach a decision based on the facts found, re-examine the same evidence or take new evidence into account. This power may be

[14] *Nowak v Data Protection Commissioner*, [2016] IESC 18, [2016] 2 IR 585 at para 28.

exercised by the courts in accordance with statute. However, some statutes remain silent on this issue, meaning that it is within the court's discretion. This can lead to inconsistency and unpredictability in the exercise of this power.

b) Secondly, the status of the first instance decision varies in different types of appeal. De novo appeals disregard the first instance decision. Other types of appeal focus on the merits of a decision, assessing whether the outcome was correct based on the facts and law. This results in some appeal courts disregarding the first instance decision, while others examine it in detail. Furthermore, in judicial review, the court disregards the merits of a decision and instead, examines the process by which the decision was made, assessing whether the process was legal, rational, and procedurally fair.

c) Thirdly, the standard of review applied to a decision under appeal varies widely. De novo appeals review every single aspect of a decision but appeals on a point of law look only at the legal aspects of the decision. The notion of 'curial deference' is particularly relevant when discussing this aspect of appeals. Where adjudicative bodies are deemed to be specialists in their area, the courts are reluctant to interfere with their decision-making. However, inconsistencies and questions arise as to when should deference be applied.

d) Fourthly, there is a variation in the grounds which can be raised in different types of appeal and it is not always clear whether the courts can review facts, law, procedure, or a combination of all these aspects of the impugned decision.

e) Fifthly, there are variations about what remedies are available on review – some appeals permit the courts to substitute their decisions for that of the adjudicator, some do not. Different remedies again are available in judicial review cases.

f) Sixthly, there is a lack of consistency regarding which court has jurisdiction to hear appeals, the procedure to be followed, and even the issue of whether a statutory appeal or judicial review is the appropriate remedy. The allocation of forum in the current system is unclear and incoherent.

g) Seven, some appeals are final while some appeals permit onward appeals on certified questions of law. The procedure and forum for onward appeals is not always consistent. Although this problem does not arise as frequently as some of those set out above, reform of the appeal structure affords an opportunity to consider whether further rights of appeal should be standardised.

h) Finally, the interface between appeals and judicial review is relevant as issues arise when applicants need to choose between pursuing a statutory appeal or a judicial review of the decision of an adjudicative body. Where the incorrect type of proceedings is brought, a court may find that it does not have jurisdiction to intervene in relation to an impugned decision. It is not always clear which proceedings are appropriate, which sometimes leads to two sets of proceedings being issued to challenge a decision. While the issue of instituting parallel proceedings arises, a further issue arises as to whether there are particular grounds or proceedings that should be pursued by way of judicial review and not a statutory appeal and whether there is a way in which this lack of clarity could be resolved to the benefit of all.

[7.13] Each of these topics is dealt with in more detail below, although not necessarily in the same order in which they are set out above.

4. Problems Common to all Appeals

(a) Treatment of Findings of Fact

[7.14] The first major distinction between different types of appeals arises from the treatment of factual findings at first instance, and whether appellate courts apply consistent and predictable standards when reviewing such findings. Before dealing with this aspect, it is important to note that facts in an appellate review are divided into two categories: primary and secondary facts. This distinction determines the level of deference afforded to the original decision-maker. In his judgment in *O'Regan v Financial Services Ombudsman* Hogan J confirmed that the legal principles regarding distinctions between primary and secondary facts in an appeal from a non-court adjudicative body are those which were elucidated by the Supreme Court in *Hay v O'Grady*.[15]

[7.15] Primary facts are usually capable of a definitive answer (for example, the distance between two points)[16] or "determinations of fact depending on the assessment of the trial judge of the credibility and quality of the witnesses".[17] Findings of primary fact will not be interfered with unless there is no evidence to support

[15] *Hay v O'Grady* [1992] 1 IR 210. This case was not an appeal from an adjudicative body but its categorisation of facts applies across such appeals as well as to inter-court appeals – this was confirmed by Hogan J in *O'Regan v Financial Services Ombudsman* [2016] IECA 165 at para 65.

[16] de Blacam, *Judicial Review* 3rd ed (Bloomsbury Professional, 2017) at para 213 page 233.

[17] *V.C. v J.M. and G.M, J.M v An Bord Uchtála* [1987] IR 510 at pages 522 to 523 and [1988] ILRM 1203 at page 1205. See also discussion in Biehler, McGrath, Egan McGrath, Beirne and Downey, *Delany and McGrath on Civil Procedure* 4th ed (Round Hall Press, 2018) at para 23-214 page 903.

them. On the other hand, secondary facts depend on some evaluation or inference drawn from the primary facts.[18] They "do not follow directly from an assessment of the credibility of witnesses or the weight to be attached to their evidence but derive from the inferences that a judge draws from the facts found or admitted".[19] If an appellate court considers the secondary facts, or the inferences drawn from the primary facts to be incorrect, it will draw its own inferences from the primary facts.[20]

[7.16] The Commission invites views on whether the distinction between primary and secondary facts creates sufficient predictability in appeals.

Variations in Approaches to Evidence Already Found

[7.17] The courts adopt a different attitude to the evidence heard by the adjudicative body, depending on the type of appeal that is brought. One problem is that the approach taken is not always consistent, even as between the identified categories, as discussed in detail below. The scope to review evidence is also influenced by the type of appeal - at one end of the spectrum, a very wide range of material can be taken into account by the appellate body in a de novo proceeding. De novo appeals, by their very nature, will almost always be determined on the basis of the evidence available at the time of the court hearing. At the opposite end, courts are unlikely to be sympathetic to an appellant who seeks to introduce new arguments evidence in an appeal on a point of law.[21]

[7.18] Another issue arises as to whether the appeal court should consider the evidence as it was considered by the first instance decision-maker or the evidence as it exists at the time of the appeal hearing. Consistency and certainty suggest that the relevant evidence is that adjudicated upon by the initial decision-maker. However, this might sometimes need to be balanced with efficacy, fairness and speed, for example if the evidence has shifted considerably in the interim that might render the initial decision out of date to be reviewed. It may become necessary to admit new evidence in such cases. The solution to this dilemma

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[18] de Blacam, *Judicial Review* 3rd ed (Bloomsbury Professional, 2017) at para 213 page 233.

[19] Biehler and others, *Delany and McGrath on Civil Procedure* 4th ed (Round Hall Press, 2018) at para 23-214 page 903.

[20] Biehler and others, *Delany and McGrath on Civil Procedure* 4th ed (Round Hall Press, 2018) at para 23-215 page 903.

[21] *McKillen v Information Commissioner* [2016] IEHC 27 at para 7.

should be found in the statute, "the admissibility of new evidence in each case depends on the wording of the relevant statute." [22]

De novo appeals

[7.19] A *de novo* appeal or full rehearing permits all issues of fact to be reheard and determined afresh by the decision-maker hearing the appeal. As the decision of the first instance body is considered to be "wholly irrelevant", the appeal court must make a decision solely on the basis of the evidence available before it.[23]

[7.20] Sometimes the categorisation of the appeal is of no assistance in deciphering how the evidence will be treated. For example, in *O'Reilly v Lee*[24] Macken J held that "the matters contended for by the appellant as constituting grounds for the holding of an inquiry into the respondent's alleged misconduct, and the respondent's reply, may be exposed again and argued afresh before the High Court, which decides the appeal on the basis of the materials which were before the Disciplinary Tribunal",[25] the characteristics of a *de novo* appeal. However, if the categorisation set out in *Fitzgibbon v Law Society*[26] is applied, this would be considered an appeal on the record as the appeal was to be decided on the materials before the lower instance body.

Appeals on the record

[7.21] In an appeal on the record, the appellate body must reach its own conclusion without considering the conclusion drawn by the initial decision-maker. However, the decision is largely based on the record of the first instance decision-maker.[27] An appeal is likely to be considered as an appeal on the record where there are restrictions regarding the admission of new evidence or the rehearing of issues which had been decided by the adjudicative body or where the evident intent of

[22] *Adegbuyi v Minister for Justice and Law Reform* [2012] IEHC 484 at para 8 per Clark J.

[23] *Fitzgibbon v Law Society of Ireland* [2014] IESC 48, [2016] ILRM 202, [2015] 1 IR 516 at para 102.

[24] *O'Reilly v Lee* [2008] IESC 21, [2008] 4 IR 269.

[25] *O'Reilly v Lee* [2008] IESC 21, [2008] 4 IR 269 at para 6.

[26] *Fitzgibbon v Law Society of Ireland* [2014] IESC 48, [2016] ILRM 202, [2015] 1 IR 516.

[27] Hogan, Morgan and Daly, *Administrative Law in Ireland* 5th ed (Round Hall 2019) at para 11.54.

the Oireachtas is that introduction of new material on appeal will be limited.[28] By way of example, Daly comments that an appeal on the record also seems to be what the Electronic Communications Appeal Panel had in mind in *Hutchinson 3G Ireland Ltd v Commission for Communications Regulation*:

> "It seems therefore that what is envisaged by the Regulations (as interpreted in the light of Article 4.1 [of the Framework Directive]) is an examination of the *decision* of the Regulator as opposed to a reassessment *de novo* by the Panel of whether the Appellant is a 'significant market power in the wholesale voice call termination market on individual mobile networks.' This will mean that Panel can focus on evidence and materials upon which the Regulator based its decision and look at the inferences and conclusions it drew from those materials."[29]

[7.22] In *Chesnokov v An tArd-Chláraitheoir*,[30] the Court of Appeal debated whether the case should be dealt with as an appeal on the record or an appeal against error. The case concerned the appellant's claim of Irish citizenship and An tArd-Chláraitheoir's (the General Registrar) refusal to register the appellant as having been born in Ireland.[31] While there was a statutory right of appeal in this case,[32] the Court of Appeal noted that there was no guidance as to the scope of the appeal under this section.[33] The Court of Appeal concluded that the appeal was an appeal on the record, which granted jurisdiction to the High Court to consider the evidence before An tArd-Chláraitheoir while reaching an independent conclusion based on that evidence.[34]

[7.23] *Diesel SPA v Controller of Patents*[35] was also described as an appeal on the record. The Court in this case quoted the decision of Clarke J in *Fitzgibbon* to the effect that the "default position in respect of an appeal on the record is that the

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[28] Paul Daly, A Typology of Administrative Appeals, blog published July 2017, https://www.administrativelawmatters.com/blog/2017/07/12/a-typology-of-administrative-appeals/ <accessed 19 November 2025>

[29] ECAP Decision No. 01/05, Appeal No.2004/01, 10 February 2005 at paras 10.1 and 10.2 as quoted in [29] Paul Daly, A Typology of Administrative Appeals, blog published July 2017, https://www.administrativelawmatters.com/blog/2017/07/12/a-typology-of-administrative-appeals/ <accessed 19 November 2025>

[30] *Chesnokov v an tArd-Chláraitheoir* [2017] IECA 19.

[31] The appeal to the High Court is provided for under section 60(8) of the Civil Registration Act 2004.

[32] Under section 60(8) of the Civil Registration Act 2004.

[33] *Chesnokov v an tArd-Chláraitheoir* [2017] IECA 19 at para 38.

[34] *Chesnokov v an tArd-Chláraitheoir* [2017] IECA 19 at paras 45 to 47.

[35] *Diesel SPA v Controller of Patents* [2023] 1 IR 1.

evidence and material which are properly relied on by the appellate body are the same as those which were before the first instance body".[36] The Court went on to state that "it is evident that a s.57 appeal may loosely be categorised as an "appeal on the record" insofar as the High Court is not required to identify any fundamental error or series of errors in order to displace the Controller's conclusions. It is entitled to come to its own conclusions on the facts and as to the relief to be granted".[37]

[7.24] However, as Clarke J noted in *Fitzgibbon v Law* Society, it may not be possible for an appeal body to reach a conclusion by reference to the record of the first instance decision-maker while ignoring its determination in cases where the facts are in issue.[38] Additionally, Clarke J cautioned that, while there is no automatic entitlement to test the evidence in an appeal, there may be cases where an oral hearing incorporating oral evidence and cross-examination is required to form a decision. This illustrates the possible difficulties posed for reaching a decision on an appeal on the record and highlights the difficulties these categories cause in general for the courts.

[7.25] *Kean v Solicitors Disciplinary Tribunal*[39] was concerned with an appeal of a decision by the Solicitors Disciplinary Tribunal, which found the applicant guilty of misconduct and ordered the payment of a substantial fine. Despite the existence of a provision permitting a full rehearing on the facts, the appellant in this case elected to confine this appeal to an appeal on the record, which the Court allowed.[40] The court pointed out that the implications of limiting an appeal in this way were identified by the Supreme Court in *Fitzgibbon* as requiring the appeal court to have regard to the record of the first instance decision-maker to ascertain whether the first instance body came to a correct or sustainable decision on the basis of that record.[41]

Appeals on a Point of Law

[36] *Diesel SPA v Controller of Patents* [2023] 1 IR 1 at para 49; *Fitzgibbon v Law Society of Ireland* [2014] IESC 48, [2016] ILRM 202, [2015] 1 IR 516.

[37] *Diesel SPA v Controller of Patents* [2020] IESC 7 at para 52, discussing appeals under section 57 of the Trade Marks Act 1963.

[38] *Fitzgibbon v Law Society of Ireland* [2014] IESC 48, [2016] ILRM 202, [2015] 1 IR 516 at page 554.

[39] *Kean v Solicitors Disciplinary Tribunal* [2014] IEHC 432.

[40] Rule 12(h)(i) of the Rules of the Superior Courts (Solicitors (Amendment) Act 2002), 2004) (SI No 701 of 2004). *Kean v Solicitors Disciplinary Tribunal* [2014] IEHC 432 at para 9.

[41] *Kean v Solicitors Disciplinary Tribunal* [2014] IEHC 432 at para 10 quoting Fitzgibbon v Law Society of Ireland [2014] IESC 48, [2016] ILRM 202, [2015] 1 IR 516.

[7.26] Sometimes issues of fact are regarded as issues of law for the purposes of an appeal. This aspect was considered in *Attorney General v Davis*,[42] where the Court found that the following three principles may be extracted from precedent when considering what issues of fact may be regarded as issues of law: (1) findings of primary fact where there is no evidence to support them; (2) findings of primary fact which no reasonable decision-making body could make; and (3) unsustainable inferences and conclusions drawn from the facts by decision-makers.[43]

[7.27] In *Fitzgibbon v the Law Society,*[44] Clarke J stated that two types of points of law can legitimately be raised in an appeal on a point of law. First, there may be an error of law in the determination of the first instance body. Second, a legal error may occur if the body's factual conclusions are reached through flawed reasoning.[45] This second category demonstrates yet another different approach to the facts found at first instance, in which those facts can be reviewed if they were reached through flawed reasoning.

[7.28] The High Court in *Marwaha v Residential Tenancies Board*[46] considered the scope of an appeal on a point of law from the Residential Tenancies Board. The Court set out the four key principles of the court's role in such appeals based on previous cases concerning the Residential Tenancies Board, which are as follows:

(1) The court is being asked to consider whether the Tenancy Tribunal erred as a matter of law (a) in its determination, and/or (b) its process of determination;
(2) The court may not interfere with first instance findings of fact unless it finds that there is no evidence to support them;
(3) As to mixed questions of fact and law, the court (a) may reverse the Tenancy Tribunal on its interpretation of documents; (b) can set aside the Tenancy Tribunal determination on grounds of misdirection in law or mistake in reasoning, if the conclusions reached by the Tenancy Tribunal on the primary facts before it could not be reasonably drawn; (c) must set aside the Tenancy Tribunal determination, if its conclusions show that it was wrong in some view of the law adopted by it;
(4) Even if there is no mistake in law or misinterpretation of documents on part of the Tenancy Tribunal, the court can nonetheless set aside the Tribunal's determination where inferences drawn by the Tribunal from primary facts could not reasonably have been drawn.

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[42] *Attorney General v Davis* [2018] IESC 27, [2018] 2 IR 357.

[43] *Attorney General v Davis* [2018] 2 IR 357 at paras 54 to 55.

[44] *Fitzgibbon v Law Society of Ireland* [2014] IESC 48, [2016] ILRM 202, [2015] 1 IR 516.

[45] *Fitzgibbon v the Law Society* [2015] 1 IR 516 at para 128.

[46] *Marwaha v Residential Tenancies Board* [2016] IEHC 308 at para 13.

[7.29] As the above cases demonstrate, the approach to facts in appeals on a point of law can vary. The Supreme Court considered this in the recent case of *An Bord Bainistíochta, Gaelscoil Moshíológ v The Department of Education*. In this case it was stated that "whatever the precise limits of an appeal to the High Court on a point of law, it is not a rehearing. The appellate body does not hear evidence and is not free to substitute its findings for that of the decision-maker."[47] It is of note that article 13(1) of the European Communities (Access to Information on the Environment) Regulations 2007, provides for an appeal to the High Court on a point of law of any decision of the Commissioner for Environmental Information. This appeal was described by O'Neill J in *An Taoiseach v Commissioner of Environmental Information* as a full rehearing on all legal issues which arose in the case.[48] Indeed, O'Neill J referred stated "Although the appeal is limited to an appeal on a point of law, as all the issues that have arisen and are in issue between the parties are questions of law, the appeal procedure contains ample jurisdiction so as to fulfill the requirement in. art. 6(2) of the Directive of providing review procedure in this case. I would construe the term review in a wide general sense rather than the more familiar judicial review concept in Irish law or the review type appeal such as an appeal from the High Court to the Supreme Court. I would treat this appeal as a full rehearing of the appeal or review before the respondent on all legal issues arising, including the jurisdictional issue now under discussion and all issues of interpretation of the Directive and the Regulations of 2007.... "[49] The Commission notes, however, that this case may be something of an outlier, given the EU law background of the case.

[7.32] As is evident from this discussion, appeals on a point of law are not always confined to pure points of law. Moreover, while appeals on a point of law are traditionally confined to examining errors of law arising in the adjudication, the courts have, on occasion, permitted applicants to raise matters of procedure normally reserved for judicial review proceedings.

Hybrid Appeals

[7.33] There have been a number of hybrid appeal cases. For example, in *DK v MK*[50] discussed the nature of an appeal against a finding of the Solicitors' Disciplinary

[47] *An Bord Banistíochta (sic), Gaelscoil Moshíológ v The Department of Education & ors* [2024] IESC 38 at para 57.

[48] *An Taoiseach v Commissioner of Environmental Information* [2010] IEHC 241, [2013] 2 IR 510 at para 63 page 541.

[49] *An Taoiseach v Commissioner of Environmental Information* [2010] IEHC 241, [2013] 2 IR 510 at para 57 page 538.

[50] *DK v MK* [2020] IEHC 520 at para 14.

Tribunal that a solicitor had not been guilty of misconduct[51] which Hyland J pointed out is not a *de novo* hearing, unlike an appeal where a solicitor is found guilty of misconduct. Both parties agreed that the case was an appeal against error, with elements of an appeal on the record.

[7.34] Similarly, in *Imranul Hassan Shuvo v Superintendent Stephen McCauley*[52] it was contended by the appellant that the statutory appeal could only be an appeal on the record. It was held by the District Court that the appeal was in essence a hybrid appeal, being both an appeal on the record and an appeal on the facts and must proceed by way of evidence.[53]

[7.35] Yet another hybrid type of appeal is provided for against decisions of the Financial Services and Pensions Ombudsman. In *O'Donoghue v Office of the Financial Services and Pensions Ombudsman* Baker J pointed out that, "the appeal to the High Court, not being a de novo hearing, falls somewhere between a judicial review and full appeal, the test being one which bears many of the features of a judicial review, but not all of them. An error, even one within jurisdiction, provided it is a significant and serious error, can vitiate a decision."[54]

[7.36] Baker J considered the status of findings of fact made by the FSPO in her decision in *O'Donoghue*.[55] The appellant had made complaints against two financial service providers, which were adjudicated upon separately initially and then re-adjudicated afresh together. An oral hearing was conducted in relation to one complaint only. A number of additional items of evidence were requested from the appellant. Findings were made rejecting one of the appellant's arguments but some other complaints were upheld. On appeal, Baker J ruled that the High Court was bound by the findings of fact, unless these were clearly wrong or the determinations of fact are considered to have been made on evidence which is not credible or which does not bear out the conclusions reached.[56] She found that the appellant had not met the "high threshold" described by Twomey J in *Stowe v Financial Services Ombudsman*[57] and had failed to show a "serious and significant" error in the findings in accordance with the test in *Ulster Bank*

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[51] Pursuant to section 7(12A)(b) of the Solicitors (Amendment) Act 1960 (as substituted by section 17 of the Solicitors (Amendment) Act 1994 and as inserted by section 9(g) of the Solicitors (Amendment) Act 2002).

[52] *Imraul Hassan Shuvo v Superintendent Stephen McCauley* [2024] IEDC 2.

[53] *Imraul Hassan Shuvo v Superintendent Stephen McCauley* [2024] IEDC 2 at para 20.

[54] *O'Donoghue v Office of the Financial Services and Pensions Ombudsman* [2018] IEHC 581 at para 38.

[55] *O'Donoghue v Office of the Financial Services and Pensions Ombudsman* [2018] IEHC 581.

[56] *O'Donoghue v Office of the Financial Services and Pensions Ombudsman* [2018] IEHC 581 at para 40.

[57] *Stowe v Financial Services Ombudsman* [2016] IEHC 199.

v Financial Services Ombudsman.[58] Baker J considered that the FSPO had credible and sufficient evidence and she upheld the decisions made.[59]

Regulatory Appeals

[7.37] In *Rye Investments v Competition Authority*,[60] Cooke J set out the relevant statutory provisions which required him to decide the issue on the basis of facts found by the Competition Authority, which are presumed correct unless otherwise demonstrated. No determination was required as to whether this was an appeal on the record or another type of appeal as the parties raised no issue about the facts found at first instance. Cooke J found that "a procedure by way of appeal is created in which any issue of law or fact may be raised, that the Court is entitled to examine also the correctness of material conclusions reached by the Authority involving mixed questions of law and fact as where, without any wrong finding of primary fact being made, a legal conclusion is drawn from one or more facts."[61]

[7.38] Consideration of the caselaw suggests that a decision made by a regulatory body will generally not attract a full rehearing on appeal.[62] In *Manorcastle Ltd v Aviation Commissioner*, the Court was tasked with answering the question as to whether the proceedings were a rehearing, a judicial review, or an assessment of whether the decision is probably incorrect on the merits. Charleton J dismissed a suggestion that the appeal in question should be determined by conducting a complete rehearing. He elaborated on the fact that courts have "no expertise in finance or accountancy", nor do they have the opportunity to conduct "face to face interviews in making its assessment". This contrasts with specialist adjudicative – and particularly regulatory - bodies, which have been established to have such expertise and to carry out assessments of applicants.[63]

Judicial Review

[58] *Ulster Bank Investment Funds Ltd v Financial Services Ombudsman* [2006] IEHC 323.

[59] *O'Donoghue v Office of the Financial Services and Pensions Ombudsman* [2018] IEHC 581 at para 45.

[60] *Rye Investments v Competition Authority* [2009] IEHC 140; [2012] IESC 52 related to the appeal provision provided for by section 24(1) of the Competition Act 2002, namely '[a]n appeal may be made to the High Court against a determination of the authority'.

[61] *Rye Investments v Competition Authority* [2009] IEHC 140 at para 7 5.8.

[62] *M & J Gleeson v Competition Authority* [1999] 1 ILRM 401, *Orange Ltd v Director of Telecoms* [2000] 4 IR 159; [1999] 2 ILRM 81.

[63] *Manorcastle Ltd v Aviation Commissioner* [2008] IEHC 386, [2009] 3 IR 495 at page 514.

[7.39] In judicial review proceedings, the court can review a decision for an error of law, for bias on the part of the decision-maker, and for compliance with procedural rights such as whether there was a fair hearing or if legitimate expectations were not fulfilled. Increasingly in judicial review cases, the courts will review decisions for errors of fact and proportionality, arising from the expansion of the concept of jurisdictional error and the influence of the European Convention on Human Rights and European Union law. The courts may also review errors of fact in judicial review due to obligations under the European Convention on Human Rights and European Union law.

[7.40] In *ED (A minor) v Refugee Appeals Tribunal*,[64] the Supreme Court, in judicial review proceedings, held that the courts must determine whether the facts found by the decision-maker were sustainable and whether that view of the facts, if found sustainable, led to a finding of the absence of a well-founded fear of persecution that was correct in law. Similarly, in *DVTS V Minister for Justice, Equality and Law Reform*,[65] the Court heard a case relating to an asylum claim where the applicant sought to quash the decision as he claimed that the Tribunal had failed to consider the conflicting information contained in the country of origin materials. Although the proceedings were brought by way of judicial review, the Court in its decision referred to the "significant error of fact" made adversely to the applicant and granted the relief sought by the applicant.[66]

(b) Admitting New Materials

[7.41] The discretion of an appeal court to admit new evidence can also be determined by the type of appeal. For example, a very wide range of material may be taken into account by the court in a *de novo* appeal, and there is unlikely to be an issue about new materials except to the extent that credibility issues may arise if different evidence is submitted on the appeal without a sufficient explanation. On the other hand, in an appeal on a point of law, the courts are unlikely to be sympathetic to an appellant who seeks to introduce new arguments.[67] In *Adegbuyi*, the Court stated that there is a "general trend towards the

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[64] *ED (A minor) v Refugee Appeals Tribunal* [2017] 1 IR 325.

[65] *DVTS v Minister for Justice, Equality and Law Reform* [2007] IEHC 305, [2008] 3 IR 476.

[66] *DVTS v Minister for Justice, Equality and Law Reform* [2007] IEHC 305, [2008] 3 IR 476 at para 35.

[67] *McKillen v Information Commissioner* [2016] IEHC 27 at para 7.

discretionary admission of new evidence in the interests of justice unless the appeal is restricted to a point of law or to a re-hearing of the same facts".[68]

[7.42] Some statutes expressly deal with the admission of new materials at appeal stage. As outlined by Clark J in *Adegbuyi v Minister for Justice and Law Reform*,[69] in all events, "the admissibility of new evidence in each case depends on the wording of the relevant statute". However, the legislation does not always set out evidential provision for new evidence in the same terms. Some statutes are silent, leaving it up to the courts to decide how to manage the admission of new evidence. When considering whether new materials can be admitted during a statutory appeal, fairness and efficiency are the primary considerations in a court's decision.

[7.43] The Oireachtas has provided for the admission of new evidence in certain cases. In appeals or referrals to the High Court in professional conduct cases for example, Order 53, rule 16(g) of the Rules of the Superior Courts provides that "the evidence upon the hearing of any such appeal or application shall be by affidavit, except insofar as the President may direct evidence to be given". [70] Additionally, section 57V(7) of the Central Bank Act 1942 provides that the Irish Financial Appeals Tribunal may require evidence or argument to be presented in writing and decide on the matters on which it will hear oral evidence or argument.

[7.44] A different standard may be adopted in regulatory appeals, for example a deferential standard was applied in *Ulster Bank Investment Funds Ltd v Financial Services Ombudsman*,[71] where the Court decided to proceed with the appeal on the basis of the materials that were produced before the Financial Services Ombudsman. It stated that where a court is satisfied that it would be necessary or in the interests of justice to admit new evidence, it would have a discretion to do so.

[7.45] In *Murphy v Minister of Defence,*[72] the admission of new evidence on appeal was discussed. The Court stated that it was satisfied that the principles to be applied in deciding whether to allow the admission of new evidence in a statutory appeal are as follows:

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[68] *Adegbuyi v Minister for Justice and Law Reform* [2012] IEHC 484 at para 8.

[69] *Adegbuyi v Minister for Justice and Law Reform* [2012] IEHC 484 at para 8.

[70] Order 53, rule 16(g) of the Rules of the Superior Courts inserted by section 13(g) of the Rules of the Superior Courts (Regulation of Legal Services) (SI No 196 of 2021).

[71] *Ulster Bank Investment Funds Ltd v Financial Services Ombudsman* [2006] IEHC 323.

[72] *Murphy v Minister for Defence* [1991] 2 IR 161. Although this case was an intra-court appeal, these comments were applied in *The Law Society of Ireland v Daniel Coleman* [2018] IESC 71.

(a) The evidence sought to be addressed must have been in existence at the time of the trial and must have been such that it could not have been obtained with reasonable diligence for use at the trial;
(b) The evidence must be such that if given it would probably have an important influence on the result of the case, though it need not be decisive;
(c) The evidence must be such as is presumably to be believed or, in other words, it must be apparently credible, though it need not be incontrovertible.

[7.46] This decision was cited in *Ulster Bank Investment Funds Ltd v Financial Services Ombudsman*[73] where the court noted that for further evidence to be introduced it must be satisfied that it is necessary and appropriate in the interest of justice. The High Court also noted that in some cases an issue may arise on appeal that could not arise at the initial hearing and, therefore, further evidence may be needed.[74]

[7.47] New legal arguments do not constitute new evidence although they may be predicated upon or linked to the admission of new evidence. However, the courts will only allow for a new argument to be raised at appeal stage in limited circumstances. McGovern J in *Minister for Education v Information Commissioner*[75] stated that the court should be slow to admit a new argument not advanced before the Information Commissioner. The court in *McKillen v Information Commissioner*[76] agreed with this and went further to quote the statement of Smyth J that "it would be entirely unsatisfactory if appeals on pure points of law could be run on the basis of matters never raised before, let alone considered and decided by the respondent".[77]

(c) The Status of the First Instance Decision

[7.48] In *Fitzgibbon v Law Society*,[78] Clarke J suggested that the characteristics of a full rehearing include the decision of the first instance body being "wholly irrelevant".

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[73] *Ulster Bank Investment Funds Ltd v Financial Services Ombudsman* [2006] IEHC 323.

[74] *Ulster Bank Investment Funds Ltd v Financial Services Ombudsman* [2006] IEHC 323.

[75] *Minister for Education v Information Commissioner* [2009] 1 IR 588 at para 7.

[76] *McKillen v Information Commissioner* [2016] IEHC 27 at para 59.

[77] Per Smyth J in *South Western Area Health Board v Information Commissioner* [2005] IEHC 177, [2005] IR 547 at paras 17 to 18.

[78] *Fitzgibbon v Law Society of Ireland* [2014] IESC 48, [2016] ILRM 202, [2015] 1 IR 516.

Similarly, in an appeal on the record the court does not consider the decision of the first instance body.

[7.49] In contrast, in an appeal against error, the court does take the adjudicative body's decision into consideration and assesses whether or not it is correct. For an appeal against error to succeed, the appellate body must be satisfied that the first instance body erred in its initial decision.[79]

[7.50] Hogan, Morgan and Daly note that the right of appeal against the decision of an adjudicative body is usually confined to an appeal on a point of law, although this is not always the case.[80] Appeals on a point of law are a subset of appeals against error, as errors of law are only one type of error that a decision-maker may make. When a court allows an appeal on a point of law, the court's decision is substituted for that of the original decision-maker. In *Castleisland Cattle Breeding Society Limited v Minister for Social and Family Affairs,*[81] Geoghegan J in the Supreme Court made the following observation

> "Clearly, on the authorities the High Court or this court on appeal is entitled to consider whether it was open to the appeals officers to come to the decision which she did arrive at and, if not, whether the evidence conclusively established that Mr. Walsh was an independent contractor. If so, the High Court or this court on appeal can make a declaration to that effect. A statutory appeal on a question of law is not a judicial review and a question of law includes the question of whether the evidence supports only one conclusion."[82]

[7.51] For the sake of completeness, judicial review also focuses on the decision made but not on its merits. Instead the court focuses on how the decision was reached and it may quash a decision which was reached in breach of fair procedures. However, in reality, the issues on appeal in some cases include both the merits and the fairness of a decision. As was pointed out by Dunne J in *Sheehan v Solicitors Disciplinary Tribunal*, "[e]ven if the statutory appeal involves a *de novo* hearing, judicial review may, in some circumstances, be the appropriate remedy, if the first instance hearing was conducted in a way that was in breach of

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[79] *Fitzgibbon v Law Society of Ireland* [2014] IESC 48, [2016] ILRM 202, [2015] 1 IR 516.

[80] Hogan, Morgan and Daly, *Administrative Law in Ireland* 5th ed (Round Hall 2019) at para 11.46.

[81] *Castleisland Cattle Breeding Society Limited v Minister for Social and Family Affairs* [2004] 4 IR 150.

[82] *Castleisland Cattle Breeding Society Limited v Minister for Social and Family Affairs* [2004] 4 IR 150 at para 18.

fair procedures, for example, such that one could say that there was, in reality, no first instance hearing."[83]

(d) Scope and Standard of Review

[7.52] When considering the extent of judicial oversight of the decisions of adjudicative bodies, the question arises as to what type of oversight applies. The courts have stated that "the nature and scope of each appeal is governed by the particular terms used by the relevant legislature when requiring that the appeal remedy be provided".[84] This sometimes results in disputes - about the scope of the available appeal for example - and ensuing litigation with associated cost and delays.[85] The scope of the appeal is not necessarily determined by the wording of a statute - even where the language in separate statutes was materially the same, the courts have arrived at different conclusions as to the nature and scope of statutory appeals in different cases.[86]

[7.53] Despite their frequency, appeals on a point of law have been subject to significant dispute and uncertainty regarding their precise scope. The case law on the approach to facts and the scope of appeals on a point of law can vary. However, as mentioned earlier, the Supreme Court has stated that whatever the precise limits of an appeal on a point of law are, it is not a rehearing.[87] By limiting statutory appeals to points of law, deference is shown for the subject-matter expertise of non-court adjudicative bodies. This expertise would arguably be undermined if the courts were to review issues of facts in all cases.[88] For example, the Redundancy Payments Act 1967,[89] the Unfair Dismissals Act 1977,[90] and the Workplace Relations Act 2015,[91] all contain identical provisions allowing for appeals to the High Court on a point of law on foot of a decision of the Labour Court. All three Acts provide that the decision of the High Court shall be final and conclusive.

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[83] *Sheehan v Solicitors Disciplinary Tribunal* [2021] IESC 64, [2022] 1 IR 78 at para 61.

[84] *Vodafone Ireland Ltd v Commission for Communications Regulation* [2013] IEHC 382 at para 26.

[85] See for example *Nowak v Data Protection Commissioner* [2016] IESC 18, [2016] 2 IR 585.

[86] See *M & J Gleeson v Competition Authority* [1999] 1 ILRM 401; *Orange Ltd v Director of Telecoms (No. 2)* (No 2) [2000] IESC 22, [1999] 2 ILRM 81, [2000] 4 IR 159; *Ulster Bank Ireland DAC v Financial Services & Pensions Ombudsman* [2023] IEHC 350; *Chesnokov v an tArd-Chláraitheoir* [2017] IECA 19.

[87] *An Bord Banistíochta (sic), Gaelscoil Moshíológ v The Department of Education & ors* [2024] IESC 38 at para 57.

[88] Cane, *Administrative Tribunals and Adjudication* (Hart Publishing 2009) at pages 118 to 119.

[89] Section 40 of the Redundancy Payments Act 1967.

[90] Section 10A of the Unfair Dismissals Act 1977.

[91] Section 46 of the Workplace Relations Act 2015.

[7.54] The authoritative statement of the jurisdiction of a court on an appeal on a point of law is set out in *Deely v Information Commissioner,*[92] where McKechnie J noted that the remit of the court in an appeal on a point of law encompasses the following:

(a) It cannot set aside findings of primary fact unless there is no evidence to support such findings,
(b) It ought not set aside inferences drawn from such facts unless such inferences were ones which no reasonable decision-making body could draw,
(c) It can however reverse such inferences, if the same were based on the interpretation of documents and should do so if incorrect, and finally,
(d) If the conclusion reached by such bodies shows that they have taken erroneous view of the law, then that also is a ground for setting aside the resulting decision.[93]

[7.55] The challenge in defining the scope of a statutory appeal in the absence of clear guidance in the language of the statute is illustrated by *Manorcastle Ltd v Aviation Commissioner*.[94] In this case, the Court was required to consider the effect of the words "the applicant may… appeal to the High Court against such refusal or decision".[95] However the Court considered that there could not be a uniform mechanism set down in isolation to be applied in all statutory appeals. Charleton J made the point that it was not only the wording of a statutory provision that matters but that the relevant provision must be considered in the context of the statute as a whole, and that a number of considerations must be addressed. These include: the nature of the court's jurisdiction; whether the court is empowered to impose conditions; whether the adjudicative body whose decision is being appealed is a specialist body; the intention of the legislature in creating the appeals mechanism; whether the court has any powers to gather information; the effect of the original decision; and whether the statutory scheme allows the decision making body to meet with the applicant, thereby making an assessment as to their credibility or reliability.[96]

[7.56] *Orange Ltd v Director of Telecoms (No. 2)*[97] sets out the modern test for interfering with the first instance decision if an error is established on appeal. In this case, Keane CJ held that an appeal against error will be allowed where an

[92] *Deely v Information Commissioner* [2001] IEHC 91, [2001] 3 IR 439.

[93] *Deely v Information Commissioner* [2001] IEHC 91, [2001] 3 IR 439 at page 452.

[94] *Manorcastle Ltd v Aviation Commissioner* [2008] IEHC 386, [2009] 3 IR 495.

[95] Section 9 of the Transport (Tour Operators and Travel Agents) Act 1982.

[96] *Manorcastle Ltd v Aviation Commissioner* [2008] IEHC 386, [2009] 3 IR 495 at page 517.

[97] *Orange Ltd v Director of Telecoms (No. 2)* [2000] IESC 22, [2000] 4 IR 159.

applicant establishes, as a matter of probability, that "taking the adjudicative process as a whole, the decision reached was vitiated [or impaired] by a serious and significant error".[98]

[7.57] In an appeal on the record, the courts will have due regard to the expertise of the adjudicative body in question when arriving at a conclusion, as set out in *Orange*.[99] This deferential standard was applied in *Ulster Bank v Financial Services Ombudsman*,[100] where the Court decided to proceed with the appeal on the basis of the materials that were produced before the Financial Services Ombudsman.

[7.58] O'Donnell J, in *Nowak v Data Protection Commissioner*,[101] stated that *Orange Ltd v Director of Telecoms (No. 2)* was indicative of a "modern trend" whereby adjudicative bodies with a considerable degree of expertise in a particular area are increasingly making decisions in complex areas. Nonetheless, he held that where an error is so clear and serious that it can be detected by judicial oversight, then the overturning of such a decision would be justified.[102]

[7.59] The recent appeal provisions contained in the Competition (Amendment) Act 2022 and the Digital Hub Act 2023 both provide a form of statutory appeal against error. These appeal provisions effectively write the *Orange* test into statute. This approach for dealing with appeals against error seeks to strike a balance between the judicial oversight of adjudicative bodies while at the same time acknowledging the particular expertise of these bodies. Although these appeals are not full rehearings, they are not confined to points of law alone: the court may, in limited circumstances and subject to procedural safeguards, reassess aspects of the evidential basis for the original decision, admit new materials, and, where appropriate, annul, vary, or substitute the decision.[103]

[7.60] In contrast to older statutory appeal models where this question may have been left open, the recent frameworks under the Competition and Digital Hub Acts provide clear statutory guidance about the scope of the appeal. In both cases, the default position is that appeals are confined to the materials originally filed, but the court is empowered to permit additional submissions or evidence where

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[98] *Orange Ltd v Director of Telecoms (No. 2)* (No 2) [2000] IESC 22, [1999] 2 ILRM 81, [2000] 4 IR 159 at page 185.

[99] *Orange Ltd v Director of Telecoms (No. 2)* (No 2) [2000] IESC 22, [1999] 2 ILRM 81, [2000] 4 IR 159 at pages .

[100] *Ulster Bank Investment Funds Ltd v Financial Services Ombudsman* [2006] IEHC 323.

[101] *Nowak v Data Protection Commissioner* [2016] IESC 18, [2016] 2 IR 585.

[102] *Nowak v Data Protection Commissioner* [2016] IESC 18, [2016] 2 IR 585 at paras 2930.

[103] *These provisions will be discussed in greater detail in Standardisation of Judicial Oversight: Recent Statutory Appeal Models.*

necessary for the fair and proper determination of the appeal. This ensures that procedural fairness is preserved while maintaining the structured nature of an appeal.

[7.61] The Commission invites views on whether the test in Orange Ltd offers an appropriate standard for statutory appeals against error, and whether it should be adopted more broadly in legislation for other types of appeal.

(i) Judicial review

[7.62] Appeals and judicial review are distinct legal mechanisms, each serving different purposes and operating on different grounds. As Clarke J stated in *Fitzgibbon v Law Society*, "[g]iven that judicial review lies in respect of all public law decisions affecting rights and obligations, it must be assumed that, by conferring a right of appeal, the Oireachtas intended that some greater degree of review is permitted than that which would have applied, in the context of judicial review".[104]

[7.63] Where a court in judicial review proceedings is reviewing a decision for an error of law, it will by and large probably review the same issues that are addressed by appeals on a point of law. However, there are some differences. First, some errors of law are made within jurisdiction and do not result in a successful outcome. Secondly, judicial review is not restricted only to reviewing a decision for errors of law - there are other grounds for judicially reviewing a decision, including for example, bias in the decision-maker and compliance with procedural rights, such as whether the procedures followed were fair.

(ii) Curial deference

Origins of the Doctrine in Irish Law

[7.64] The concept of curial deference is a common feature which arises throughout commentary concerning appeals. Curial deference may be defined as the courts' reluctance to trespass upon decisions of bodies designated by the Oireachtas to exercise power in a particular area. In this sense, the courts show an appreciation for the expertise of these bodies and may be reluctant to interfere with the decision reached.[105] Many first instance bodies were established and designated decision-making powers over legal issues based on the knowledge and expertise they possess. This poses the question of the effectiveness of an appeal if the courts show too much deference towards the initial decision-maker.

[104] *Fitzgibbon v Law Society of Ireland* [2014] IESC 48, [2016] ILRM 202, [2015] 1 IR 516 at para 130.

[105] O'Reilly, "The Doctrine of Curial Deference in Ireland" (2007) 2 Irish Judicial Studies Journal 197.

[7.65] Caselaw suggests that the courts are reluctant to interfere with the decision of the first instance body, unless the findings were based on an erroneous application of the law or could not be supported by the facts of the case. In *Henry Denny & Sons (Ireland) Ltd v Minister for Social Welfare*,[106] the Supreme Court held that the High Court should not have interfered with the findings of the appeals officer unless the first instance body had erred in law, or the decision of the appeals officer could not be supported by the facts of the case. Hamilton CJ stated that it is undesirable to interfere with the findings of expert adjudicative tribunals because such bodies have been designated to perform tasks based on their expertise and, as such, it should not be necessary for the courts to review those decisions unless the decision is "based upon an identifiable error of law or unsustainable finding of fact by a tribunal".[107]

[7.66] In *Ulster Bank Ireland DAC v Financial Services & Pensions Ombudsman*,[108] Bolger J summarised the position as follows:

> "The statutory appeal afforded by s. 64 of the 2017 Act is, like many statutory appeals, limited to an appeal on a point of law. This is different to a *de novo* appeal on the merits of a complaint. Whether this Court would have reached the same decision on the evidence before the FSPO [Financial Services and Pensions Ombudsman] is irrelevant as the only issue for this Court is whether there was a serious or significant error or series of errors perpetrated by the FSPO in reaching his decision. That assessment is likely to involve affording the FSPO some level of curial deference, at least on his analysis of the facts. No deference is afforded to him on his analysis of the law, but some deference arises in findings involving mixed questions of law and fact. The case law makes it clear that this Court must have regard to the particular expertise of the FSPO in interpreting contractual arrangements or documents."

[7.67] Similarly, in *Orange Ltd v Director of Telecoms*,[109] the Supreme Court stated that the High Court should "have regard to the degree of expertise and specialised knowledge" available to the decision-maker. The *Orange* test was further

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[106] *Henry Denny & Sons (Ireland) ltd v Minister for Social Welfare* [1998] 1 IR 34.

[107] *Henry Denny & Sons (Ireland) ltd v Minister for Social Welfare* [1998] 1 IR 34 at pages 37 to 38.

[108] *Ulster Bank Ireland DAC v Financial Services & Pensions Ombudsman* [2023] IEHC 350 at para 38.

[109] *Orange Ltd v Director of Telecoms (No. 2)* (No 2) [2000] IESC 22, [1999] 2 ILRM 81, [2000] 4 IR 159 at page 185.

endorsed by the Supreme Court in *Nowak v Data Protection Commissioner*.[110] In *Nowak*, the Court outlined how the "degree of expertise and specialised knowledge" test had stemmed from a passage of the Supreme Court in Canada in the case *Canada (Director of Investigation and Research) v Southam Inc*.[111] In its judgment, the Court stated that a tribunal's expertise "is the most important of the factors that a court must consider in settling on a standard of review",[112] and that, given that such expertise had been deemed necessary to adjudicate on certain matters, the standard of review by a court should incorporate deference towards the relevant tribunal or body. In adopting this thinking, Irish courts will consider the expertise of the decision-making body but also the decision-making process as a whole and whether the decision was impacted by serious and significant errors.[113]

Limits to Deference

[7.68] However, there are limits as to the deference a court will give towards adjudicative bodies. Charleton J in *EMI Records (Ireland) Ltd v Data Protection Commissioner*[114] commented on such limits:

> "curial deference does not aid such a specialist tribunal beyond according due respect for its expert factual assessment or decision on the balance of competing interests. Curial deference cannot extend to sanctioning breaches of the rules as to jurisdiction or the bypassing of the tribunal of the obligation to incorporate fair procedures."

[7.69] The Court of Appeal case *Stanberry Investments Ltd v Commissioner of Valuation*[115] also discussed the limits of deference. This case concerned an appeal against a valuation decision by the Commissioner of Valuation. The Court, in discussing curial deference, considered previous caselaw, highlighting throughout that administrative tribunals, expert or otherwise, obtain no deference on pure issues of law.[116] It also referenced the remarks of Kelly J in *Premier Periclase Ltd v*

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[110] *Nowak v Data Protection Commissioner* [2016] IESC 18, [2016] 2 IR 585 at pages 592 to 593.

[111] *Canada (Director of Investigation and Research) v Southam Inc* [1997] 1 SCR 748.

[112] *Canada (Director of Investigation and Research) v Southam Inc* [1997] 1 SCR 748 at para 50.

[113] *Orange Ltd v Director of Telecoms (No. 2)* (No 2) [2000] IESC 22, [1999] 2 ILRM 81, [2000] 4 IR 159.

[114] *EMI Records (Ireland) Ltd v Data Protection Commissioner* [2012] IEHC 264, [2013] 2 IR 669 at para 20 page 686.

[115] *Stanberry Investments Ltd v Commissioner of Valuation* [2020] IECA 33.

[116] *Stanberry Investments Ltd v Commissioner of Valuation* [2020] IECA 33 at para 49.

Commissioner of Valuation,[117] where it was made clear that errors of fact do not present any issue of curial deference either; "when conclusions are based on an identifiable error of law or an unsustainable finding of fact by a Tribunal, such conclusions must be corrected".[118]

Presumption of Validity

[7.70] The Court of Appeal in *Stanberry* commented that in judicial review proceedings the notion of deference is already built into the procedure by virtue of the combined effect of the presumption of validity and the stringent test for review on the grounds of unreasonableness.[119] It noted that the Commissioner of Valuation was effectively seeking to extract from curial deference a supercharged presumption of validity. The Court held that deference means that a court should be slow to interfere with an adjudicative body's reasoning in areas of that adjudicative body's expertise.[120] Finally, the Court held that 'curial deference' is properly understood as "depending on the Tribunal having provided a properly reasoned decision, not as affording a mechanism for compensating where the decision is not so reasoned".[121] Thus, while curial deference respects the expertise of decision-making bodies, it does not insulate them from judicial oversight when errors of law or unreasonable factual findings arise.

Expertise of the Body

[7.71] In addition to intervening where errors are made, the courts also intervene where a body's decision does not arise from any particular expertise. For example, in *Veterinary Council of Ireland v Brennan*[122] Irvine P stated that while the court must show deference to the specialist knowledge of the Veterinary Council

> "there are areas in which the Council may conceivably err, and which are within the court's specific expertise to assess. These include, for example, the proper approach to mitigation and the question of causality between circumstances of personal hardship and professional misconduct".[123]

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[117] *Premier Periclase Ltd v Commissioner of Valuations* [1999] IEHC 8.

[118] *Premier Periclase Ltd v Commissioner of Valuations* [1999] IEHC 8 at page 26.

[119] *Stanberry Investments Ltd v Commissioner of Valuation* [2020] IECA 33 at para 50; *O'Keeffe v An Bord Pleanála* [1993] 1 IR 39.

[120] *Stanberry Investments Ltd v Commissioner of Valuation* [2020] IECA 33 at para 52.

[121] *Stanberry Investments Ltd v Commissioner of Valuation* [2020] IECA 33 at para 52.

[122] *Veterinary Council of Ireland v Brennan* [2020] IEHC 655.

[123] *Veterinary Council of Ireland v Brennan* [2020] IEHC 655 at para 30.

[7.72] Similarly, in *McCartney v Veterinary Council*,[124] O'Higgins J considered the above statement and, while noting that "regulatory cases occupy their own space in the legal arena… mitigating factors carry less weight in Fitness to Practice proceedings than in criminal proceedings because the primary purpose of sanction is to protect the public and the standing of the profession, rather than to be punitive",[125] he applied a lower level of curial deference to the issue of consideration of mitigation by the Veterinary Council. The High Court also stated that the issues in this particular case were "straight forward" and therefore would not warrant paying a high level of deference to the ruling of the Council.[126] Additionally, the Court held that "the court is very well placed to assess and weigh the mitigating factors in the case".[127]

[7.73] These cases highlight that the position on curial deference is relatively clear, outlining that deference must be given to the factual assessment of the first instance body where they are exercising expert judgment on an issue. However, an adjudicative body that is exercising a role similar to that of the courts will not benefit from curial deference. Moreover, the courts may intervene in cases of unreasonableness or bias, and adjudicative bodies obtain no deference on points of pure law. Finally, curial deference does not apply in *de novo* appeal cases.

(e) Grounds of Appeal

[7.74] It may seem trite but there is a variation as between appeals about what grounds can be raised before the Courts. While de novo appeals allow a decision to be revisited for errors of fact or law, other forms of appeal are more limited. Obviously, appeals on a point of law are restricted to legal issues and in the case *Attorney General v Davis*,[128] McKechnie J discussed the scope of a statutory appeal on a point of law[129] holding that such appeals permit the Court to interfere with a decision in four circumstances.[130] These non-exhaustive grounds were identified by the Court as follows

(a) Errors of law as generally understood;

[124] *McCartney v Veterinary Council* [2024] IEHC 411.

[125] *McCartney v Veterinary Council* [2024] IEHC 411 at para 71.

[126] *McCartney v Veterinary Council* [2024] IEHC 411 at para 28.

[127] *McCartney v Veterinary Council* [2024] IEHC 411 at para 28.

[128] *Attorney General v Davis* [2018] IESC 27, [2018] 2 IR 357.

[129] It is of note that this was not an appeal from an adjudicative body but an intra-court appeal.

[130] *Attorney General v Davis* [2018] IESC 27, [2018] 2 IR 357 at pages .

(b) Errors such as would give rise to judicial review including illegality; irrationality, defective or absence of reasoning, and procedural errors of some significance;
(c) Errors which may arise in the exercise of discretion which are plainly wrong; and
(d) Certain errors of fact.[131]

[7.75] There is some overlap between appeals against error and judicial review as is hinted at by McKechnie J. There is much confusion about the choice between pursuing a statutory appeal or judicial review proceedings. For example, in *Faulkner v Minister for Industry and Commerce*[132] the appeal was concerned with the failure of the Labour Court to give reasons, which O'Flaherty J stated was not a point of law. However, he took a pragmatic view and dealt with the issue as a statutory appeal. The court in *Ashford Castle Ltd v Services Industrial Professional Technical Union*,[133] followed *Faulkner's* reasoning. *Ashford Castle Ltd* involved an employment dispute relating to pay in the Labour Court which was then appealed to the High Court under the statutory scheme. When discussing the different types of appeals and judicial review proceedings the Court stated:

> "At one end of the spectrum are issues which involve the same sort of mixed questions of law and fact with which the courts are frequently faced. A person may, for example, be entitled to a social welfare benefit provided that a certain set of facts, as specified by statute, are found to exist. The issue at a hearing within the social welfare system may well, therefore, turn on whether, as a matter of fact, the necessary qualifying requirements have been established or disqualifying requirements have been shown to exist. In such cases the findings of fact will be very similar to the facts which will be found by a court should a comparable issue arise in judicial proceedings."[134]

[7.76] As a general rule, judicial review proceedings are restricted to procedural/legal grounds, for example, whether a decision was made within jurisdiction or whether fair procedures were followed. However, as discussed earlier, some particular types of judicial review proceedings may involve a review of the factual

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[131] *Attorney General v Davis* [2018] IESC 27, [2018] 2 IR 357 at paras 54 to 55. These grounds were also referenced in *Stanberry Investments Ltd v Commissioner of Valuation* [2020] IECA 33 at para 37.

[132] *Faulkner v Minister for Industry and Commerce* [1997] ELR 106 at page 111.

[133] *Ashford Castle Ltd v Services Industrial Professional Technical Union* [2006] IEHC 201, [2007] 4 IR 70.

[134] *Ashford Castle Ltd v Services Industrial Professional Technical Union* [2006] IEHC 201, [2007] 4 IR 70 at para 36 pages .

background relevant to a decision - for example, if bias or unreasonableness is imputed, it may be necessary to review the full circumstances of a decision rather than the procedures followed.

(f) Remedies

[7.77] Remedies do not vary quite as much between categories of appeal as other aspects considered in this chapter. However, some statutes are silent as to the remedies that are available on appeal and there is some variation where remedies are provided for. There is also considerable difference between the remedies available in appeals and those available in judicial review, this gives rise to much confusion about whether it is advisable to pursue a statutory appeal or judicial review proceedings. If the most appropriate route to take is not clear, appellants may decide to initiate parallel proceedings in judicial review alongside an appeal in order to secure an appropriate remedy, resulting in both an appeal and judicial review in relation to the same decision. Consequently, the same decision undergoes scrutiny through two separate processes, leading to unnecessary duplication and increased legal costs. This dual jurisdiction also places a considerable burden on the courts. Where applicants pursue both avenues, courts face an increased workload, which delays proceedings and leads to unnecessary waste of judicial resources. Furthermore, it can prolong the resolution of disputes, undermining the efficient administration of justice.

[7.78] This section will discuss the remedies available in both judicial review proceedings and in a statutory appeal.

(i) Remedies Available on Appeal

[7.79] Subject to some exceptions which are discussed below, in general upon hearing an appeal, a court may exercise several remedial options: the court may affirm the original decision (whether in whole or in part), set aside the decision, vary the decision, or substitute the decision with its own decision. The Court also has the discretionary jurisdiction to remit the matter to the decision-maker, as stated by MacEochaidh J in *National Asset Management Agency v Commissioner for Environmental Information*.[135]

[7.80] The statutory scheme for an adjudicative body may outline the remedies available to the appellant. An example of this can be seen in section 44(3) of the Teaching

[135] *National Asset Management Agency v Commissioner for Environmental Information* [2013] IESC 86 at para 96.

Council Act 2001,[136] where it is outlined that the High Court, on hearing an application may

(a) annul the decision,
(b) confirm the decision and as the Court considers appropriate –
    (i) direct the Council to remove the registered teacher from the register,
    (ii) direct that during a specified period (which period shall commence not earlier than seven days after the date of the decision of the Court and shall not exceed two years) registration shall be suspended, or
    (iii) direct the Council to retain the registration subject to such conditions (if any) as the Court considers appropriate,
(c) vary the decision…, or
(d) give such other directions to the Council as the Court considers appropriate.

[7.81] The circuit court has appellate jurisdiction[137] under the Data Protection Act 2018 to hear an appeal against an administrative fine imposed by the DPC;[138] an application by the DPC to confirm an administrative fine;[139] an application brought by an authorised officer to compel a person to comply with a DPC investigation;[140] and an application brought by an authorised officer to compel a person to comply with an oral hearing conducted by the DPC.[141] The remedies available on appeal are also clearly set out. On an appeal from the DPC, the circuit court may confirm or annul the decision, dismiss the appeal or substitute its own decision, including imposing a different fine or no fine at all.[142] Interestingly, if an appeal is brought in the circuit court against an administrative fine which is within the ordinary monetary jurisdiction of the court (currently €75,000), it appears that the court may vary this fine up to €1m.[143]

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[136] Section 44(3) of the Teaching Council Act 2001. See also *Teaching Council of Ireland v SR* [2018] IEHC 582 at para 53.

[137] Section 155 of the Data Protection Act 2018.

[138] Section 142 of the Data Protection Act 2018.

[139] Section 143 of the Data Protection Act 2018.

[140] Section 138 of the Data Protection Act 2018.

[141] Paragraph 5 of Schedule 3 to the Data Protection Act 2018.

[142] Section 150 (2) & (6) of the Data Protection Act 2018.

[143] S. 142(5) Data Protection Act 2018.

[7.82] A range of remedies is available in statutory appeals against licensing decisions which appear to be subject to full rehearings on appeal to the District Court.[144] For instance, section 15A of the Firearms Act 1925 allows for an appeal to the District Court of a decision of An Garda Síochána regarding firearms licences.[145] The District Court is empowered to confirm the decision, adjourn proceeding and direct a reconsideration of the decision, or to allow the appeal.[146] Similarly, section 13(3) of the Taxi Regulation Act 2013 provides for an appeal to the District Court regarding the refusal, revocation or suspension of a taxi licence. The District Court, on hearing such an appeal, may confirm the decision or allow the appeal.[147] This decision is final, subject to the leave of the District Court to appeal on a point of law to the High Court.[148]

[7.83] The remedies which are available for certain appeals – particularly appeals from specialised bodies such as regulators - may be restricted by their statutory schemes. For example, in *Manorcastle Ltd v Commission for Aviation Regulation*,[149] the Court was concerned with allowing an appeal under the Transport (Tour Operators and Travel Agents) Act 1982. Under statute, allowing the appeal would result in a licence being automatically granted to the appellant. This is in contrast to the ordinary position, where the High Court would return the matter to the original decision-maker for reconsideration.[150]

[7.84] The nature, scope, and available remedies of an appeal depend on statutory construction.[151] However, as already stated, some statutes are silent as to the remedies available on appeal. In such cases, the court might adopt an approach consistent with that which applies where a court hears an appeal from a lower court (rather than an adjudicative body). For such appeals, section 6 of the Summary Jurisdiction Act 1857 provides that the High Court may reverse, affirm or amend the determination made by the first instance decision-maker. It may

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[144] One example can be observed in section 113(4) of the Veterinary Practice Act 2005 which provides for an appeal to the District Court of a decision to refuse to grant or renew a certificate of suitability.

For a full list of the appeal mechanisms for each administrative body, please see the Appendix to this Consultation Paper.

[145] As inserted by section 43 of the Criminal Justice Act 2006.

[146] Section 15A(3) of the Firearms Act 1925 as inserted by section 43 of the Criminal Justice Act 2006.

[147] Section 13(7) of the Taxi Regulation Act 2013.

[148] Section 13(10) of the Taxi Regulation Act 2013.

[149] *Manorcastle Ltd v Commission for Aviation Regulation* [2008] IEHC 386.

[150] *Manorcastle Ltd v Commission for Aviation Regulation* [2008] IEHC 386. See also: Hogan, Morgan, and Daly, *Administrative Law in Ireland* 5th ed. (Round Hall, 2019).

[151] Hogan, Morgan, and Daly, *Administrative Law in Ireland* 5th ed. (Round Hall, 2019) at para 11.47.

also choose to remit the matter to the original decision along with an opinion or make any other order the Court deems fit. This provision also states that the High Court's order will be final and conclusive, save for a right of appeal to the Court of Appeal.[152] Additionally, Order 84C, rule 8(2) of the Rules of the Superior Courts provides that the Court may, "where it appears just and proper, make orders for relief of an interlocutory nature, whether in the nature of an injunction or otherwise".[153]

[7.85] The Commission invites views on whether the remedies available in appeal proceedings should be more clearly set out in legislation to enhance transparency and predictability.

(ii) Remedies in Judicial Review

[7.86] The first point of difference arising in relation to judicial review remedies is the wide range of remedies available. Following a successful judicial review, a court may uphold, quash (part or all of a decision), or remit a decision for reconsideration. A court may also make an order of mandamus or prohibition, issue a declaration, grant an injunction, or award damages. In such proceedings, the applicant must satisfy the court that "it would be just and proper in all the circumstances" to grant the relief sought."[154]

[7.87] Orders of certiorari are granted to quash adjudicative decisions. Such orders are made where a decision-making body acts unfairly, in excess of its jurisdiction or where an error appears on the face of the record for example.[155] As stated by O'Higgins CJ in *State (Abenglen Properties Ltd) v Dublin Corporation*,[156] the purpose of an order of certiorari is to "control any usurpation or action in excess of jurisdiction".

[7.88] An order of mandamus may require a duty to be performed by a public body, which may be a statutory obligation.[157] This duty must have been an obligation that was demanded by the applicant to be fulfilled and subsequently refused by the public body, however, that refusal can be inferred. In *Ryan v Clare County Council,*[158] MacMenamin J confirmed this stating that a refusal to comply must be "either in direct terms, or by conduct by which a refusal can be conclusively

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[152] This procedure is governed by Order 62 of the Rules of the Superior Courts.

[153] Order 84C, rule 8(2) of the Rules of the Superior Courts.

[154] *State (Cussen) v Brennan* [1981] IR 181 at page 195.

[155] Biehler and others, *Delany and McGrath on Civil Procedure* 4th ed (Round Hall Press, 2018) at para 31-16 page 1270.

[156] *State (Abenglen Properties Ltd) v Dublin Corporation* [1984] IR 381 at page 392.

[157] Where a statutory duty is imposed it must be clearly and unambiguously expressed and not be discretional. See *O'Donoghue v Keyes* [2016] IEHC 262 at para 18.

[158] *Ryan v Clare County Council* [2014] IESC 67 at para 30.

implied". It is of note that the courts have been traditionally reluctant to grant an order of mandamus if there is another "equally effective and convenient remedy".[159]

[7.89] A prohibition order restrains a lower court or an adjudicative body in certain circumstances, for example from acting unlawfully or outside its jurisdiction. It assists in restraining what may otherwise be a breach of fair procedures in an adjudicative body. The courts may also issue an order of quo warranto. However, quo warranto is rarely used in proceedings as an injunction or a declaration can achieve similar results.[160]

[7.90] Since the introduction of Order 84 of the Rules of the Superior Courts 1986, remedies which traditionally operated in private law are also available in judicial review proceedings.[161] As a result, an injunction, damages, or a declaration may now be granted in judicial review proceedings. This allows for more flexibility in the courts and provides appropriate remedies.

[7.91] Order 84, rule 18(2) provides that "an application for… an injunction may be made by way of an application for judicial review".[162] An injunction may be prohibitory or mandatory in nature.[163] Additionally, an injunction may be granted at the initial stage of the judicial review pending the final decision.

[7.92] Order 84, rule 25 allows for damages to be granted in judicial review if certain conditions are met.[164] First, the court must be satisfied that in a civil action the applicant would have been awarded damages. Secondly, Order 19, rules 5 and 7 apply to a claim for damages which requires the applicant to set out the particulars of the wrongdoing alleged and any items of special damages.[165]

[7.93] Finally, the court may grant a declaration, which is historically a civil remedy that confirms the particular position of the court. Order 84, rule 18(2) provides that

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[159] *R. (Tipperary North Riding and South Riding County Councils) v Considine* [1917] 2 IR 1 at page 6. See also discussion in Biehler and others, *Delany and McGrath on Civil Procedure* 4th ed (Round Hall Press, 2018) at paras 31-25 to 31-28 pages 1272 to 1278.

[160] It is of note that the Law Reform Commission recommended that the remedy *quo warranto* be abolished both in its *Report on Judicial Review Procedure* (LRC 71-2004) at para 5.14 and in its *Working Paper on Judicial Review of Administrative Action: the Problem of Remedies* (LRC WP 8-1979) at para 5.2.

[161] Order 84 of the Rules of the Superior Courts.

[162] Order 84, rule 18(2) of the Rules of the Superior Courts.

[163] Biehler and others, *Delany and McGrath on Civil Procedure* 4th ed (Round Hall Press, 2018) at para 31-22 page 1272.

[164] Order 84, rule 25 of the Rules of the Superior Courts.

[165] Order 19, rules 5 and 7 of the Rules of the Superior Courts. See also Biehler and others, *Delany and McGrath on Civil Procedure* 4th ed (Round Hall Press, 2018) at para 31-23 page 1272.

"[a]n application for a declaration or an injunction may be made by way of an application for judicial review", and the courts may grant such relief if, having regard to the nature of the matters and the persons or bodies in respect of or against whom relief may be granted, in "all the circumstances of the case, it would be just and convenient for the declaration or injunction to be granted on an application for judicial review."[166] Declarations are not coercive in nature but they give judicial weight to a proposition of law, which may assist in the resolution of proceedings.

[7.94] A further point of difference arises insofar as these remedies are discretionary, meaning that even if an applicant establishes their case, the court retains discretion to refuse the relief sought. In other words, even if an applicant successfully impugns a decision, relief may be refused if there has been a lack of good faith or bad conduct on the part of the applicant, if there has been unjustifiable or unexplained delay, if there has been acquiescence or waiver in respect of the wrongful decision or if no useful purpose would be served by granting relief.

(g) Forum for Appeals

[7.95] The forum for judicial review is the High Court. However, under the current system of judicial oversight, there is a variety of destinations for appeals from administrative bodies. Appeals may lie to the District Court, the Circuit Court, or the High Court, depending on accessibility and the nature of review. Moreover, destination is not clearly dictated by the type of appeal although some patterns emerge. For instance, *de novo* appeals mostly lie either to the District Court or the Circuit Court. The rationale underlying the choice of forum between the Circuit Court and the District Court can be discerned in that the District Court appears to be the preferred forum for matters of a local nature and relevance such as licensing. From an examination of the statutory appeal routes, it is found that the grant of a right to a full rehearing to the High Court is exceedingly rare.[167]

[7.96] When an appeal does lie to the High Court, the justification may be connected to the fact that the monetary value of the claim exceeds the jurisdiction of the lower courts. By way of example of jurisdictional choice of forum, the decision of the Data Protection Commission to impose an administrative fine may be appealed to the Circuit Court, or to the High Court if the fine exceeds €75,000.[168] At first glance, this appeal appears to be a variant of a *de novo* appeal, as the court "may

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[166] Biehler and others, *Delany and McGrath on Civil Procedure* 4th ed (Round Hall Press, 2018) at para 31-22 page 1272.

[167] See the appendix to this Consultation Paper.

[168] Section 142(6) of the Data Protection Act 2018.

consider any evidence adduced or argument made by the controller or processor concerned, whether or not already adduced or made to an authorised officer or the [Data Protection] Commission".[169] However, the courts have concluded that this procedure does not consist of a *de novo* appeal.[170]

[7.97] Moreover, not all appeals have a readily identifiable monetary value. For example, section 150 of the Data Protection Act 2018 transposes Article 58 GDPR and grants the Circuit Court concurrent jurisdiction with the High Court to determine appeals of substantive decisions made by the Data Protection Commission. However, this provision is silent as to when the Circuit Court is the appropriate forum for an appeal of a substantive decision.[171]

[7.98] Appeals often lie to the District Court from decisions regarding licenses and certificates. For example, the decision of the Veterinary Council of Ireland to grant or renew subject to conditions or refuse to grant or renew a certificate of suitability may be appealed to the District Court.[172] Upon hearing an appeal, the District Court may make an order affirming or setting aside any decision of the Veterinary Council Ireland, remitting the decision for reconsideration and the making of a new decision, or the Court may make any other order that it considers appropriate.[173] The decision of the District Court on an application under this section is final unless an appeal is certified to the High Court on a question of law.[174]

[7.99] Appeals of a more complex nature are usually heard in the Circuit Court. For example, adjudications by the Workplace Relations Commission about complaints of discrimination under the Equal Status Acts 2000-2015 are appealed to the Circuit Court. Decisions made by an adjudication officer can be appealed by either party to the Circuit Court, **"**by notice in writing specifying the grounds of the appeal."[175] The appeal must be instituted within 42 days from the date of the decision and appeals should be brought in the circuit where the respondent resides or carries out its business. The Rules of the Circuit Court provide that all appeals shall be heard upon oral evidence.[176] The Equal Status Acts provide that

[169] Section 142(2) of the Data Protection Act 2018.

[170] *Nowak v Data Protection Commissioner* [2016] IESC 18, [2016] 2 IR 585 per O'Donnell J at para 30.

[171] Section 150(9) of the Data Protection Act 2018.

[172] Section 113(4) of the Veterinary Practice Act 2005.

[173] Section 113 (5) of the Veterinary Practice Act 2005.

[174] Section 113(7) of the Veterinary Practice Act 2005.

[175] Section 28(1) of the Equal Status Act 2000, as substituted by section 84(1)(b) of the Workplace Relations Act 2015.

[176] Rule 3(g) of the Circuit Court Rules (Equal Status Act, 2000) 2004 (SI 879 of 2004).

in determining the appeal, the Circuit Court may provide for any redress for which provision could have been made by the decision appealed against (substituting the discretion of the Circuit Court for the discretion of the Director of the Workplace Relations Commission).[177] The Circuit Court decision can itself be appealed to the High Court, but only on a point of law.

[7.100] The decision of a Mental Health Tribunal to affirm an admission order may be appealed by the patient concerned to the Circuit Court.[178] Such appeals are restricted in the statute to the grounds "that he or she is not suffering from a mental disorder." The Circuit Court may affirm or revoke the order made, having had regard to 'any submission' made. Although there is no statutory power to hear evidence,[179] the Rules of the Circuit Court specify that appeals, whether by the Mental Health Commission or by the detained appellant, are heard on foot of oral evidence although the reports furnished at first instance are admissible in evidence without further proof.[180] This appeal appears to be a further bespoke variation of a rehearing. Further appeals against an order of the Circuit Court are restricted except for appeals on a point of law to the High Court.

[7.101] As for proceedings in the High Court, appeals tend to be confined to appeals against error or appeals on a point of law. For instance, section 64 of the Financial Services and Pensions Ombudsman Act 2017 provides for an appeal to the High Court. The Courts have concluded that an appeal under this Act is not intended to be a *de novo* appeal, and should be confined to appeals against error.[181] The Residential Tenancies Act 2004 states that a determination of the Residential Tenancies Tribunal may be appealed to the High Court on a point of law only.[182] The decision of the High Court in such an appeal is final and conclusive.[183]

[7.102] Finally, some categories of appeal are more generously catered for than others. Thus, for example, the taxpayer is given numerous opportunities to appeal, which include a full de novo appeal from the Revenue Commissioners to the Tax Appeals Commission. The decision of the Commission may be appealed by either party on a point of law, by way of case stated to the High Court, from there to the

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[177] Section 28(3) of the Equal Status Act 2000.

[178] Section 19(1) of the Mental Health Act 2001.

[179] Section 19(4) and (7) of the Mental Health Act 2001.

[180] Order 47A(10) of the Rules of the Circuit Court.

[181] *Chubb European Group SE v Financial Services and Pensions Ombudsman* [2023] IEHC 74 at para 90.

[182] Section 123(3) of the Residential Tenancies Act 2004.

[183] Section 123(4) of the Residential Tenancies Act 2004.

Court of Appeal and, in certain limited circumstances, onwards to the Supreme Court.[184]

[7.103] Overall, there is a lack of predictability about the forum for appeals. A further layer of complexity arises when hearing appeals, because different courts have different requirements in terms of practice and procedure, time limits, and venue, all of which add to the complexities for parties. The Commission believes that there is merit in standardising the rules about appeal paths and the appropriate forum for appeals, with a view to bringing greater coherence, clarity, consistency, and accessibility for all involved. The appropriate forum for the variety of appellate proceedings should be considered. The allocation of forum will depend on a number of factors, including the nature of the proceedings, the language of the statute, and accessibility.

[7.104] The Commission invites views on how the allocation of appeal forums could be standardised to promote consistency, accessibility and clarity for applicants.

(h) Onward Appeals

[7.105] As a general rule, unless precluded by statute, decisions of the District Court can be appealed to the Circuit Court and decisions of the Circuit Court can be appealed to the High Court. Since the passing of the Court of Appeal Act 2014, the Court of Appeal has the jurisdiction to hear appeals in civil proceedings from the High Court which previously would have been heard by the Supreme Court.

[7.106] A particular problem has arisen in practice where a statutory appeal lies to the Circuit Court and, unless explicitly excluded, a further appeal lies to the High Court. This automatic right can lead to multiple onwards appeals arising from the same set of proceedings and this creates a risk of undue delay, increased cost, and inconsistency, particularly where multiple rehearings occur. An example of this can be seen in *JVC Europe v Panisi*.[185] In this case, the High Court carried out a third full rehearing on oral evidence of the case, as evidence had already been heard by the Employee Appeals Tribunal and the Circuit Court.[186]

[7.107] Another remarkable example is the case of *Nowak v Data Protection Commissioner*, in which an appeal from the Data Protection Commission was heard successively by the Circuit Court, High Court,[187] Court of Appeal, and

[184] Section 949AP of the Taxes Consolidation Act 1997 as inserted by section 34 of the Finance (Tax Appeals) Act 2015.

[185] *JVC Europe v Panisi* [2011] IEHC 279.

[186] *JVC Europe v Panisi* [2011] IEHC 279 at para 11 and 12.

[187] *Nowak v Data Protection Commissioner (HCt)* [2012] IEHC 449, [2013] 1 ILRM 207.

Supreme Court,[188] who made a reference to the Court of Justice of the European Union.[189] The Data Protection Act 2018 has addressed this possibility, providing that a decision of the Circuit or High Court (as the case may be) is final except that an appeal shall lie to the High Court or Court of Appeal respectively on a point of law.[190]

[7.108] There is not always an automatic a full right of appeal, however. In *Canty v Private Residential Tenancies Board,*[191] the Supreme Court held that any statute which purports to remove even a limited right of appeal on an issue, such as costs which this case concerned, had to be phrased so as to make that intention clear. In some instances, the Oireachtas has regulated the appellate jurisdiction by confining onward appeals to a point of law[192] or requiring a certificate from a court to permit a further appeal. An example of this kind of restricted right of appeal is contained in section 16(11) of the European Arrest Warrant Act 2001. This statute provides for an appeal against the decision to surrender a person named in a European Arrest Warrant only if the High Court certifies that the order or decision involves a point of law of public importance and that it is desirable in the public interest that an appeal should be taken.[193]

[7.109] The Supreme Court in *Re Article 26 of the Constitution and Re Illegal Immigrants (Trafficking) Bill 1999*[194] discussed restrictions on the right of appeal for example, where the Oireachtas regulated further appeals by requiring leave of the High Court before an appeal could be taken under section 52(2) of the Courts (Supplementary Provisions) Act 1961, or by confining the appeal to a point of law as provided for by section 96 of the Patents Act 1992.[195] The Court pointed out that in *Minister for Justice v Wang Zhu*[196] and *Irish Asphalt Limited v An Bord Pleanála*,[197] the Court had given effect to restricted appellate provisions. In *Irish Asphalt Limited v An Bord Pleanála*, Barrington J drew attention to the underlying

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[188] *Nowak v Data Protection Commissioner* [2016] IESC 18, [2016] 2 IR 585.

[189] *C-434/16 Peter Nowak v Data Protection Commissioner* ECLI:EU:C:2017:994.

[190] Section 150(11) of the Data Protection Act 2018.

[191] *Canty v Private Residential Tenancies Board* [2008] IESC 24.

[192] For example, section 96(7) of the Patents Act, 1992 and section 52(2) of the Courts (Supplementary Provisions) Act 1961.

[193] Section 16 of the European Arrest Warrant 2001 as inserted by section 10(k), (m) of the European Arrest Warrant (Amendment) Act 2024. For another example, see section 13(6) of the Irish Take-Over Panel Act 1997.

[194] *Re Article 26 of the Constitution and Re Illegal Immigrants (Trafficking) Bill 1999* [2000] 2 IR 360.

[195] Similar formulae appear in the Local Government (Planning and Development) Act 1992 and in the Irish Take-Over Panel Act 1997.

[196] *Minister for Justice v Wang Zhu* [1993] IR 426.

[197] *Irish Asphalt Limited v An Bord Pleanála* [1996] 2 IR 179.

policy of the Local Government (Planning and Development Act 1992 when he observed, "[c]learly, the purpose of this Act was to speed up the planning process by shortening litigation and by eliminating applications for judicial review which were devoid of substance."[198]

The Commission invites views on whether greater legislative guidance is required to clarify the nature and scope of appeals from non-court adjudicative bodies.

(i) Appeals to the Supreme Court

[7.110] For the sake of completeness, it is noted that Article 34.5.3 of the Constitution confers appellate jurisdiction from a decision of the Court of Appeal to the Supreme Court in circumstances where the Supreme Court is satisfied that the decision involves a matter of general public importance or that an appeal is necessary in the interests of justice.[199] The Court of Appeal may grant a stay on an appeal before it, to enable the applicant to apply to the Supreme Court for leave to appeal.[200]

[7.111] Finally, there can also be cases where a decision from the High Court is appealed directly to the Supreme Court pursuant to Article 34.5.4°, colloquially called a 'leapfrog' appeal. These arise in exceptional circumstances. For example, *Connelly v an Bord Pleanála*[201] involved environmental obligations connected to an application for planning permission for a windfarm. Leave to appeal was granted where the High Court refused a certificate of leave to appeal but the Supreme Court deemed the points raised to be of general public importance.

[7.112] However, there is no longer an automatic right of appeal to the Supreme Court in the above instances. Instead, an application for leave to appeal must be made to the Supreme Court and the Court determines which appeals it will hear based on its assessment of the public importance of the decision.

[7.113] The meaning of general public importance or an appeal that is necessary in the interests of justice was discussed in the Supreme Court in *Barlow Woodstown Bay Shellfish Ltd v Minister for Agriculture, Food and Marine*.[202] In this case, Clarke J held that for the purpose of a leapfrog appeal an 'exceptional' case requires the

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[198] *Irish Asphalt Limited v An Bord Pleanála* [1996] 2 IR 179 at 186.

[199] Article 34.5 of the Constitution. See also de Blacam, *Judicial Review* 3rd ed (Bloomsbury Professional, 2017) at para 51.17 page 867.

[200] Power to grant a stay pending application for leave to appeal was provided by section 7B of the Courts (Supplemental Provisions) Act 1961 as inserted by section 9 of the Court of Appeal Act 2014.

[201] *Connelly v an Bord Pleanála* [2018] IESC 31.

[202] *Connelly v An Bord Pleanála* [2018] IESC 31, [2021] 2 IR 752.

court to consider the nature of the appeal and the existence of 'external circumstances'.[203]

(ii) Appeals by Way of Case Stated

[7.114] A case stated consists of a procedure where a primary decision-maker may refer a question of law to a superior court for determination."[204] In some circumstances, an 'appeal by way of case stated' may be permitted. During this procedure, an appellant may require the relevant decision-maker to state a case, with the decision-maker having limited grounds for refusing to do so.[205]

[7.115] Despite being termed an 'appeal', a case stated does not involve a rehearing or factual reassessment. It does however, involve judicial oversight. The jurisdiction of the court is confined to questions of law and consideration of the facts set out in the agreed case stated.[206] Unlike an appeal on a point of law, a case stated must be formally stated and signed by the decision-maker before being heard. A different procedure is followed in the appeal court and the pleadings differ from a normal appeal but in substance, an appeal by way of case stated is very similar to an appeal on a point of law.

[7.116] As with appeals on a point of law, it has been acknowledged that there may be "borderline cases" of appeals by way of case stated which may involve a mixed question of both law and fact.[207] De Blacam notes that, in such cases, a court may be minded to refrain from interfering, unless an obvious legal issue exists, such as the construction of a statute.[208]

[7.117] The statutes of some adjudicative bodies specifically provide for an appeal by way of case stated. For instance, determinations of the Tax Appeal Commissioners are final and conclusive, save for an appeal by way of case stated.[209] The Finance Tax Appeals Act goes on to provide for an appeal by way of case stated where "a party… is dissatisfied with a determination as being erroneous on a point of law".[210] This means that parties may not appeal simply

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[203] *Connelly v An Bord Pleanála* [2018] IESC 31, [2021] 2 IR 752 at para 17. See also de Blacam, *Judicial Review* 3rd ed (Bloomsbury Professional, 2017) at para 51.20 page 869.

[204] de Blacam, *Judicial Review* 3rd ed (Bloomsbury Professional, 2017) at para 58.01 page 973.

[205] de Blacam, *Judicial Review* 3rd ed (Bloomsbury Professional, 2017) at para 58.04 at page 974.

[206] de Blacam, *Judicial Review* 3rd ed (Bloomsbury Professional, 2017) at para 58.04 at page 989. See also *Donaghy v Walsh* [1914] 2 IR 261 at page 273.

[207] *Rahill v Brady* [1971] IR 69.

[208] de Blacam, *Judicial Review* 3rd ed (Bloomsbury Professional, 2017) at para 58.42 at page 990.

[209] This procedure is governed by Order 34 of the Rules of the Superior Courts.

[210] Section 949AP(2) of the Finance (Tax Appeals) Act 2015.

because the decision was not made in their favour. A party will have a right to appeal, however, where they believe that an Appeal Commissioner has misinterpreted a section of the relevant legislation. The High Court may reverse, affirm or amend the determination, remit the matter with its opinion, or make any order it deems to be just.[211]

[7.118] Similarly, the Valuation Act 2001 provides for an appeal by way of case stated following a determination of the Valuation Tribunal.[212] The Act also provides for an onward appeal from the decision of the High Court, following an appeal by way of case stated.[213]

5. Choosing Whether to Appeal or Judicially Review

[7.119] The Commission is particularly interested in how judicial review interacts with or should interact with statutory appeals. Because a first instance decision may be flawed in a number of ways, the decision may be amenable to judicial review or to an appeal or even to both. For example, a decision may be flawed in the way in which it is decided or in its reasoning or understanding of the law. This can lead to confusion about whether an applicant should apply for judicial review proceedings, a statutory appeal or both. This can subsequently cause waste of costs and court resources. This includes the circumstances in which an appellant may be told that a complaint being made about the decision appealed from is outside the scope of the appeal and must be pursued by way of judicial review. There are also cases where the courts have ruled that an appeal would have been a more appropriate remedy than judicial review.

[7.120] In *EMI Records (Ireland) Ltd v Data Protection Commissioner*[214] one of the key issues was whether judicial review was appropriate given that the notice party retained a right of statutory appeal against the respondent's decision. The Court considered this issue and found that judicial review was appropriate as the *applicant* did not have any right to appeal. Moreover, while appropriate deference would be given to the specialist decision of the Data Protection Commission, curial deference could not arise where reasons for a decision were required by statute but were not given, nor could curial deference be a factor in judicial review where a mistake of law put a tribunal outside of its statutory jurisdiction.

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[211] Section 949 AR(1) of the Finance (Tax Appeals) Act 2015.

[212] Section 39(2) of the Valuation Act 2001.

[213] Section 39(7) of the Valuation Act 2001.

[214] *EMI Records (Ireland) Ltd v Data Protection Commissioner* [2012] IEHC 264, [2013] 2 IR 669. The High Court decision in this case was upheld by the Supreme Court in *EMI Records (Ireland) Ltd v Data Protection Commissioner* (SCt) [2013] IESC 34; [2014] 1 ILRM 225.

[7.121] There are also situations where, as a precaution, an appellant brings both an appeal and judicial review proceedings and consequential issues arise, for example relating to interaction/sequencing between the two sets of proceedings. An example can be seen in the case *Chubb European Group plc v The Health Insurance Authority*[215] which concerned both judicial review proceedings[216] and a statutory appeal.[217] The Court was of the opinion that it was open to the litigant to issue judicial review proceedings as the appeal procedure did not provide the full range of appropriate remedies.[218] However, the Court ruled that for judicial review proceedings to be sustainable, the complaints reviewed by the Court should not be amenable to the statutory appeal procedure.[219] In those circumstances, only the grounds which were not raised and considered in the course of the statutory appeal proceedings were considered by the Court in the judicial review proceedings.

[7.122] By way of contrast, in *An Taoiseach v Environmental Information Commissioner*, the appellant had instituted judicial review proceedings 'around the time of' the appeal, challenging the *vires* of the respondent to reach its decision. The parties agreed that the issue could be dealt with within the confines of the appeal.[220]

[7.123] When considering what grounds can only be pursued by way of judicial review and cannot be pursued by way of statutory appeal, there are a number of key cases to consider. Generally, any public law decision having an effect on legal rights and obligations is amenable to judicial review.[221] In *G v DPP*[222] the Supreme Court set down the test for leave to proceed by way of judicial review. Finlay CJ laid down the five-part test as follows:

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[215] *Chubb European Group plc v The Health Insurance Authority (JR pcdgs)* [2018] IEHC 608.

[216] The judgment in the judicial review proceedings is *Chubb European Group plc v The Health Insurance Authority (JR pcdgs)* [2018] IEHC 608.

[217] The judgment in the statutory appeal proceedings is *Chubb European Group PLC v HIA (appeal pcdgs)* [2018] IEHC 609.

[218] *Chubb European Group plc v The Health Insurance Authority* [2020] IECA 91; [2022] 2 IR 686 at paras pages 731732.

[219] *Chubb European Group plc v The Health Insurance Authority (JR pcdgs)* [2018] IEHC 608 at para 30. See also *Chubb European Group plc v The Health Insurance Authority* [2020] IECA 91; [2022] 2 IR 686 at paragraph 137 to 139 pages 731.

[220] *An Taoiseach v Commissioner of Environmental Information* [2010] IEHC 241, [2013] 2 IR 510 at para 26 page 524.

[221] *Fitzgibbon v Law Society of Ireland* [2014] IESC 48, [2016] ILRM 202, [2015] 1 IR 516 at para 129 page 560.

[222] *G v Director of Public Prosecutions* [1994] 1 IR 374.

> "An applicant must satisfy the court in *prima facie* manner by the facts set out in his affidavit and submission made in support of his applications of the following matters:
>
> (a) That he has a sufficient interest in the manner to which the application relates to comply with rule 20(4);
>
> (b) That the facts averred in the affidavit would be sufficient, if proved to support a stateable ground for the form of relief sought by way of judicial review;
>
> (c) That on those facts an arguable case in law can be made that the applicant is entitled to the relief which he seeks;
>
> (d) That the application has been made promptly and… within the… [relevant] time limits…;
>
> (e) That the only effective remedy, on the facts established by the applicant, which the applicant could obtain would be an order by way of judicial review or, if there be an alternative remedy, that the application by way of judicial review is, in all the facts of the case, a more appropriate method of procedure".[223]

[7.124] The Court in *Gogova v The Residential Tenancies Board*[224] applied this test. While there were a number of issues with the case (primarily due to time limits not being adhered to) the Court held that where a statutory appeal is provided for, it is understood as the appropriate remedy for a claimant who considers the decision to be legally flawed and therefore the case should not proceed by way of judicial review.[225]

[7.125] Where the unlawfulness of the exercise of the powers of a decision-making body is concerned, judicial review is the exclusive remedy. The decision of the Court of Appeal in Stanley v Revenue Commissioners[226] which was quoted with approval in *Lee v Revenue Commissioners*[227] demonstrates this, stating that "the Appeal Commissioners' function is confined to determining whether the quantum of a lawful assessment is correct, and not whether the notice of assessment itself is

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[223] *G v Director of Public Prosecutions* [1994] 1 IR 374 at pages 377 to 378.

[224] *Gogova v The Residential Tenancies Board* [2023] IEHC 449.

[225] *Gogova v The Residential Tenancies Board* [2023] IEHC 449 at para 25.

[226] *Stanley v Revenue Commissioners* [2017] IECA 279, [2019] 2 IR 218 at page 232.

[227] *Lee v Revenue Commissioners* [2021] IECA 18; [2022] 1 IR 388 at para 61 page 411.

lawfully issued". The Court in *Lee* observed that judicial review forms the exclusive mechanism for challenging an out-of-time assessment.[228]

[7.126] The decision in *Koczan v Financial Services Ombudsman*,[229] provides useful commentary on the differences between statutory appeals and judicial review. In *Koczan*, the Court acknowledged that there are "certain categories of cases where the legal argument raised falls properly to be canvassed by means of judicial review rather than by way of a statutory appeal,"[230] as an appeal would not permit the person aggrieved to adequately ventilate the basis of their complaint. The High Court goes on to state that

> "These cases must, however, be regarded as the exception rather than the rule… It follows, therefore, that the creation by legislation of a right of statutory appeal from an administrative decision which is not confined to an appeal on a point of law generally raises the inference - albeit a rebuttable inference - that the Oireachtas "must have intended that the Court would have powers in addition to those already enjoyed at common law" in respect of its judicial review jurisdiction… That in turn suggests that the Oireachtas further intended that the statutory appeal would form the vehicle whereby the entirety of an appellant's arguments could be ventilated in such an appeal without any need to commence a further set of proceedings, at least to the extent that it was procedurally possible to do so".[231]

[7.127] *Koczan* was cited with approval by the Supreme Court in *EMI Records (Ireland) Ltd v Data Protection Commissioner,* where it was stated that "[t]he default position is that a party should pursue a statutory appeal rather than initiate judicial review proceedings".[232] This statement was later approved by the Supreme Court in *Sheehan v Solicitors Disciplinary Tribunal*.[233] While the statutory construction will determine the scope of the appeal and "the extent to which an appellate body can involve itself in a consideration of the adequacy of the process by which the original decision was made or other issues which typically arise in judicial review proceedings concerning the lawfulness of the original decision can vary

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[228] *Lee v Revenue Commissioners* [2021] IECA 18; [2022] 1 IR 388 at para 60 page 411.

[229] *Koczan v Financial Services Ombudsman* [2010] IEHC 407.

[230] *Koczan v Financial Services Ombudsman* [2010] IEHC 407 at para 19.

[231] *Koczan v Financial Services Ombudsman* [2010] IEHC 407 at para 20.

[232] *EMI Records (Ireland) Ltd v Data Protection Commissioner (SCt)* [2013] IESC 34; [2014] 1 ILRM 225 at para 4.8.

[233] *Barry Sheehan Practising Under the Style of Barry Sheehan, Solicitor v Solicitors Disciplinary Tribunal (SC)* [2021] IESC 64, [2022] 1 ILRM 1, [2022] 1 IR 78.

considerably"[234] given the statutory variation, the courts have shown that they are not beyond permitting grounds usually raised in judicial review proceedings being raised in appeals on a point of law.[235] In particular, in *EMI Records*, it was determined that there would be cases where a party should not be confined to the statutory appeal route alone so as to ensure justice was properly served, and which would include circumstances where an appeal would not allow a party to adequately outline their complaint.

[7.128] One of the factors considered in granting discretionary judicial review remedies is whether an alternative remedy exists.[236] There is authority to the effect that certain grounds of challenge to an administrative decision must be pursued by way of judicial review. This is evident in cases such as *Chubb European PLC v The Health Insurance Authority*[237] but it is also in keeping with the decision of Laffoy J in *Teahan v Minister for Communications, Energy and Natural Resources*.[238] Laffoy J considered an appeal under the Fisheries Acts,[239] which provides for appeals against statutory instruments made under the Act. She held that an appeal based on a failure to consult the applicants in violation of their rights to fair procedures could be brought by way of an appeal, noting that

> "There is nothing in the language of the provision which suggests that, if the aggrieved person's complaint is that the respondent infringed his legal rights, but he does not want to incur the additional cost of adducing evidence to challenge the decision on the merits, he cannot avail of the statutory appeal procedure but must go the judicial review route".[240]

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[234] *EMI Records (Ireland) Ltd v Data Protection Commissioner (SCt)* [2013] IESC 34; [2014] 1 ILRM 225 at para 5.3.

[235] See the comments of Noonan J in *Swaine v Solicitors Disciplinary Tribunal* [2016] IEHC 667 at para 19 that "all of the matters of which complaint is made by the applicant in these proceedings are capable of being dealt with by way of appeal.".

[236] As set out by O'Higgins CJ in *The State (Abenglen Properties) v Dublin Corporation* [1984] IR 381 at page 393; by Barron J in the High Court in *McGoldrick v An Bord Pleanála* [1997] 1 IR 497 at page 509; by Geoghegan J in *Buckley v Kirby* [2000] 3 IR 431 at page 435; by Denham J in *Stefan v Minister for Justice* [2001] 4 IR 203 at page 216; by Denham J in *Tomlinson v Criminal Injuries Tribunal* [2005] IESC 1, [2006] 4 IR 321 at pages 324 to 325; the judgment of Hogan J in *Koczan v Financial Services Ombudsman*[2010] IEHC 407 at paras 19 and 20; and the judgment of Clarke J in *EMI Records (Ireland) Ltd and Others v Data Protection Commissioner* [2014] 1 ILRM 225, [2013] IESC 34.

[237] *Chubb European Group plc v The Health Insurance Authority (JR pcdgs)* [2018] IEHC 608.

[238] *Teahan v Minister for Communications, Energy and Natural Resources* [2008] IEHC 194.

[239] Section 11(1)(d) of the Fisheries (Consolidation) Act 1959 as amended by sections 3 and 33 of the Fisheries (Amendment) Act 1962.

[240] *Teahan v Minister for Communications, Energy and Natural Resources* [2008] IEHC 194 at para 43. As noted by Hogan, Morgan & Daly, broadly similar views are expressed by the

[7.129] In the case of *O'Reilly v Lee*,[241] Macken J provides helpful guidance as to the suitability of a rehearing or judicial review depending on the appellant's desired outcome. In her decision, Macken J stated that if the applicant wished to challenge the manner in which the original decision was made or raise the contention that the tribunal had failed to deal with certain matters, the correct application would be for a judicial review of the original decision.[242]

[7.130] A final consideration in the interaction between judicial review and appeals focuses on the consequences. Judicial review proceedings can potentially have a wide-ranging effect, invalidating a class of decisions taken under a particular unlawful procedure, for example while a decision in an appeal will only invalidate the original decision.

[7.131] Given the variations demonstrated above, it is clear why an applicant may have concerns over which type of judicial oversight they choose to pursue and therefore may choose to pursue parallel proceedings. However, these proceedings can be costly and unnecessarily use up court resources and in the Commission's view, any reform should aim to reduce the perceived need to issue more than one set of oversight proceedings.

6. Proposed Standardisation of Judicial Oversight

[7.132] This Chapter has noted that the multiplicity of appeal mechanisms creates inefficiencies and adds significant complexity to the process, burdening not only applicants without specialist knowledge, but also legal professionals and the judiciary. Applicants and their representatives must be prepared to engage with varying types of review, legal standards and procedural rules at each stage, depending on the statutory appeal available for the decision in question. Each type of review and each stage requires a different approach and understanding of the law, which can be daunting for applicants who lack legal expertise and challenging even for experienced legal professionals. The various types of appeals form one layer of complexity over which is laid the blanket of judicial review, adding new complexities to the system. This multifaceted system can be overwhelming, leading to increased time and costs, and creating barriers to access to justice.

[7.133] It would seem to follow that a useful reform in this area could be for the Oireachtas, when legislating to create a statutory appeal, to provide greater guidance as to the nature and scope of the appeal and also to address whether

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same judge in *Canty v Private Residential Tenancies Board* [2007] IEHC 243. See further, *Koczan v Financial Services Ombudsman* [2010] IEHC 407.

[241] *O'Reilly v Lee* [2008] IESC 21, [2008] 4 IR 269.

[242] *O'Reilly v Lee* [2008] IESC 21, [2008] 4 IR 269 at para 7 page 273.

the court can have regard to additional material, what orders may be made by the court, onward appeals, and so on.

[7.134] Examples of progress towards standardisation of statutory appeals can be seen in recent statutes such as the Competition (Amendment) Act 2022 and the Digital Hub Act 2023.[243]

[7.135] It is also possible for reform to take place at a level below statute. Standardisation of court rules relating to appeals from adjudicative bodies would provide some clarity, for example. The Commission sets out its proposals for reform of statutory appeals and court procedure below.

(a) Court Procedure

[7.136] While recent legislation, such as the Competition (Amendment) Act and the Digital Hub Act, specify the procedures to be followed and the orders that can be made by courts on appeal, many statutes contain no such guidance. For example, regarding appeals, the Agricultural Appeals Act 2001 simply states that decisions may be appealed on "any question of law" to the High Court.[244] There is no mention of what the court may do on hearing the appeal - whether that is to confirm, remit or vary the decision or substitute the decision for its own. When legislation does mention the remedies a court may grant, the available remedies often vary depending on the statute in question.[245] For example, the Aviation Act 1982 provides "a unique mechanism" according to Charleton J which provides that if the High Court considers that the appeal against refusal of a licence should be allowed, the respondent is automatically obliged to grant a licence.[246]

[7.137] By way of response to inconsistent statutory guidance, the Rules of the Superior Courts provide a procedure in Order 84B which has contributed somewhat to standardising procedures. The procedures apply to a broad swathe of applications and apply unless an enactment provides an alternative procedure.[247] The Order applies to 'any agency, authority, board, commission, council or other body [other than a company formed under the Companies Acts] established by or under any enactment and authorised to exercise powers under any enactment, including, where the context so admits or requires, any committee of, or appointed by, such body, and any chairperson, officer or member of the staff of

[243] See discussion below on Recent Statutory Appeal Models.

[244] Section 11 of the Agricultural Appeals Act 2001.

[245] For further discussion on remedies available to the courts see Judicial Remedies section in this Chapter.

[246] *Manorcastle Ltd v Aviation Commissioner* [2008] IEHC 386, [2009] 3 IR 495 at para 83 page 509.

[247] Order 84B(1)(2) of the Rules of the Superior Courts.

such body who has been authorised by such body to exercise powers under any enactment'.[248]

[7.138] Similarly, Order 84C of the Rules of the Superior Courts sets out the procedure to be followed in statutory appeal cases where no provision is made by the enactment providing for the right to appeal.[249] While often the relevant statute will specify that a statutory appeal lies to the High Court on a point of law only,[250] sometimes the legislation will not specify the procedures to be applied to such an appeal.[251] An Order 84C procedure is commenced by way of a Notice of Motion which must state concisely the point of law on which the appeal is made and be grounded on a grounding affidavit.[252] The affidavit must exhibit the original application and decision under appeal.[253] The court can give directions and hear interlocutory applications in accordance with this Order.[254]

[7.139] Order 84C, rule 2 imposes a 21-day time limit on the issuing of the Notice of Motion following the decision-making body's decision.[255] However, Rule 2(5)(b) allows for the court to extend this time where the court is satisfied "that there is good and sufficient reason for extending that period and that the extension of the period would not result in an injustice being done to any other person concerned in the matter".[256]

[7.140] The High Court considered what a "good and sufficient" is reason for extending the 21-day time limit in *Keon v Gibbs*.[257] Baker J, in deciding this case, looked to the common law test for an applicant seeking to extend time to appeal, as established in *Éire Continental Trading Company Ltd v Clonmel Foods Ltd* by the Supreme Court.[258] This three-step test requires applicants to show (1) that they had a bona fide intention to appeal within the time limit; (2) that there was an element of mistake (with a procedural error being insufficient); and (3) that there were arguable grounds of appeal. In *Keon v Gibbs,* Baker J held that a court

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[248] Order 84B(1)(e) of the Rules of the Superior Courts.

[249] Order 84C, rule 1(2) of the Rules of the Superior Courts.

[250] For example, section 15(6) of the Protection of Employees (Fixed Term Work) Act 2003.

[251] Section 15(6) of the Protection of Employees (Fixed Term Work) Act 2003. See also Maguerite Bolger, "High Court Appeals on Points of Law" (2013) 10(3) Irish Employment Law Journal 81.

[252] Order 84C, rule 3 of the Rules of the Superior Courts.

[253] Order 84C, rule 3 of the Rules of the Superior Courts.

[254] Order 84C, rule 8 of the Rules of the Superior Courts.

[255] Order 84C, rule 2(5) of the Rules of the Superior Courts.

[256] Order 84C, rule 2(5)(b) of the Rules of the Superior Courts.

[257] *Keon v Gibbs* [2015] IEHC 812.

[258] *Éire Continental Trading Company Ltd v Clonmel Foods Limited* [1955] IR 170. Note that this case was an intra-court appeal and not an appeal from an adjudicative body.

hearing an application for an extension of time under Order 84C must have regard to the reason for the delay, the length of the delay, whether the intention to appeal was formed within time, whether the appeal is arguable, and whether an extension of time would prejudice the other party. [259]

The Commission invites views on whether existing court rules, such as Order 84B and 84C of the Rules of the Superior Courts, provide a sufficient procedural framework for statutory appeals, or whether reform is needed.

[7.141] Furthermore, Order 63 of the Rules of the Superior Courts provides detailed rules for the pre-trial and case management of commercial cases,[260] competition cases,[261] and chancery and non-jury actions.[262] Some of these cases involve appeals from adjudicative decisions. By way of example, Order 63C provides detailed guidelines for the preparation and case management of chancery and non-jury actions in the High Court. Among other matters, the Order provides for the fixing of time limits; the giving of directions about whether proceedings shall continue on pleadings or on oral evidence; by means of statement of issues of law or fact or both fixing any issues of fact or law to be determined in the proceedings; the consolidation of the proceedings with any other cause; the delivery of interrogatories or discovery; and the exchange of documents or information between the parties.

[7.142] The Order permits a judge to fix a timetable for the filing of pleadings and interlocutory applications, and for case management to ensure that proceedings are prepared for trial in a matter which is just, expeditious and likely to minimise the costs of the proceedings. The aim of the Order is to ensure that the issues are identified in advance of the trial as precisely and concisely as possible. At the option of the judge, there may be a pretrial conference to establish what steps, if any, remain to be taken to prepare the case for trial.

[7.143] Order 63C, rule 3 sets out the (preferably agreed) documentation to be filed with the court including a trial booklet, a book of exhibits, written submissions, and a book of authorities. All those documents can be filed electronically in most circumstances. The Order provides that a party intending to call evidence shall give notice of that intention and file a written statement or expert report, which can be treated as evidence in chief if it is verified on oath. If at the trial it becomes apparent that any witness other than those notified is required, then with the leave of the trial judge such witness can be called. The Order provides that the costs of any hearing for an application for directions shall be deemed to

[259] *Keon v Gibbs* [2015] IEHC 812 at para 49.

[260] Order 63A of the Rules of the Superior Courts.

[261] Order 63B of the Rules of the Superior Courts.

[262] Order 63C of the Rules of the Superior Courts.

be costs in the cause[263] and provides that the court may limit the amount of a party's expert fees and expenses that can be recovered from the other parties.[264]

[7.144] Order 63C, rule 6 provides for complex appeals that may involve technical or complex evidence.[265] The rule provides for a pre-trial conference which involves an intensive oversight of all pre-trial preparation by a specially assigned judge and therefore differs from a pre-trial directions hearing.[266] Additionally, this type of case management must be ordered by the list judge. Agreeing or identifying issues at the request of a judge is aimed at making the process of sorting out facts and applying legal principle to those facts easier, as evidenced in the case *Defender Ltd v HSBC France*.[267] When discussing case management in *Defender Ltd*[268] the Supreme Court stated:

> "Larger cases, under rule 6, are to be brought under case management and the purpose of this is not to increase time in court or to encourage pre-trial applications but to hear what the case is about in dialogue with the parties and for the trial judge then to exercise his or her powers to set limits on the issues, ensure these are defined, and circumscribe the time to be spent."

[7.145] In *Talbot v Hermitage Golf Club*[269] case management was deemed "crucial to the effective conduct of litigation" especially in complex appeal cases to assist in determining a case within a reasonable timeframe. Order 63C, rule 14(2) allows that, where a judge chairing a case management or pre-trial conference considers that the proceedings would be assisted by the appointment of an assessor, they may make a recommendation to that effect. This recommendation shall be appended to the certificate of readiness for trial.[270]

[7.146] While these Rules of Court relate to appeals between court levels rather than non-court adjudicative bodies, it appears to the Commission that one possible

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[263] Order 63C(18) of the Rules of the Superior Courts.

[264] Order 63C(20) of the Rules of the Superior Courts.

[265] Order 63C, rule 6 of the Rules of the Superior Courts.

[266] Order 63C, rule 6 of the Rules of the Superior Courts. See also: Dowling and Martin, "Conduct of Trial Rules" (2016) 21(5) The Bar Review 153.

[267] *Defender Ltd v HSBC France* [2021 I ILRM 1, [2021] 1 IR 516. See also O'Floinn, *Practice and Procedure in the Superior Courts* 3rd ed (Bloomsbury Professional 2022).

[268] *Defender Ltd v HSBC France* [2021 I ILRM 1, [2021] 1 IR 516 at para 154 at page 585.

[269] *Talbot v Hermitage Golf Club* [2014] IESC 57 at para 13. This case concerned an intra-court appeal, however the importance of case management in complex appeals has been highlighted in statutory appeals such as *Kelly v An Bord Pleanála* [2024] IEHC 364.

[270] Order 63C, rule 14(2) of the Rules of the Superior Courts.

reform would be to extend this model or a similar one to apply to all statutory appeals.

The Commission invites views on whether the extension of Orders 63 and 84 of the Rules of Court to apply to statutory appeals would be a suitable reform option. Additionally, would modifications be required to those rules of court and if so, what modifications?

(b) Recent Statutory Appeal Models

[7.147] The scope of a statutory appeal will depend very much on the legislation which provides for the appeal in any given case, as stated by Dunne J in *Sheehan v Solicitors Disciplinary Tribunal*.[271] Some recent appeal provisions have been quite elaborate, for instance, the appeals provided for in the Competition (Amendment) Act 2022 and the Digital Hub Act. Both statutes provide for a statutory appeal against error although it should be noted that they differ from other forms of statutory appeal in that they effectively translate the test set out in *Orange Ltd v Director of Telecoms*[272] into statutory language. The legislation is described below, demonstrating how these two Acts contain very similar provisions.

[7.148] Each contains an expanded version of the *Orange* test, allows the submission of additional evidence (subject to the leave of the High Court), specifies the evidential matters the court may consider and disallows judicial review in most circumstances. This uniform approach may indicate a legislative trend toward providing clearer guidance on appeals, reducing the confusion previously identified in earlier case law and statutes. By incorporating these detailed provisions, the Oireachtas appears to be moving toward a more structured and predictable system of appeals from non-court adjudicative bodies, aiming to reduce the judicial confusion that had previously arisen due to the lack of clarity in legislation. One striking novelty of the Competition (Amendment) Act is that it allows for judicial review grounds to be advanced in the course of an appeal, and in doing so, excludes the possibility of separate judicial review proceedings.[273] A similar provision exists in the Digital Hub Act.[274]

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[271] See the comments of Dunne J in *Barry Sheehan Practising Under the Style of Barry Sheehan, Solicitor v Solicitors Disciplinary Tribunal (SC)* [2021] IESC 64, [2022] 1 ILRM 1, [2022] 1 IR 78.

[272] *Orange Ltd v Director of Telecoms (No 2)* [2000] IESC 22, [2000] 4 IR 159.

[273] Section 15AY(1)(a)(iii) of the Competition Act 2002 as inserted by section 13 of the Competition (Amendment) Act 2022.

[274] Section 107(2)(a) of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

(i) Procedure

[7.149] **The Competition (Amendment) Act 2022** contains detailed parameters for the courts to follow in conducting the appeal.[275] It permits the High Court, "where it is satisfied by reference to the grounds of appeal that a serious and significant error of law or fact, or a series of minor errors of law or fact which when taken together amount to a serious and significant error, was made in making the decision, or that the decision was made without complying with fair procedures",[276] to remit the decision for consideration or vary the decision and substitute it for any other the court deems appropriate. Decisions of adjudication officers in relation to any alleged infringement of relevant competition law, breach of a procedural requirement, failure to comply with a structural or behavioural remedy, failure to comply with commitments entered into or failure to comply with a prohibition notice, may not be challenged otherwise than through an appeal under the provisions of the Act.[277]

[7.150] The High Court may permit or require the submission of additional evidence where it considers it necessary for the fair and proper determination of an appeal.[278] The Act also specifies other matters the court may consider, such as whether the appropriate and proportionate sanction or prohibition notice was imposed, whether the law was correctly applied in reaching the decision, or whether the decision is supported by the evidence including additional evidence submitted.[279] In deciding the appeal, the court must have regard to the record of the initial decision and any additional evidence submitted in reaching its decision.[280]

[7.151] Applicants must seek leave from the High Court if they wish to appeal the decision to the Court of Appeal. Leave shall not be granted unless there are substantial grounds for contending that the High Court decision is invalid or ought to be quashed.[281] The statute explicitly excludes judicial review except in

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[275] Section 15AY of the Competition Act 2002 as inserted by section 13 of the Competition (Amendment) Act 2022.

[276] Section 15AY(10)(b) of the Competition Act 2002 as inserted by section 13 of the Competition (Amendment) Act 2022.

[277] Section 15AY(1)(iii) of the Competition Act 2002 as inserted by section 13 of the Competition (Amendment) Act 2022.

[278] Section 15AY(7) of the Competition Act 2002 as inserted by section 13 of the Competition (Amendment) Act 2022.

[279] Section 15AY(8) of the Competition Act 2002 as inserted by section 13 of the Competition (Amendment) Act 2022.

[280] Section 15AY(9) of the Competition Act 2002 as inserted by section 13 of the Competition (Amendment) Act 2022.

[281] Section 15AY(2)(f)(i) of the Competition Act 2002 as inserted by section 13 of the Competition (Amendment) Act 2022.

circumstances outlined in section 15AAA of the Act.[282] These circumstances are for applications brought under Order 84 of the Rules of the Superior Courts or through a statutory process provided for in this Act, the Act of 2002, or the Act of 2014.[283]

[7.152] A similar approach to appeals is used in the **Digital Hub Act**. This Act provides for a number of different appeals, such as an appeal against adjudication or an appeal against urgent interim measures notice.[284] Appeals can only be challenged by the specific mechanism provided.[285] Section 17(15) provides that the High Court, on hearing an appeal against a decision relating to security of networks and services, measures to assist consumers, and code regulations, may consider (a) whether the jurisdiction existed to make the decision, (b) whether the law was correctly applied in reaching the decision, or (c) whether the decision was supported by the evidence including evidence admitted in the appeal. It also sets out what factors the court shall consider on appeal and provides for submissions and the receipt of evidence.[286]

(ii) Grounds of Appeal

[7.153] Both the Competition (Amendment) Act and the Digital Hub Act establish that, in an appeal, applicants may raise any ground that could be raised in a judicial review application. In the Competition (Amendment) Act, applicants may raise any grounds which could be raised in a judicial review application.[287] In appeals made under the Digital Hub Act 2023, in addition to considering whether there was jurisdiction to make the decision, whether the law was correctly applied, and whether the decision was supported by evidence, the Court may also consider in the case of an appeal against an adjudication, whether an administrative sanction was imposed as part of the adjudication that was appropriate, effective, proportionate and dissuasive.[288]

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[282] Section 15AY(1)(a)(iii) of the Competition Act 2002 as inserted by section 13 of the Competition (Amendment) Act 2022.

[283] Section 15AAA(2) of the Competition Act 2002 as inserted by section 13 of the Competition (Amendment) Act 2022.

[284] Chapter 8 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

[285] Section 104 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

[286] Section 17(15) and (16) of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

[287] Section 15AY(2)(d)(i) of the Competition Act 2002 as inserted by section 13 of the Competition (Amendment) Act 2022.

[288] Section 107(11) of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

(iii) Available Remedies

[7.154] The primary remedies under the Competition Act are provided in sections 15AY and 15AZ which are inserted by the Competition (Amendment) Act 2022.[289] The Court has broad remedial powers on appeal under section 15AY(10).[290] These include confirming the decision or prohibition notice, annulling the decision in whole or in part, remitting it for reconsideration (with or without directions), or substituting such other decision as it considers appropriate. In addition, the Court may suspend the effect of a decision or prohibition notice where an appeal is pending.[291]

[7.155] The Act clearly sets out that the High Court must confirm the decision unless it determines that there was a manifest and fundamental error of law or that the remedy imposed was manifestly disproportionate.[292] Where either is found, the Court may remit the matter for reconsideration or substitute a lower penalty. The findings of fact made by the adjudication officer are to be treated as final by the Court. This regime supplements the exclusion of judicial review under section 15AAA, and should be read alongside that section.

[7.156] The Digital Hub Act provides that the court may, on the hearing of an appeal against a decision (a) confirm the decision, or (b) where it is satisfied by reference to the grounds of appeal that a serious and significant error of law or fact, or a series of minor errors of law or fact which when taken together amount to a serious and significant error, was made in making the decision, or that the decision was made without complying with fair procedures, annul the decision in its totality or in part, and either (i) remit the decision for reconsideration, subject to such directions as the court considers appropriate, or (ii) vary the decision and substitute such other decision as the court considers appropriate.[293] The statute limits onwards appeals to the Court of Appeal where leave has been granted by the High Court on foot of certification that its judgment contains a point of law of exceptional public interest.[294]

[7.157] Similarly, the Act provides for a mechanism for appeals against relevant measures, which again permits the High Court to consider (a) whether the

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[289] Section 13 of the Competition (Amendment) Act 2022.

[290] Section 15AY(10) of the Competition Act 2002 as inserted by section 13 of the Competition (Amendment) Act 2022.

[291] Sections 15AY(13) and 15AY(14) of the Competition Act 2002 as inserted by section 13 of the Competition (Amendment) Act 2022.

[292] Section 15AZ(3) and (4), of the Competition Act 2002 as inserted by section 13 of the Competition (Amendment) Act 2022.

[293] Section 17(17) of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

[294] Section 18 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

jurisdiction existed to make the decision, (b) whether the law was correctly applied in reaching the decision, or (c) whether the decision is supported by the evidence including evidence admitted in the appeal.[295] In such appeals, the court shall have regard to (a) the record of the decision the subject of the appeal, (b) the grounds stated by the parties to the appeal, and documents and evidence relied upon by the parties to support those grounds, and (c) any submissions, documents or evidence admitted.[296]

[7.158] The Digital Hub Act also permits the court to confirm the decision. Alternatively, if it is satisfied by the appellant's submission that a serious and significant error of law or fact, or a series of minor errors of law or fact which when taken together amount to a serious and significant error, was made in making the decision, or that the decision was made without complying with fair procedures, the court can annul the decision in its totality or in part. The court may also remit the decision for reconsideration by the Minister subject to such directions as the court considers appropriate.[297] Again, only onward appeals involving points of law of exceptional public interest which are certified by the High Court can be appealed to the Court of Appeal.[298]

[7.159] This legislation also makes intricate provision for appeals against urgent interim measures or against adjudications.[299] Similar to the other appeal mechanisms set out, it provides for no other challenge by way of appeal or judicial review save in accordance with the relevant sections. However, section 107(2) provides that an appeal may include any ground that could be relied upon by the appellant in an application seeking judicial review.

[7.160] In addition to the appeal mechanisms outlined above, the Act provides for limited relief by way of judicial review.[300] The relevant provision applies a 14-day time limit for such applications and appears to deploy a higher standard than the usual standard of an 'arguable case', which provides that leave shall not be granted unless there are "substantial grounds for contending that the decision or

[295] Section 28(13) of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

[296] Section 28(14) of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

[297] Section 28(15) of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

[298] Section 31 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

[299] Sections 104-110 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

[300] This is regulated by section 112 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

act concerned is invalid or ought to be quashed".[301] In addition, it appears to provide for expanded relief in such judicial review applications, permitting the Court where the application is in respect of part only of a decision or other act, to declare to be invalid or quash the part concerned or any provision thereof without declaring invalid or quashing the remainder of the decision or other act or part of the decision or other act. If the Court quashes part of a decision, it may expressly make any consequential amendments to the remainder of the decision or other act or the part thereof that it considers appropriate.[302]

(iv) Right of Onward Appeal

[7.161] Both the Competition Act and the Digital Hub Act impose strict conditions on onward appeals. Under the Competition Act, applicants must seek leave from the High Court to appeal to the Court of Appeal, ensuring that only cases with substantial grounds for challenging the decision are advanced. Similarly, the Digital Hub Act limits onward appeals to those cases involving points of law of exceptional public interest, requiring certification by the High Court. These measures are designed to restrict further appeals to only the most significant cases.

[7.162] As can be seen from the provisions described above, these two Acts contain very similar provisions for appeal hearings and remedies open to the court, while limiting access to judicial review. The Commission considers that this uniform approach may provide a useful model for appeals by providing clear guidance and reducing the confusion previously identified in earlier case law and statutes.

The Commission invites views on whether the appeal models introduced in the Competition (Amendment) Act 2022 and the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 represent a desirable template for future statutory appeal provisions.

[7.163] A significant further reform to the institutional framework of administrative adjudication in Ireland is anticipated with the forthcoming replacement of the International Protection Appeals Tribunal (IPAT) as part of the implementation of the EU Migration and Asylum Pact. Under the national plan approved by Government in March 2025, the current international protection decision process will be replaced with a single first instance determination covering refugee status, subsidiary protection, and return or permission to stay, followed by a single-tier appeal. This streamlined process aims to simplify and expedite decision-making, with legally binding timeframes and newly designated border procedure centres expected to conduct initial screening, interviews, and appeals in an integrated

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[301] Section 112(11) of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

[302] Section 112(14) of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

manner. Applications submitted before 12 June 2026 will remain subject to the current system. While legislation underpinning these changes is pending, this forthcoming model may serve as an instructive statutory prototype in discussions about the design of future appellate systems for other adjudicative bodies.

(c) Suggestion 1: Reform of Statutory Appeals

[7.164] Standardisation could be achieved by developing a template form in Court rules for limited statutory appeals. This template would outline the grounds for appeal and the remedies available for each type of appeal and would provide a structured approach that could serve as a reference for the Oireachtas when creating new non-court adjudicative bodies. This would ensure that these bodies are equipped with clear guidance on how appeals should be managed, streamlining the process and reducing the potential for confusion or inconsistency.

[7.165] The Commission notes, however, that it may not be possible to design an appeal structure to encompass every appeal that may arise. Ultimately, it is for the Oireachtas to consider, on a case-by-case basis, what form of appeal to provide for, to what court and what form of further appeal would be suitable (if any). The Commission invites views on the development of a standardised statutory appeal template and the extent to which such a model should be prescriptive or flexible.

(i) Suggested Appeal Path A: For Appeals by way of rehearing

[7.166] The Commission suggests that there could be an option for providing for an appeal by way of full rehearing. This first appeal path would provide that the matter would be reheard entirely from the beginning, allowing the court to review both the facts and the law as if no previous decision had been made. This form of appeal provides a comprehensive review, ensuring that any issues overlooked or misjudged in earlier proceedings can be fully addressed. It would allow the appeal court to look at procedural issues as well as factual or legal issues. The Commission suggests these appeals be document-based save where there is a conflict of fact which can only fairly be adjudicated upon by an appeal body hearing oral evidence or accepting new evidence.

[7.167] The Commission notes that this review/rehearing could potentially provide a more expeditious and cost-effective remedy than an application to the High Court whether by appeal or judicial review.

[7.168] The next consideration is determining the appropriate forum for rehearings. Not every appeal needs to be heard by the same body. However, the Commission believes that the choice of forum should be based on clear criteria. The Commission believes that the nature and relevance of the matter should guide this decision. For example, for appeals concerning issues of local significance, the

District Court would be the most appropriate forum. The localised nature of these cases makes the District Court well-suited to deal with matters within its geographical and jurisdictional reach. Moreover, for many less complex decisions affecting only a particular individual, such as licensing and registration, a rehearing before a lower court can be accommodated without difficulty.

[7.169] For appeals without local relevance, the appropriate court might depend primarily on the value of the claim. This approach has precedence in the Data Protection Act 2018.[303] Most appeals would be directed to the Circuit Court, as it typically handles intermediate-level cases and is equipped to manage a broad range of matters. However, for appeals involving claims that exceed the monetary jurisdiction of the Circuit Court, the High Court would be the proper forum. Of course not all appeals will have a financial aspect and for those appeals, the Commission suggests that cases of significance only to the appellant would be dealt with by the District Court, whereas cases with implications for larger numbers of persons could be dealt with by the Circuit Court and cases of national significance could be dealt with by the High Court. This would ensure that more substantial or complex cases, particularly those with significant financial implications, are heard by a court with the requisite authority and resources. In reality, rehearings before the High Court would, as they are now, be wholly exceptional.

[7.170] Finally, the issue of onward appeals could be addressed in this context, with a restriction to certified point of law, for example. The Commission invites views on the continued suitability of de novo appeals and whether they should be limited to particular types of decisions or particular courts. The Commission also invites views on whether the above suggested division of forums for appeals is appropriate and sufficiently clear to be practical.

(ii) Suggested Appeal Path B: Hybrid appeal

[7.171] The Commission suggests a new type of statutory appeal that would merge the grounds of an appeal on a point of law with the judicial review framework, drawing from the approach adopted in recent legislation such as the Competition (Amendment) Act 2022 and the Digital Hub Act 2023.[304]

[7.172] This hybrid appeal mechanism, which combines the *Orange* test (serious and significant error of law or fact) with grounds typically raised in judicial review, would allow for a more comprehensive appeal process. This approach has the potential to result in greater clarity, consistency and predictability for applicants

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[303] Section 142 of the Data Protection Act 2018.

[304] See also section 132(3) of the Electoral Reform Act 2022.

who wish to challenge decisions from non-court adjudicative bodies. By merging the two legal avenues, the proposed statutory appeal allows applicants to pursue both appeal grounds and grounds of judicial review in a single set of proceedings. Such an appeal would eliminate duplicitous proceedings and consequent complexities and costs.

[7.173] The Competition (Amendment) Act and the Digital Hub Act 2023 both exclude judicial review of the decisions which may be appealed. The Commission sees the advantages of maintaining a single procedure for appealing decisions of adjudicative bodies. Moreover, due to the inclusion of grounds for judicial review in this hybrid appeal mechanism, the proposed statutory appeal would lie to the High Court in cases where judicial review grounds are deployed and where the merits of the case necessitate a High Court hearing.

[7.174] Additionally, both Acts grant the High Court discretion to permit new evidence if necessary for the fair resolution of the appeal. By allowing parties to submit new evidence, the Court can ensure that all relevant material is considered, especially if the evidence was previously unavailable or overlooked. This is particularly beneficial in cases where failure to include new evidence could result in an unjust outcome. In certain complex cases, new evidence or legal arguments may emerge after the initial appeal, especially in rapidly evolving areas of law or fact. Such a provision allows for flexibility, ensuring the court has all the necessary information for a well-informed decision.

[7.175] However, the Commission is mindful that there are potential disadvantages attached to this proposal. First, this proposal may lead to an expansion of the scope of appeals on a point of law. As has been discussed in this Paper, there is already uncertainty as to the scope of appeals on a point of law. By merging appeals against error and appeals on a point of law, the boundaries between errors of fact and errors of law may become even further blurred. Moreover, the inclusion of grounds for judicial review may exacerbate this issue.

[7.176] Secondly, granting the court the ability to accept submissions of new evidence has some distinct disadvantages. The introduction of new evidence or submissions may prolong the appeal process, requiring additional hearings or consideration. The introduction of new evidence at appeal stage is already a topic which attracts legal argument.[305] This could result in delays in resolving disputes and increased legal costs for both parties. Allowing new evidence can also place an additional burden on the appellate court, requiring it to engage in fact-finding or reassess the factual matrix of the case. This goes beyond the typical judicial function of reviewing legal issues, potentially complicating and lengthening the court's workload. This is particularly unsuitable where this statutory appeal

[305] See for example, *Lynagh* v *Mackin* [1970] IR 180 and *Murphy* v *Minister for Defence* [1991] 2 IR 161 at page 164.

consists of an appeal from an appellate body which itself fully reheard the case. The statutory appeal is intended to be narrower than the rehearing path and the inclusion of an ability to hear new evidence would widen it and blur the distinction between the two paths causing uncertainty and inconsistency in the handling of appeals.

[7.177] Thirdly, if such appeals have to be heard in the High Court, that may result in higher costs than those that would be incurred if the appeal were heard by a court of local and limited jurisdiction. The risk of high costs awards can act as a 'chill factor' for parties.

The Commission invites views on whether a hybrid appeal mechanism should be introduced to replace or supplement current statutory appeal models and whether it should include the capacity to raise judicial review-type grounds.

The Commission invites views as to whether the High Court is the forum for such appeals.

The Commission invites views on other mechanisms which might avoid or mitigate the risk of high costs.

(d) Suggestion 2: High Court Administrative Appeals Division/List

[7.178] In this section, the Commission discusses whether the creation of an Administrative Appeals Division/List within the High Court would be an effective appeal mechanism. The Commission has previously recommended the creation of a High Court Regulatory Appeals List in an earlier report.[306] In that report, the Commission noted that the High Court, with the benefit of specially assigned judges, court-appointed assessors, and "fast-track" lists such as the commercial and competition list, is well-equipped to deal with regulatory appeals more expeditiously and cost-effectively than appeals panels.[307] Moreover, as direct appeals to the High Court are not amenable to judicial review, having an Administrative Appeals List/Division would avoid any issues caused by parallel proceedings where judicial review proceedings are commenced alongside a statutory appeal. However, many, if not most, statutory appeals are dealt with either by the Commercial List or the Judicial Review/Non-Jury List. Therefore, it may be questionable what additional benefit would follow from an Administrative Appeals Division/List.

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[306] Law Reform Commission, *Report on Regulatory Powers and Corporate Offences Volume 1* (LRC 119-2018) at page 338.

[307] Law Reform Commission, *Report on Regulatory Powers and Corporate Offences Volume 1* (LRC 119-2018) at page 337.

[7.179] Currently, the High Court sits in various specialised configurations such as the Central Criminal Court, the Commercial List, the Environmental and Planning List, and the Professional Disciplinary List.[308] These configurations of the High Court facilitate specialisation in complex and technical areas of law. Judges assigned to these lists develop expertise in the specialised area of law in question, allowing for increased jurisprudential coherence and speed in processing appeals. An Administrative Appeals Division/List would likely hear a high volume of appeals which would allow judges to develop the law in a coherent way. As the High Court is a superior court of record, the court's decisions would constitute binding precedent to give guidance to first instance decision-makers.

[7.180] The Commercial Court manages a number of lists including the Competition List, the Arbitration List, the Strategic Infrastructure Developments List, the Insolvency List, and the Intellectual Property and Technology List. This allows for further specialisation of judges leading to increased quality of decision-making. This trend toward specialisation has also led to innovation in court procedures. Proceedings in the Commercial Court may involve the hearing of evidence. However, the amended Rules of the Superior Courts allow for the judge hearing a commercial, competition, chancery and non-jury matters to direct at a case management conference that the proceedings be heard on affidavit only, be heard on affidavit with oral evidence on a specific issue or issues, and/or be determined without discovery of documents, or with discovery of documents only in respect of specific matters.[309]

[7.181] The above-mentioned divisions of the High Court have been noted for their speed. Dowling commented that "[t]he Commercial Court has been very successful in achieving its aim of facilitating the efficient and speedy resolution of commercial disputes".[310] However, the average length of proceedings in the Commercial Court has been increasing since its inception.[311] The rules of the Commercial Court provide for case management conferences, though in practice most case management matters are dealt with at directions hearings.[312] This ensures expediency in preparing cases for hearing and minimises parties' ability to delay. Tribunals are often credited as being more expeditious than the courts. However, the experience of the Commercial Court demonstrates that this

[308] While these lists are divisions of the High Court they are often referred to as courts, for example the Commercial Court.

[309] Order 63A of the Rules of the Superior Courts.

[310] Dowling, *The Commercial Court* 2nd Ed (Round Hall, 2012) at para 1.17.

[311] In 2017, the average length of proceedings in the Commercial Court was 287 days. In 2022, the average length of proceedings was 665 days. See Courts Service, *Annual Report* (2017) at page 94, and Courts Service, *Annual Report* (2022) at page 110. This information is not included in more recent Annual Reports for 2023 and 2024.

[312] Order 63A, rule 14 of the Rules of the Superior Courts.

advantage would not necessarily have to be lost in the creation of an Administrative Appeals Division/List.

[7.182] Another aspect of the Commercial Court is that the Rules make provision for the appointment by the court of an independent expert assessor to assist the court in understanding the complex issues in each specific list. In the Intellectual Property and Technology List, the court may, either of its own motion or on the application of a party, appoint an expert to assist the court in understanding or clarifying a matter, or evidence in relation to a matter, in which they have a particular skill and experience. This provision also exists for the competition list. An advantage often remarked upon of tribunals is that they allow for experts with specialised knowledge of subjects to decide cases. The ability to appoint an independent expert assessor may be used in this context to allow the Administrative Appeals Division/List to procure specific experts to assist them based on the subject matter of the appeal in question.

[7.183] The question then arises as to what type of appeal would be allowed to be heard in the Administrative Appeals Division/List. The Commission suggests utilising this proposal in combination with the proposed statutory hybrid appeal discussed in Proposal 1: Reform of Statutory Appeals above. The Commission is also open to providing the option for the courts at their discretion to hear evidence in a matter where it is considered necessary in the interests of justice. This may be necessary where an adjudicator excluded evidence wrongly or where new evidence arises which was not known at the time of decision.

The Commission invites views on whether a dedicated Administrative Appeals Division or List in the High Court would improve the consistency and efficiency of statutory appeal oversight.

(e) Suggestion 3: Onward Appeals

[7.184] A further consideration arises as to whether there should be an opportunity for judicial oversight of a decision, on more than one occasion. There is recent precedent for providing that where an appeal lies to the High Court, any further appeal to the Court of Appeal should, at the very least, be restricted in scope. Some more recent statutes, such as the Competition (Amendment) Act 2022,[313] and the Digital Hub Act,[314] provide that further appeals be certified by a High Court judge. This should involve a point of law of exceptional public importance that makes it desirable in the public interest that an appeal should be made.

[7.185] The Commission suggests that onward appeals should be legislated for, albeit on a managed basis. It invites views as to whether it is appropriate to restrict appeals

[313] Section 15AAB(2) of the Competition (Amendment) Act 2022.

[314] Sections 18 and 113(2) of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023.

from the High Court to the Court of Appeal to those which have been certified by the High Court judge, as involving a point of law of exceptional public importance that makes it desirable in the public interest that an appeal should be made.

(f) Suggestion 4: Reform of Judicial Remedies

[7.186] As can be observed from the discussion above, the remedies available in a statutory appeal are much broader than those available in judicial review proceedings, whereas a judicial review has the potential to have a much larger impact than an appeal which will only have prospective effect and will not call into question the legality of earlier decisions. Hogan, Morgan and Daly observed these distinctions between appeals and judicial review in their book *Administrative Law in Ireland*. The authors highlighted the four general points they believed were relevant when contrasting appeals and judicial review as follows:

(1) the High Court in appeal cases, generally speaking, has the power to uphold, reverse, alter or vary an administrative decision, as opposed to judicial review proceedings, in which restricted remedies are available;
(2) an appeal will only have prospective effect and will not call into question the legality of earlier administrative decisions in respect of the period between the actual decision and the appeal;
(3) in judicial review proceedings only issues of "legality" can be examined, whereas issues of "merits" can be examined in statutory appeals; and
(4) more evidence may be admissible on appeal than in a judicial review.[315]

[7.187] The Commission sees merit in the creation of a standardised set of judicial remedies, allowing courts to tailor relief to each case. The judicial remedies could include the following: an order of mandamus, order of prohibition, order of certiorari, declaration, injunction, and award of damages. Under this framework, it should be noted that narrower remedies would exist for statutory appeals. For example, as discussed earlier in the Chapter in *Manorcastle Ltd v Commission for Aviation* if the High Court allowed the appeal it would have resulted in an automatic granting of a licence under the statute.[316] Therefore, in some adjudicative bodies, the nature, scope and availability of remedies depend on the statutory framework of that body. This framework could integrate both appeal

[315] Hogan, Morgan and Daly, *Administrative Law in Ireland* 5th ed (Roundhall, 2019) at paras 11–48 to 11–49. See also *An Bord Banistiochda (sic) Gaelscoil Moshiolog v The Labour Court (HC)* [2023] IEHC 497 at para 32.

[316] *Manorcastle Ltd v Aviation Commissioner* [2008] IEHC 386, [2009] 3 IR 495.

remedies, such as substituting decisions, and judicial review remedies, such as certiorari.

[7.188] In light of the challenges presented by the current appeals framework - its inconsistency, complexity, and potential inaccessibility - the Commission considers that reform is both necessary and achievable. While different appeal mechanisms may be justified in particular statutory contexts, the rationale for these differences should be clearly articulated in legislation to ensure transparency for all end users. The models set out in this chapter, especially those derived from recent legislation, provide a promising foundation for greater coherence.

The Commission invites views on whether the distinctions between statutory appeals and judicial review are adequately understood and whether reform of remedies is required to better align the two processes.

[7.189] It appears to the Commission that a template statutory appeal, a hybrid appeal model, or a High Court Administrative Appeals Division/List could promote efficiency, reduce litigation costs, and support more predictable outcomes. Ultimately, it is essential that any new system preserves the rule of law while remaining accessible to applicants and effective in promoting administrative accountability.

The Commission invites views on which of these proposals is most appropriate, if any and on how best to limit onward appeals without undermining access to justice, and on whether a harmonised remedies framework should be adopted. The Commission is particularly interested in hearing stakeholder opinions on the viability and potential impact of the suggested reforms.

7. Request for Views

Q 7.1 The Commission invites views on whether the distinction between primary and secondary facts creates sufficient predictability in appeals.

Q 7.2 The Commission invites views on whether the test in *Orange* offers an appropriate standard for statutory appeals against error, and whether it should be adopted more broadly in legislation for other types of appeal.

Q 7.3 The Commission invites views on whether the remedies available in appeal proceedings should be clearly set out in legislation to enhance transparency and predictability.

Q 7.4 The Commission invites views on how the allocation of appeal forums could be standardised to promote consistency, accessibility and clarity.

Q 7.5 The Commission invites views on whether existing court rules, such as Order 84B and 84C of the Rules of the Superior Courts, provide a sufficient procedural framework for statutory appeals, or whether reform is needed.

Q 7.6 The Commission invites views on whether the extension of Orders 63 and 84 of the Rules of Court to apply to statutory appeals would be a suitable reform option. Additionally, would modifications be required to those rules of court and if so, what modifications?

Q 7.7 The Commission invites views on whether the appeal models introduced in the Competition (Amendment) Act 2022 and the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 represent an appropriate template for future statutory appeal provisions.

Q 7.8 The Commission invites views on the development of a standardised statutory appeal template and the extent to which such a model should be prescriptive or flexible.

Q 7.8 The Commission invites views on the use of de novo appeals and whether they should be limited to particular types of decisions or particular courts.

Q 7.9 The Commission invites views on whether a hybrid appeal mechanism should be introduced to replace or supplement current statutory appeal models and whether it should include the capacity to raise judicial review-type grounds.

Q 7.10 The Commission invites views as to whether the High Court is the forum for extended appeals.

Q 7.11 The Commission invites views on other mechanisms which might avoid or mitigate the risk of high costs.

Q 7.12 The Commission invites views on whether a dedicated Administrative Appeals Division or List in the High Court would improve the consistency and efficiency of statutory appeal oversight.

Q 7.13	The Commission invites views on whether its suggestion that onward appeals should be legislated for, albeit on a managed basis. It invites views as to whether it is appropriate to restrict appeals from the High Court to the Court of Appeal to those which have been certified by the High Court judge, as involving a point of law of exceptional public importance that makes it desirable in the public interest that an appeal should be made.
Q 7.14	The Commission invites views on how to reform the system so the distinction between statutory appeals and judicial review is clear.
Q 7.15	The Commission invites views on the viability and potential impact of the suggested reforms.
Q 7.16	The Commission is interested in hearing any other views on the contents of this Chapter.

APPENDIX A REQUESTS FOR VIEWS

The following is a compilation of the Requests for Views in this Consultation Paper.

1. Identifying the Problem

Q 1.1	The Commission invites views on whether standardisation across all adjudicative bodies is required, and how to accommodate the expertise of specific bodies.
Q 1.2	The Commission invites views on the impact of the model used in the Ombudsman (Amendment) Act 2012.
Q 1.3	The Commission is interested in hearing any other views on the contents of this Chapter.

2. Adjudicative Bodies and Functions

Q 2.1 The Commission suggests that an adjudicative function will generally involve:

(a) the finding of facts based on the presentation of evidence,

(b) deciding cases by applying settled rules or principles to facts,

(c) resolving something in the nature of a legal dispute between parties and

(d) determining legal rights and obligations.

Do you agree with the formulation? Do you think there are any criteria missing from the formulation?

Q 2.2 The Commission is interested in hearing any other views on the contents of this Chapter.

3. Responding to the Problem

Q 3.1	The Commission invites views on the creation of a first instance super tribunal in this jurisdiction.
Q 3.2	The Commission invites views on the proposal for the implementation of a framework statute in Ireland.
Q 3.3	The Commission invites views on what provisions could usefully be included in a framework statute.
Q. 3.4	The Commission invites views on the proposal for the establishment of an administrative justice council in Ireland.
Q. 3.5	The Commission invites views on how the functions suggested for an administrative justice council might interact with other bodies, such as Government departments and the Office of the Ombudsman.
Q. 3.6	The Commission is interested in hearing any other views on the contents of this Chapter.

4. Procedural Requirements

Q.4.1 The Commission considers that it might be useful to have procedural rules for adjudicative bodies in the following areas:

(a) good administration

(b) the duty to give notice and relevant information

(c) ability to receive submissions

(i) ability to admit evidence

(ii) oral evidence and examination of witnesses

(d) right to access

(i) recording of proceedings

(e) transparency and past decisions

(f) right to representation

(g) timely decision-making

(h) the duty to give reasons

(i) reconsideration of decisions

(i) internal appeals

The Commission invites views on the above suggestions and asks whether there are any additional areas or issues that should be dealt with in the procedural rules of adjudicative bodies.

Q. 4.2 The Commission invites views on whether there should be additional duties of good administration enshrined in the framework statute. If so, what should these additional duties include?

The Commission is of the view that publication of decisions should be the default for bodies administering justice (with redacted versions being utilised to preserve anonymity in sensitive cases). What is your view on this?

Do you agree that a party appearing before an adjudicator who is administering justice should have the right to legal representation?

The Commission suggests that individuals should have a right to be represented, or to represent themselves in appropriate cases before a body exercising adjudicative functions and that the body has discretion to determine whether legal representation should be permitted. The Commission invites views on this suggestion.

Q. 4.3 Should a general duty to give reasons be provided for in legislation?

Q. 4.4 Should an administrative justice council have a role in oversight of adjudicative procedures and therefore monitor the implementation of procedures by adjudicative bodies?

The Commission invites views on whether there are procedural rules so fundamental that they have to be approved by an outside body, such as an administrative justice council?

Q. 4.5 The Commission is interested in hearing any other views on the contents of this Chapter.

5. Powers of Adjudicative Bodies

Q. 5.1 The Commission suggests the following powers for all adjudicative bodies: (a) a power to make procedural rules

(b) case management powers, including:

(i) a power to convene case management conferences

(ii) a power to make available alternative dispute resolution, via mediation and conciliation

(c) a power to hold a hearing, including:

(i) a power to hold an oral hearing, either in person or virtually

(ii) a power to decide without an oral hearing

(d) a power to refer a question of law to the High Court

Q. 5.2 The Commission suggests the following additional powers for adjudicative bodies that administer justice:

(a) a power to give directions, including:

(i) a power to compel witnesses

(ii) a power to administer oaths or affirmations

(iii) a power to order the production of documents

(b) powers to manage their proceedings:

(i) a power to remove disruptive individuals from proceedings

(ii) a power to sanction disobedience which such directions

(iii) a power to enforce decisions

(c) a power to create a scheme of payment towards legal expenses.

Q 5.3 The Commission invites views on the above suggestions and queries whether there are any additional powers it should consider.

Q 5.4 The Commission is interested in hearing any other views on the contents of this Chapter.

6. Composition of Adjudicative Bodies

Q. 6.1 The Commission suggests that the composition of adjudicative bodies might be provided for in a framework statute and invites views on this subject.

Q. 6.2 While the Commission is of the view that ongoing training and development should be provided to members of adjudicative bodies, it invites views as to whether this obligation should be provided for in statute.

Q. 6.3 The Commission invites views on the following suggestions with regard to the composition of adjudicative bodies:

(a) a merit-based recruitment process

(b) appropriate expertise and qualifications embedded into statutes

(c) multi-member panels

(d) ongoing training and development provided to members

(e) a consistent complaints procedure

(f) statutory declarations of impartiality

(g) appointment of adjudicators by an independent body

(h) inclusion of financial security and independence in terms and conditions of appointment

(i) a shared services model.

Q. 6.4 The Commission invites views on whether the application of the removal grounds as set out in the Workplace Relations Act 2015 should be applied to all non-court adjudicative bodies administering justice.

Q. 6.5 The Commission invites suggestions about appropriate and effective mechanisms which could be introduced to ensure financial security and independence for adjudicators.

Q. 6.6 The Commission seeks consultees' views on the appropriate methods for assignment of cases to individual adjudicators.

Q. 6.7 The Commission invites views on whether provision should be made for post-service restrictions and how such restrictions might work in practice.

Q. 6.8 The Commission seeks views on whether clustering would work in practice. If so, what adjudicative bodies may suitably be clustered and how?

Q. 6.9 The Commission invites views on what services could be appropriately shared among adjudicative bodies.

Q. 6.10 The Commission suggests the following powers in relation to composition under an administrative justice council:

(a) ensuring independent and robust appointment processes

(b) creating and managing rosters of qualified adjudicators

(c) training of adjudicators

(d) creating a single complaints procedure

(e) ensuring independence safeguards function effectively

(f) recommending bodies for clusters and the creation of new clusters

(g) creating a forum to discuss issues among adjudicative bodies

(h) providing research and advocacy services

(i) providing front- and back-office services.

Q. 6.11 A proportion of adjudicative bodies have to interpret and apply EU law on a regular basis. Such bodies, or some of them, may require special provisions for fixity of tenure, or resources or autonomy. The Commission invites views on this subject.

Q. 6.12 The Commission is interested in hearing any other views on the contents of this Chapter.

7. Judicial Oversight

Q 7.1 The Commission invites views on whether the distinction between primary and secondary facts creates sufficient predictability in appeals.

Q 7.2 The Commission invites views on whether the test in *Orange* offers an appropriate standard for statutory appeals against error, and whether it should be adopted more broadly in legislation for other types of appeal.

Q 7.3 The Commission invites views on whether the remedies available in appeal proceedings should be clearly set out in legislation to enhance transparency and predictability.

Q 7.4 The Commission invites views on how the allocation of appeal forums could be standardised to promote consistency, accessibility and clarity.

Q 7.5 The Commission invites views on whether existing court rules, such as Order 84B and 84C of the Rules of the Superior Courts, provide a sufficient procedural framework for statutory appeals, or whether reform is needed.

Q 7.6 The Commission invites views on whether the extension of Orders 63 and 84 of the Rules of Court to apply to statutory appeals would be a suitable reform option. Additionally, would modifications be required to those rules of court and if so, what modifications?

Q 7.7 The Commission invites views on whether the appeal models introduced in the Competition (Amendment) Act 2022 and the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 represent an appropriate template for future statutory appeal provisions.

Q 7.8 The Commission invites views on the development of a standardised statutory appeal template and the extent to which such a model should be prescriptive or flexible.

Q 7.9 The Commission invites views on the use of de novo appeals and whether they should be limited to particular types of decisions or particular courts.

Q 7.10 The Commission invites views on whether a hybrid appeal mechanism should be introduced to replace or supplement current statutory appeal models and whether it should include the capacity to raise judicial review-type grounds.

Q 7.11	The Commission invites views as to whether the High Court is the forum for extended appeals.
Q 7.12	The Commission invites views on other mechanisms which might avoid or mitigate the risk of high costs.
Q 7.13	The Commission invites views on whether a dedicated Administrative Appeals Division or List in the High Court would improve the consistency and efficiency of statutory appeal oversight.
Q 7.14	The Commission invites views on whether its suggestion that onward appeals should be legislated for, albeit on a managed basis. It invites views as to whether it is appropriate to restrict appeals from the High Court to the Court of Appeal to those which have been certified by the High Court judge, as involving a point of law of exceptional public importance that makes it desirable in the public interest that an appeal should be made.
Q 7.15	The Commission invites views on how to reform the system so the distinction between statutory appeals and judicial review is clear.
Q 7.16	The Commission invites views on the viability and potential impact of the suggested reforms.
Q 7.17	The Commission is interested in hearing any other views on the contents of this Chapter.