

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.