



## **Bar Council response to the Transforming our Justice System: Panel Composition in Tribunals consultation paper**

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Ministry of Justice consultation paper entitled Transforming our Justice System: Panel Composition in Tribunals.<sup>1</sup>
2. The Bar Council represents over 15,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

### **Overview**

4. The Bar Council has previously submitted a response to the earlier part of this consultation, responding to questions 1-6, and partially to 9-11. This response deals with questions 7-8, and gives additional comments on 9-11 insofar as they relate to the composition of panels in tribunals.

**Question 7: Do you agree that the SPT should be able to determine panel composition based on the changing needs of people using the tribunal system? Please state your reasons.**

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<sup>1</sup>Ministry of Justice (2016), Transforming our Justice System: Panel Composition in Tribunals, available [here](#).

5. The Bar Council does not believe that the needs of people using the tribunal system are significantly changing, and instead sees financial considerations as the main driver to this reform.

6. The basis for the proposal appears to be a relatively unchanged proportion of successful appeals in the Immigration and Asylum Chamber, Special Educational Needs and Disability tribunal, and Employment Tribunal. However, that experience cannot readily be extrapolated to other tribunals where specialist knowledge is regularly required in specialist fields such as medicine, accountancy, valuation and surveying, in order to determine the facts.

7. The Bar Council does not necessarily oppose a more flexible approach to panel composition in appropriate circumstances, as set out in our response to the Civil Justice Council's Property Disputes Working Group discussion paper in January 2016<sup>2</sup>. However, a separate analysis should be conducted for each tribunal, instead of adopting a blanket approach. For example, different considerations will attach to cases in the social security tribunal, the tax tribunal and the property tribunal from those tribunals mentioned in paragraph 6.

8. The Bar Council is also concerned that using a crude measure of rates of appeal does not necessarily identify the impact that such a change will have, as in many tribunals appeal is based on an error of law, rather than an error of fact. The Bar Council considers that there is a risk of more frequent errors of fact where there is reduced specialist expertise on a tribunal panel. In three-person tribunals, the presence of two lay members can have a checking and balancing effect on each other; this is hence not a duplication but a helpful risk assurance measure.

9. In addition, the Bar Council is concerned that reducing the number of lay experts risks blurring the distinction between tribunals and courts. The less formal, expert nature of tribunals is an important feature of our justice system which must be preserved, and so the Bar Council would urge caution, and clarity over both the costs and benefits of using lay expertise more scarcely.

**Question 8: In order to assist the SPT to make sure that appropriate expertise is provided following the proposed reform, which factors do you think should be considered to determine whether multiple specialists are needed to hear individual cases? Please state your reasons and specify the jurisdictions and/or types of case to which these factors refer.**

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<sup>2</sup> Bar Council [2016], Response to the Civil Justice Council's Property Disputes Working Group discussion paper, available here: <http://www.barcouncil.org.uk/media/418679/latest.pdf>

10. The key factors that should be considered are specific to each tribunal. Where specialist expertise is central to the issue being determined, for example medicine, accountancy, valuation and surveying, and where appeal is based solely on points of law, the Bar Council considers that particular care should be taken.

### **Impacts and equalities impacts**

**Question 9: Do you agree that we have correctly identified the range of impacts, as set out in the accompanying Impact Assessments, resulting from these proposals? Please state your reasons.**

**Question 10: What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposed options for reform? Please state your reasons.**

**Question 11: Do you agree that we have correctly identified the range of equalities impacts, as set out in the accompanying Equalities Impact Assessments, resulting from these proposals? Please state your reasons.**

11. Taking questions 9-11 together, the Bar Council is concerned that the Ministry of Justice has not addressed the risk that its proposals may lead to a greater number of incorrect decisions being made on the basis of errors of fact. As indicated above, it is the Bar Council's view that more errors of fact are likely where there is reduced specialist expertise on a tribunal panel.

12. If this were the case, the impact is likely to be greater on certain parties with protected characteristics. For example, incorrect decisions by the Social Security and Child Support Tribunal, are likely to have a disproportionate impact on people with disabilities and women, the latter being more likely to have caring responsibilities. The Bar Council therefore does not consider that the full range of potential impacts, including equalities impacts, upon tribunal users have been identified.

**Bar Council**  
**24<sup>th</sup> November 2016**

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