



LAW SOCIETY
OF IRELAND

Submission on Reform of Non-Court Adjudicative Bodies and Appeals to Courts

Law Reform Commission

23 June 2026

Introduction

The Law Society welcomes the opportunity to respond to the Law Reform Commission's (**LRC**) *Consultation Paper on the Reform of Non-Court Adjudicative Bodies and Appeals to Courts* (the **Consultation Paper**).

The Law Society is supportive of reform initiatives that enhance access to justice, reduce cost and delay for applicants, and improve the quality, consistency, and transparency of administrative decision-making. It is generally in the public interest to have expert decision makers adjudicate on contentious matters in a less formal, more efficient and less costly setting than the courts.

Unfortunately, various attempts at reform have not yet been brought to fruition¹. Undoubtedly, reform is required as the current system is over-complicated with too many Non-Court Adjudicative Bodies (**NCABs**) giving poor quality first instance decisions which are often not challenged as the applicants cannot afford to bring appeal or judicial review proceedings. While it is true that judicial review serves as a crucial check on administrative power it is not a “substitute for robust and consistent decision making in the first instance”². Establishing procedural baselines, ensuring adequate adjudicator training and transparent and accountable processes for their appointment and removal can be expected to lead to more public confidence in the administrative justice system.

The Supreme Court decision in *Zalewski*³ clarified constitutional law in relation to administrative adjudication. In that case the Supreme Court held that some adjudicative bodies are engaged in the administration of justice within the meaning of Article 34 and must act and be structured similarly to the courts and that the saving provision of Article 37 means that different types of adjudicative bodies may exercise limited judicial functions without being considered courts⁴. This decision has placed a sharp focus on existing NCABs in Ireland and how they conduct their adjudication. The Consultation Paper is very timely, and the Law Society is generally supportive of reform in this area.

Executive Summary

The Law Society supports reforms to NCABs in Ireland. We support reforms that will enhance procedural fairness and reduce cost and delay for applicants. However, the Law Society has reservations regarding certain central proposals in the Consultation Paper, in particular the

¹ The Programme for Government 1994 had ambitions to introduce an Administrative Procedures Act which never progressed. The Fair Procedures and Administrative Justice Bill 2024 lapsed and never made it onto the statute books.

² Consultation Paper, page 24.

³ *Zalewski v the Workplace Relations Commission, an Adjudication Officer, Ireland and the Attorney General* [2021] IESC 24, [2022] IR 421

⁴ Under Article 37 a NCAB may administer justice as long as its powers and functions are limited.

proposed introduction of a comprehensive framework statute and the establishment of a new administrative justice council.

The Law Society considers that a single overarching statutory regime would risk conflict with existing legislative frameworks, potentially increase litigation, and impose unnecessary procedural rigidity on a diverse range of bodies. Instead, a targeted and incremental approach to reform is required, building on existing legislative models and well-established principles of constitutional and administrative law and jurisprudence.

The Law Society favours practical reforms, including enhanced governance and transparency in NCABs, ongoing training of adjudicators, increased use of shared services⁵ between NCABs, improvements to appeals mechanisms, and potentially greater use of the Rules of the Superior Courts⁶ to streamline processes.

Overall, the Law Society recommends reform that strengthens existing frameworks rather than introducing additional institutional layers or new complex statutory schemes.

Identifying NCABs in Ireland

It is disappointing that the Consultation Paper does not include a comprehensive schedule or tabular overview of the NCABs currently in existence in the State. Given the objective of addressing fragmentation and enhancing coherence across the administrative justice landscape, the absence of a clear, consolidated mapping of NCABs is a significant omission. Such an inventory would have provided an essential evidential baseline to inform both the scope and necessity of reform, as well as enabling stakeholders (in particular those with experience in NCABs) to engage more effectively with the proposals. We would therefore suggest that, as a next step, the LRC should consider producing a tabular overview of the NCABs currently in existence in the State.

The importance of this exercise is underscored by comparative experience in other jurisdictions. In particular, the Leggatt Review of Tribunals in the United Kingdom (2001)⁷ was grounded in a comprehensive audit which identified approximately 70 separate tribunals and highlighted significant inconsistencies in structure, caseload and governance across the system. This mapping exercise provided the evidential foundation for subsequent structural reform, including the creation of a unified tribunal system under the Tribunals, Courts and Enforcement Act 2007. Similar approaches can be observed in jurisdictions such as Canada and Australia, where efforts have been made to catalogue administrative tribunals and, in some instances, rationalise or cluster them within more coherent administrative frameworks⁸.

⁵ Such as office space, IT systems, administrative support and training, HR support – all where appropriate for particular NCABs. Noted later in the submission shared services may not be appropriate for certain specialised economic regulators.

⁶ See generally our response to Q7.5 regarding Order 84B and 84C and Q7.6 on Orders 63 and 84.

⁷ Sir Andrew Leggatt's 2001 review, *Tribunals for Users: One System, One Service*.

⁸ See for example; Canada: *Adjudicative Tribunals Accountability, Governance and Appointments Act*, 2009 (Ontario), Australia: *Administrative Review Committee, Commonwealth Administrative Review Committee Report*, 1971, and more recently *The Administrative Review Tribunal Act 2024*.

In the absence of a comparable mapping exercise in the Consultation Paper, it is difficult to assess the true scale, diversity and operational overlap of NCABs in Ireland, or to properly evaluate the proportionality of the reforms proposed. The preparation of such an inventory would greatly assist in identifying duplication, gaps, and opportunities for rationalisation, and would represent a necessary foundation for any meaningful and evidence-based reform in this area.

Definitional Issues

The Consultation Paper appears at times to conflate “regulation” with “non-court adjudication”, without clearly distinguishing between the two. The precise difference between an adjudicative body and regulator has not been teased out. While the LRC states that the consultation “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*”⁹, it would nonetheless be useful to include a dedicated section clarifying how regulators that exercise adjudicative functions differ from bodies whose primary role is adjudication¹⁰.

The absence of a clear distinction between regulatory and adjudicative functions blurs the discussion regarding the potential scope of the Ombudsman. The LRC refers to adjudicative bodies within the jurisdiction of the Office of the Ombudsman and those which are exempt from the Ombudsman’s jurisdiction (such as the Commission for Communications Regulation (**ComReg**)). The LRC suggests that “these bodies are exempted to protect their institutional and adjudicative independence”¹¹. The Consultation Paper does not examine the range of functions and differences between regulators carrying out adjudicative functions and other adjudicative bodies. It is difficult to debate reform in this area without a full prescriptive list of adjudicative bodies with an analysis of the scope of their functions.

A New Framework Statute

The Law Society does not support the introduction of a far-reaching, overarching framework statute designed to categorise NCABs and prescribe uniform procedural and substantive rules across a diverse range of bodies.

NCABs perform highly varied functions across distinct statutory and legal contexts. A centralised framework risks:

- Conflict with existing statutory provisions, many of which are carefully tailored to sector-specific needs;

⁹ See Consultation Paper, page 16, paragraph 7.

¹⁰ For example, the adjudication regime for the regulation of electronic communications was created by Part 7 of the Communications Regulation and Digital Hub Development (Amendment) Act 2023. However, ComReg takes many other decisions that are separate from the adjudication regime set out in Part 7, for instance, wholesale telecoms market remedy decisions, decisions on consumer policy, and decisions on spectrum licencing. These regulatory decisions are subject to distinct procedural rules.

¹¹ See Consultation Paper, pages 171, 172, paras [6.36] and [6.37].

- Increased litigation and uncertainty, particularly where inconsistencies arise between new and existing provisions;
- The potential mis-categorisation of NCABs engaged in the “administration of justice” or exercising “limited” functions.

In this regard, the Law Society considers that much of the Consultation Paper is aspirational rather than sufficiently grounded in practical operational reform deliverables.

Rather than adopting a new overarching statute, the Law Society recommends a more incremental and pragmatic approach, building upon existing legislative models. Consideration could be given to extending certain principles reflected in established legislation, such as the Ombudsman (Amendment) Act 2012, to promote (i) good administrative practice; (ii) procedural fairness; and (iii) transparency and reasoned decision-making.

Administrative Justice Council

The Law Society does not support the creation of a new statutory body in the form of an Administrative Justice Council. We have concerns that this could potentially result in:

- The risk of creating an additional bureaucratic layer, with associated cost and time implications for the State and the public;
- Uncertainty regarding the delineation of functions between such a body and existing institutions; and
- The duplication of existing supervisory functions, which are appropriately exercised by the courts.

The Law Society submits that the courts remain the constitutionally appropriate forum for the supervision of administrative decision-making.

Appeals

The Law Society supports targeted reform of appeals processes, which currently give rise to inefficiencies.

In particular, it is unsatisfactory that applicants are sometimes required to pursue parallel statutory appeals and judicial review proceedings, with associated cost and complexity. The Law Society agrees with the LRC that greater clarity and coherence in appeal pathways is required.

The Law Society notes that recent legislative developments, including the Competition (Amendment) Act 2022 and the Digital Hub Act 2023, offer potentially instructive models for structuring appeals in a more integrated and streamlined manner.

Additionally, the Law Society considers that greater use could be made of the Rules of the Superior Courts to clarify appeal pathways and reduce duplication¹².

¹² For more detail see responses to Chapter 7 questions.

Composition and Governance of NCABs

The Law Society supports reform to the composition and governance of NCABs, including:

- The introduction of transparent, merit-based recruitment and appointment processes;
- Provision for ongoing training and professional development of decision-makers;
- Measures to safeguard independence;
- Enhanced transparency in procedures and decision-making.

The Law Society also supports greater use of clustering and shared services across NCABs, which could yield efficiencies in administration, infrastructure, and expertise.

The provision of training for adjudicators is something that could be done immediately by NCABs in conjunction with relevant government departments without the need for legislative amendment. This could be a short course on the conduct of hearings and could be rolled out as part of the induction into the role.

Independence of NCABs

A non-court adjudicative body is 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”¹³.

A key feature of NCABs is that they operate independently of Government, even where they are established within, or closely connected to, a particular government department. While, as noted by the LRC¹⁴, independence in this context does not equate to the full constitutional independence enjoyed by the courts, it nonetheless requires meaningful protection from external influence. In practice, concerns arise where institutional arrangements may give rise to a perception of insufficient separation between decision-makers and the administrative structures of the relevant department. It is important that NCABs are not only structurally independent, but are also seen to operate independently, with clear organisational, functional, and physical separation from the bodies whose decisions they review, in order to maintain public trust in the administrative justice system.

The next section of this submission, **Appendix 1**, contains our responses to the specific “requests for views” under each of the 7 chapters in the Consultation Paper¹⁵ as follows:

1. Identifying the Problem
2. Adjudicative Bodies and Functions
3. Responding to the Problem

¹³ Consultation Paper, page 20

¹⁴ Ibid.

¹⁵ Ibid, pages 264 to 270.

4. Procedural Requirements
5. Powers of Adjudicative Bodies
6. Composition of Adjudicative Bodies
7. Judicial Oversight

Appendix 1

Requests for Views

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.

The Law Society agrees that adjudicative bodies are usually established to address specific issues with little consideration of how they fit into the broader network of bodies, and without a consistent approach to their procedures or their relationship to the courts¹⁶.

Consolidating multiple NCABs into a single entity could lead to more efficient and better-quality decision making. Creating a “super tribunal” (an amalgamation of first instance NCABs) and/or “an administrative appeals tribunal” has many advantages as can be seen from the UK reforms in this area. However, the LRC rightly highlights constitutional concerns around whether a super tribunal would be considered *limited* within Article 37 due to its potentially wide jurisdiction. Article 37 states “*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 first step towards reform “should be to establish a robust procedural foundation that enhances the quality and reliability of decision-making across existing bodies”¹⁷.

The Law Society is in favour of standardisation **where possible** across NCABs. No country has achieved a uniform “standard” across all bodies, but many countries operate a clustering system whereby adjudicative bodies are structured around subject area (see the UK system)¹⁸. This accommodates the expertise of specific bodies been pooled along with processes and procedures appropriate to bodies with similar subject matter and statutory frameworks without forcing inappropriately rules across multiple bodies.

The Law Society does not believe standardisation across **all** NCABs is possible given the patchwork nature of the evolution of these bodies, the multiple pieces of legislation that would need to be amended and the track record of Ireland in completing such a scale of reform. As mentioned, the Consultation Paper appears aspirational in this ambition. However, the Law Society does believe that a more practical reform is possible using existing legislation to standardise good administration, fair processes, and procedural transparency.

¹⁶ Consultation Paper, page 20.

¹⁷ Ibid, page 70.

¹⁸ Ibid, page 53 at 3.16.

2. Adjudicative Bodies and Functions¹⁹

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?

The formulation set out here comes from the New Zealand Law Commission²⁰. The Law Society considers that this definition is too wide and may capture, for example, arbitration. In addition, the precise difference between an adjudicative body and a regulator is not clear from the Consultation Paper²¹.

Finally, it is unclear for what purpose the LRC proposes using this definition

3. Responding to the Problem

Q. 3.1 *The Commission invites views on the creation of a first instance super tribunal in this jurisdiction.*

The Law Society is not in favour of the creation of a new first instance super tribunal.

The suggestion of establishing a super tribunal by amalgamating separate tribunals into one simplified structure, either at first instance or appellate stage mirrors what the UK have done. These tribunals are designed to streamline the adjudication process by centralising different types of disputes under one organisational structure. The Law Society agrees that the amalgamation of similar bodies into a single body may create efficiencies and better-quality decisions with the sharing of resources and expertise. However, the roadmap of reforms that took place in the UK spanning more than 7 decades commencing with the *Franks Committee*²², followed by the Legatt review and the Tribunal Courts and Enforcement Act 2007 exhibit the complex time consuming nature of reform in this area which has resulted, in the UK, in the judicialisation of the tribunal system.

¹⁹Section 42 of the Irish Human Rights and Equality Commission Act 2014 is not mentioned in the Consultation Paper. This places a statutory obligation on public bodies to have regard to human rights and equality considerations in the performance of their functions, including to deliver efficient accessible services to citizens and communities in carrying out their daily work. Note also the Report of the Judicial Planning Working Group which refers to the role of non-court adjudicative bodies.

²⁰ New Zealand Law Commission, *Tribunals in New Zealand*. See page 35 Consultation Paper.

²¹ Page 20 at para [1.6] states: “This rapid growth in the number of non-court adjudicative bodies has continued into the 21st century. [Footnote 8]” Footnote 8 is “For example, Coimisiún na Meán, an Coimisiún Toghcháin, the Land Development Agency, the Legal Service Regulatory Authority”. But Coimisiún na Meán, and the Legal Service Regulatory Authority are primarily regulators, rather than non-court adjudicative bodies.

²² Franks Committee, *Report of the Committee on Administrative Tribunals and Enquiries* as referred to in the Consultation Paper, page 50.

The LRC argues that reforms which establish “a robust procedural foundation that enhances the quality and reliability of decision-making across existing bodies” may render the requirement of a super tribunal unnecessary.

The LRC is not in favour of following the UK reform experience primarily due to constitutional constraints.

“Even if a specialist appellate body was not unconstitutional, it would not be immune from the inherent supervisory jurisdiction of the High Court. 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 undoubtedly require the amendment to Article 34 of the Constitution.”²³

The Law Society agrees with the LRC and submits that a section of the High Court dealing solely with administrative appeals could function like an administrative appeal’s super tribunal without the requirement of a constitutional amendment.

Q. 3.2 *The Commission invites views on the proposal for the implementation of a framework statute in Ireland.*

The Law Society does not support the introduction of a general framework statute in Ireland.

The LRC proposes “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 function.”²⁴ The idea is that this would be a new legislative act that outlines the framework pursuant to which existing and new NCABs would operate. It would leave detailed procedural or substantive rules to be developed through secondary legislation at a later date. The act would provide guiding principles on procedure and evidence regardless of what type of NCAB. The LRC envisages such a framework statute as representing a “gold standard” for procedures which could be adopted by NCABs. There may need to be discretion built in for individual NCABs to depart from the proposed norm “where necessary to protect their individual purpose or function”. The LRC suggests that the task of designating whether the framework statute applies to a particular body could be left to the appropriate Minister or the legislature. The Minister could designate through secondary regulations. The legislature could amend the original parent act of the NCAB or include a “trigger provision” within the framework statute itself to capture adjudicative bodies through definition. Following further analysis, the LRC believes the appropriate Minister should decide (by way of a statutory instrument) whether an adjudicative body falls within the framework statute²⁵.

²³ Consultation Paper, page 71.

²⁴ Ibid, page 74.

²⁵ Ibid, page 84. “This method would offer efficiency and simplicity while allowing for swift implementation. It could be carried out in collaboration with the body in question....”

The LRC then considers how to categorise NCABs within the framework statute and notes that the distinctions made by *Zalewski* such as acting fairly, acting judicially and administering justice are not practical for structuring a framework statute. To address categorisation challenges the LRC suggests a two-tier framework. 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 therefore be subject to more stringent procedural standards. The LRC notes that as per *Zalewski* in determining whether an adjudicative body is merely required to act fairly or administer justice is ultimately a judicial function, but the courts “would neither be the most effective nor the most suitable means for categorisation the wide range of” NCABs at first instance. Instead, the appropriate Minister should deal with this initial designation. The LRC concludes that “this dual classification approach will help tailor procedural standards to the specific needs and functions of each adjudicative body”.

At a conceptual level, the Law Society is not persuaded that such a statute is either necessary or desirable. The stated objective of providing minimum procedural standards to ensure fairness and consistency is already substantially achieved through existing constitutional and administrative law principles, as developed and refined by the courts over several decades. The duty to act fairly, the requirements of constitutional justice, and—where applicable—the standards associated with the administration of justice under Article 37 of the Constitution, are well established and adaptable to the diverse range of adjudicative contexts in which NCABs operate. In this respect, the proposed “tier 1” framework, which would require all bodies to act fairly, appears to do little more than restate the current legal position. It is therefore unclear what substantive value such legislative provisions would add.

The proposed “tier 2” categorisation, by contrast, raises more significant concerns. The Law Society considers that any attempt to classify adjudicative bodies according to the nature of their function (for example, whether they are administering justice) is inherently a matter of constitutional interpretation and is properly within the remit of the courts. The jurisprudence in this area, including the decision in *Zalewski*, confirms that such determinations are statutory and context-specific. It is therefore inappropriate, and constitutionally questionable, for the legislature or an individual Minister to seek to assign bodies to categories which carry differing legal consequences. Such an approach may give rise to legal uncertainty where statutory classifications conflict with or are subsequently reinterpreted by the courts.

In addition, the proposal to confer on Ministers the power to designate whether a particular body falls within the framework statute, and at which level, raises concerns regarding independence, and consistency of application. The exercise of such discretion is likely to be contested, particularly where classification carries substantive procedural implications. This, in turn, is likely to lead to increased litigation, as bodies and parties seek to challenge or defend particular designations. Rather than simplifying the administrative justice landscape, the proposed framework risks introducing a further layer of complexity and dispute.

The Law Society is also concerned that the introduction of a framework statute of general application may result in unintended conflict with existing legislation. NCABs have been established under a wide range of legislative instruments, each tailored to the specific subject matter/area at issue. The imposition of a uniform statutory framework, particularly one

supplemented by secondary legislation, creates a real risk of inconsistency, duplication, or conflict with existing provisions. This could generate uncertainty for decision-makers and applicants alike, and may ultimately require judicial clarification, thereby undermining the stated objective of enhancing clarity and coherence.

For these reasons, the Law Society considers that the proposed framework statute would not materially improve the operation of NCABs and carries a significant risk of increasing uncertainty, complexity, and litigation. Reform efforts would be better directed toward targeted, evidence-based measures which build on existing legal principles and respect the constitutional role of the courts in supervising administrative decision-making.

Q. 3.3 The Commission invites views on what provisions could usefully be included in a framework statute.

See above. N/A.

Q. 3.4 The Commission invites views on the proposal for the establishment of an administrative justice council in Ireland.

The LRC proposes the creation of a new statutory body to have general oversight of NCABs in the State. It could offer back-office support (administrative, case management) and front office functions (legal advice, hearing management). It could conduct research and give views on the design and processes of NCABs:

“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”²⁶

While the objectives identified by the LRC for the administrative justice council (consistency, efficiency, and improved standards) are commendable, the Law Society does not agree that the creation of a new statutory body is the most effective mechanism to achieve these aims.

From a policy perspective, the principal concern is that the establishment of another statutory body risks duplicating functions already performed, albeit sometimes imperfectly, by existing institutions, while diverting scarce public resources toward administrative overhead rather than substantive reform.

The challenges currently affecting NCABs include inconsistent or poor-quality first-instance decision-making, lack of standardised procedures, insufficient transparency in adjudicator appointments, and fragmented or overly complex appeals processes. These issues cannot be resolved merely by introducing an additional supervisory body. Rather, they require grassroots reform within existing structures, focused on:

²⁶ Consultation Paper, page 88.

- Improving decision-making quality at first instance, thereby reducing the volume of appeals;
- Establishing clear, simple, and accessible procedures across NCABs;
- Ensuring transparent, merit-based appointment processes for adjudicators, with appropriate training and oversight;
- Enhancing case management systems within individual bodies to deliver timely and efficient decisions.

It is submitted that the quality of legislative drafting is a critical and often overlooked factor contributing to inefficiencies in administrative justice. Poorly drafted legislation—especially in the context of Irish implementation of EU law—frequently gives rise to ambiguity and legal uncertainty. This in turn leads to increased litigation and appeals, including onward appeals to the European Courts. Notably, the Consultation Paper does not adequately address this underlying structural issue. Without improving the quality and clarity of primary legislation, the creation of another statutory body risks addressing symptoms rather than causes.

While the proposed functions of the new justice council—such as providing shared services, offering guidance on processes and procedure, and promoting consistency—may appear beneficial, these could be achieved more effectively through targeted reforms within existing NCABs.

In conclusion, the Law Society does not support the establishment of an administrative justice council.

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.

If, notwithstanding the above concerns, an administrative justice council were to be established, careful consideration would need to be given to its interaction with existing institutions to avoid duplication, confusion, and jurisdictional overlap.

The interaction between an administrative justice council and existing bodies highlights a broader concern: the risk that the introduction of a new entity may complicate, rather than simplify, the administrative justice landscape in Ireland. Instead of creating a more coherent system, it may introduce additional layers of bureaucracy and uncertainty.

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

Q. 4.2 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.

The LRC notes that “adjudication exists in a sliding scale of formality”. At one end is the minimum standards which all bodies must meet. This baseline standard is described as acting fairly or adhering to fair procedures. On the other end of the scale is the highest standard of administering justice. These bodies must have a rigorous procedural structure akin to a court.

The Law Society believes that NCABs should have procedural rules linked to the statutory function or objectives of the body in question. The procedural rules for adjudicative bodies in the areas outlined by the LRC in Chapter 4 of the Consultation Paper and summarised in Q4.1 above are thorough but **all** these procedural rules may not be appropriate to **all** adjudicative bodies.

Q. 4.3 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?

See response to Q3.2 above. The Law Society does not believe that there should be additional duties of good administration enshrined in a new framework statute.

Q. 4.4 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?

The Law Society believes that the publication of decisions should be the default position for certain but not all NCABs. Each NCAB should decide in its procedural rules the appropriateness of publishing all decisions.

Q. 4.5 Do you agree that a party appearing before an adjudicator who is administering justice should have the right to legal representation?

Yes.

Q. 4.6 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.

The Law Society does not agree that individual adjudicative bodies should determine if and when legal representation should be permitted. The Law Society believes that individuals should have the right to be represented, or to represent themselves in cases before any NCAB.

Q. 4.7 Should a general duty to give reasons be provided for in legislation?

As mentioned in the Consultation Paper, public bodies in Ireland generally have a duty to provide reasons for a decision. The Supreme Court has held that reasons for a decision generally must be given in order to comply with constitutional justice²⁷. In addition, many bodies are required to give reasons under their parent statute (e.g. the WRC, Coimisiún na Meán, the Commission for Communications Regulation). Accordingly, the Law Society does not believe new legislation is required to impose a duty to give reasons.

Q. 4.8 Should an administrative justice council have a role in oversight of adjudicative procedures and therefore monitor the implementation of procedures by adjudicative bodies?

See response to Question 3.4 above. The Law Society is not in favour of the creation of a new administrative justice council.

Q. 4.9 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?

See response to Question 3.4 above. The Law Society does not believe there are procedural rules so fundamental that they have to be approved by an outside body, such as an administrative justice council. The courts ultimately have oversight of fundamental procedural rules.

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.

²⁷ Mallak v Minister for Justice, Equality and Law Reform [2012] IESC 59, [2012] 3 IR 297

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.

All adjudicative bodies are required to act fairly. *Zalewski* underscored the constitutional necessity for bodies that are considered to be administering justice to possess powers akin to those exercised by the courts²⁸. While different NCABs require different powers, the LRC argues that a framework statute could address discrepancies by establishing a template of powers for adjudicative bodies. In addition, the LRC envisages that an administrative justice council could have a consultative function with regard to the powers exercised by adjudicative bodies. The LRC notes that “*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.*”²⁹

The Law Society notes the LRC’s effort to identify a core set of powers (set out in a sliding scale depending on the type of adjudicative body) that could improve the effective functioning of NCABs. Many of the powers outlined, such as procedural rule-making, case management, and the ability to hold hearings, are appropriate and reflect good administrative practice.

However, it is not clear that the articulation of these powers within a generalised framework statute would, of itself, result in meaningful improvement across the administrative justice system. A significant number of NCABs already derive comparable powers from their establishing legislation, as well as from principles of constitutional justice, fair procedures, established jurisprudence, and relevant EU law obligations. In this context, the added value of codifying such powers at a general level appears limited.

More broadly, the implementation of a “menu” of powers seems unworkable at a practical level. The suggestion that powers would be tailored through engagement with the “appropriate

²⁸ Consultation Paper page 132.

²⁹ *Ibid*, page 134.

Minister” raises practical concerns. This approach could result in divergent approaches across government departments, undermining coherence rather than enhancing it.

In the absence of support for an overarching framework statute or the establishment of an administrative justice council, the Law Society considers that reform would be more effectively achieved through targeted review and amendment of individual establishing statutes, where necessary. This approach would allow for the specific functions, jurisdiction, and operational needs of each body to be appropriately reflected, while avoiding a “one-size-fits-all” model.

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.

The Law Society supports consistency and quality of adjudicators in the composition of adjudicative bodies. However, we do not consider that a single framework statute is the most appropriate mechanism to achieve this objective. Given the diversity of NCABs, including differences in functions, subject matter, and modes of appointment, a uniform legislative approach risks being overly rigid.

Instead, composition requirements are best addressed through targeted provisions within individual establishing statutes and individual procedural rules ensuring that the specific needs of each body are appropriately reflected. If reform efforts towards a “clustering” model for similar adjudicative bodies were pursued, then in addition to shared services, consistency regarding the organisational structure and composition of these “grouped” NCABs could be achieved.

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.

The Law Society strongly supports the provision of ongoing training and professional development for adjudicators. Competence is a fundamental requirement, as recognised by the Supreme Court in *Zalewski*, where it was emphasised that parties are entitled to a competent resolution in every case.

While training is essential, the Law Society considers that it is not necessary to prescribe this in a general new statutory form. Instead, appropriate training obligations could be developed within individual NCAB procedural arrangements, allowing flexibility.

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

The Law Society's views on the composition of adjudicative bodies are as follows:

- **(a) Merit-based recruitment:** This is strongly supported by the Law Society. Transparent and open competition processes are essential to safeguard independence and public confidence.
- **(b) Expertise and qualifications:** Supported, but these should be tailored to the functions of each body rather than uniformly prescribed.
- **(c) Multi-member panels:** May be appropriate in certain contexts, particularly where complexity or significance warrants it, but should not be mandatory.
- **(d) Ongoing training and development:** Strongly supported as a means of maintaining quality decision making.
- **(e) Consistent complaints procedure:** The Law Society sees merit in a more consistent approach to handling complaints and the Office of the Ombudsman has issued useful guidance for public bodies regarding complaints³⁰.
- **(f) Statutory declarations of impartiality:** The Law Society notes that certain NCABs already require statutory declarations of impartiality by adjudicators (e.g. Tax Appeals Commission). Extending this to all adjudicators may be excessive however conflict of interest declarations should be compulsory for all adjudicators.
- **(g) Appointment by an independent body:** Supported. The involvement of an independent body (e.g. the Public Appointments Service) would enhance transparency and reduce the risk of any perceived political influence.
- **(h) Financial security and independence:** According to the LRC, financial security relates to the ability of an external party to lower or to raise the salary of an adjudicator³¹. The Law Society is supportive of including in the terms and conditions of the appointment of adjudicators a reference to financial security and independence however it is unclear how this could work in practice.
- **(i) Shared services model:** Strongly supported (see response to 6.8 and 6.9 below).

Overall, the Law Society emphasises that independence and competence are the central principles underpinning the composition of all adjudicative bodies.

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.

The Law Society does not support the general application of the removal grounds under the Workplace Relations Act 2015 to all NCABs administering justice. Given the diversity of

³⁰ Available at: <https://ombudsman.ie/en/collection/1df0a-guidance/>

³¹ Consultation Paper, page 180 at para [6.68].

adjudicative bodies, removal provisions should be carefully tailored to the nature, jurisdiction, and constitutional context of each body rather than applied uniformly.

Q. 6.5 The Commission invites suggestions about appropriate and effective mechanisms which could be introduced to ensure financial security and independence for adjudicators.

Adjudicators can be appointed to full time or part time positions. Rates vary between NCABs with some paying a daily rate whilst others paying per individual case. Whilst financial security is an important element of adjudicator independence, it is unclear what the LRC concern is here. Most statutes provide that the terms and conditions of adjudicators is under the responsibility of the appropriate minister with the consent of the Minister for Public Expenditure and Reform. Mechanisms to support financial security include clearly defined and transparent terms and conditions of appointment and independent and transparent remuneration structures.

Q. 6.6 The Commission seeks consultees' views on the appropriate methods for assignment of cases to individual adjudicators.

NCABs have various mechanisms and different persons responsible for the assignment of cases e.g. the Registrar assigns cases for the Legal Practitioners Disciplinary Tribunal, the Director General manages administration in the WRT, specific staff members are authorised in other bodies³².

The Law Society submits that the assignment of cases in all NCABs should be conducted in a manner that is objective, transparent, and free from external influence.

Appropriate mechanisms may include:

- Allocation on a rotational or randomised basis;
- Assignment according to expertise, where relevant;
- Clear internal procedures to ensure consistency and avoid perceptions of bias.

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.

The Law Society considers that proportionate post-service restrictions may be appropriate in certain circumstances to protect the integrity of adjudicative processes.

Any such restrictions should be (i) clearly defined, (ii) limited in duration and scope, and (iii) balanced so as not to unduly restrict individuals' ability to work.

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?

The Law Society supports the clustering of adjudicative bodies, whereby functionally similar bodies are grouped within a single organisational structure while retaining their distinct statutory

³² E.g. Coimisiún na Meán.

jurisdiction and membership. NCABs could be grouped in a number of different ways including by “their substantive subject areas” or “by the nature of the parties”³³ that use particular adjudicative bodies. Another method could be the creation of an organisational structure where administrative staff could be shared between the cluster.

This approach, successfully adopted in other jurisdictions (including the UK, Australia, Canada and New Zealand), offers efficiencies while preserving independence. Existing Irish examples, such as CORU³⁴, demonstrate that such models can operate effectively.

Clustering is preferable to the creation of a single “super tribunal,” which may raise constitutional concerns.

The absence of a mapping of existing NCABs in the Consultation Paper, makes it difficult to comment on subject matter or operational overlap of NCABs in Ireland, or to properly identify appropriate bodies to consider clustering. The preparation of such an inventory would represent a necessary foundation for any meaningful and evidence-based reform in this area

Q. 6.9 The Commission invites views on what services could be appropriately shared among adjudicative bodies.

The Law Society supports a shared services model between NCABs. It should be noted that such a model may not be appropriate for highly specialised economic regulators.

Where it is appropriate, services that could be shared include:

- Office space;
- IT and case management systems;
- Administrative support including marketing;
- Training and knowledge-sharing;
- HR, finance, legal and communications functions.

International models, such as those in Canada, and domestic examples (e.g. the Ombudsman’s office structure and the National Shared Services Office³⁵), demonstrate the practical benefits of this approach in promoting efficiency and cost savings.

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

³³ Consultation Paper, page 186.

³⁴ CORU consists of the Health and Social Care Professionals Council and various Registration Boards including but not limited to clinical biochemists, dietitians, occupational therapists, physiotherapists, social care workers and speech and language therapists.

³⁵ The National Shared Services Office Act 2017 established the National Shared Services Office and provides for the transfer of certain functions of the Minister for Public Expenditure and Reform to that office.

- (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.

The Law Society does not support the establishment of an administrative justice council.

While the functions identified, such as oversight of appointments, training, complaints, and shared services, are all important, they can be achieved through existing statutory and institutional arrangements, targeted reforms, and enhanced coordination.

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.

The Law Society does not see merit in differentiating between NCABs in this way. Most bodies have to interpret both domestic and EU law. It is not necessary to have separate rules regarding fixity of tenure, resources or autonomy for bodies that “have to interpret and apply EU law on a regular basis”.

7. Judicial Oversight³⁶

Q7.1 The Commission invites views on whether the distinction between primary and secondary facts creates sufficient predictability in appeals.

It is not apparent to the Law Society that the existing distinction between primary and secondary facts is leading to greater unpredictability. By definition, matters that are appealed have some degree of uncertainty. Complete predictability in appeals would mean that an appeal would be unnecessary.

The Law Society notes that the Supreme Court case of *Hay v O’Grady*³⁷ remains authoritative in the distinctions between primary and secondary facts. The Supreme Court stated here that a court is bound by the findings of a trial judge if primary findings of fact are supported by credible evidence. Although the fact pattern in *Hay* related to an appeal from a court, this principle applies broadly to all forms of appeals.³⁸ Courts are reluctant to overturn a decision-maker’s finding of primary facts but are much more likely to set aside inferences of secondary facts that are flawed or incorrect in nature.

³⁶ Currently there are multiple appeal routes from NCABs, depending on the body, an appeal may lie to the district court, circuit court, the high court or oversight may lie via judicial review. There are various types of appeal available including de nova appeals, appeals on the record, appeals against error and appeals on point of law.

³⁷ [1992] 1 IR 210.

³⁸ Consultation Paper, page 204.

Q7.2 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.

The modern test for interfering with the first instance decision if an error is established on appeal as stated in *Orange Ltd v Director of Telecoms (No. 2)*³⁹ (and applied later in *Ulster Bank Investment Funds Ltd v Financial Services Ombudsman*⁴⁰) is an appropriate standard for statutory appeals against error.

The LRC notes that both the Competition (Amendment) Act 2022 and the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (**Digital Hub Act 2023**) effectively write the *Orange* test into statute.⁴¹

The Law Society agrees that these mechanisms provide clear statutory guidance for the scope of appeals against error, ensuring that appeals are confined to the materials that were originally filed while also empowering the court with the flexibility to permit additional materials or evidence where necessary to the fair determination of an appeal. This ensures that procedural fairness is guaranteed throughout the process.⁴²

Whether this standard “should be adopted more broadly in legislation for other types of appeal” would depend on the statutory framework in question and the Law Society does not express a general view on this.

Q7.3 The Commission invites views on whether the remedies available in appeal proceedings should be clearly set out in legislation to enhance transparency and predictability.

As noted by the LRC, 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...leading to unnecessary duplication and increased legal costs.”⁴³

The Law Society shares the concerns of the LRC regarding parallel proceedings. In addition, the nature, scope and available remedies of an appeal depend on statutory construction. The Law

³⁹ [2000] IESC 22, [2000] 4 IR 159.

⁴⁰ [2006] IEHC 323.

⁴¹ Consultation Paper, page 219.

⁴² Ibid, page 220.

⁴³ Ibid, page 226.

Society does not think it necessary to codify remedies in a general manner as this would not “enhance transparency and predictability” but rather be an inappropriate encroachment on the courts inherent powers to determine remedies based on the particular circumstances surrounding the appeal in question including the statutory scheme for the relevant adjudicative body.

Q7.4 The Commission invites views on how the allocation of appeal forums could be standardised to promote consistency, accessibility and clarity.

The LRC notes as follows:

“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.”

The LRC questions how the allocation of appeal forums can be standardised to “promote consistency, accessibility and clarity”.

The existing appeals landscape reflects a wide range of statutory schemes, each tailored to the specific subject matter, rights at issue, and legal considerations relevant to the particular adjudicative body. In this context, any attempt to impose a uniform approach would require a comprehensive review and amendment of numerous statutes. The Consultation Paper does not indicate that such a mapping exercise needs to be undertaken, nor does it identify how such reforms might be implemented in a practicable manner. Furthermore, it is unclear how standardisation could be achieved without potentially interfering with the inherent jurisdiction of the courts.

The Law Society considers that the suggestion about standardisation, as it stands in this chapter, is aspirational and lacks sufficient detail as to practical implementation. A more effective approach may be to address concerns regarding appeal routes for certain adjudicative bodies on a case-by-case basis, through targeted statutory reform where genuine difficulties arise, rather than attempting to introduce a generalised model across a diverse and complex system.

Q7.5 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.

Order 84B (Procedure in Statutory Applications) of the Rules of the Superior Courts⁴⁴ apply to a broad swathe of applications and apply unless an enactment provides an alternative procedure⁴⁵.

Order 84C (Procedure in Statutory Appeals) of the Rules of the Superior Courts⁴⁶ sets out the procedure to be followed in statutory appeal cases where no provision is made by the enactment providing for the right of appeal. Often the relevant statute will specify that a right of appeal lies to the High Court on a point of law only, sometimes the legislation will not specify the procedures to be applied to such an appeal⁴⁷.

The Law Society considers that Order 84B and Order 84C provide a sufficient framework for statutory appeals.

Q7.6 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?

The Law Society considers that the extension of Orders 63 and 84 of the Rules of Court to statutory appeals may represent a constructive reform option, particularly in promoting greater procedural consistency and more effective case management. Order 63 provides detailed rules for the pre-trial and case management of commercial cases, competition cases, and chancery and non-jury actions. Some of these cases involve appeals from adjudicative decisions⁴⁸.

However, any such extension would require careful and detailed analysis. Statutory appeals arise across a wide range of subject areas and procedural contexts, and it is unlikely that a direct or unmodified application of these Orders would be suitable in all cases. Consideration would need to be given to whether, and to what extent, modifications are required to reflect the specific nature of statutory appeals, including differences in timelines, evidential requirements, and the scope of review.

Q7.7 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.

As noted in our answer to Q7.2 above, we agree that these appeal models are flexible and ensure procedural fairness by applying the test in the *Orange* judgment. We do not express a view as to whether these appeal models represent a template for future statutory appeal provisions.

⁴⁴ Order 84B here: <https://www.courts.ie/court-rules/full-court-rule?url=Order-84B-Superior-Procedure-in-Statutory-Applications>.

⁴⁵ Consultation Paper, page 244.

⁴⁶ Order 84C here: <https://www.courts.ie/court-rules/full-court-rule?url=Order-84C-Superior-Procedure-in-Statutory-Appeals>.

⁴⁷ Consultation Paper, page 245.

⁴⁸ Ibid, page 246.

Q7.8 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.

The LRC notes 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)⁴⁹.

The Law Society submits that, given the wide variety of NCABs in Ireland, any standardised set of procedures must strike a balance between flexibility and prescriptiveness.

Q7.9 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.

See response to Q7.8. above. Ultimately it is for the Oireachtas to consider, on a case-by-case basis, where the use of de novo appeals is appropriate.

Q7.10 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.

The LRC 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 the Competition (Amendment) Act 2022 and the Digital Hub Act 2023⁵⁰. 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 in a single set of proceedings.

There are clearly advantages and disadvantages to this as outlined in the Consultation Paper⁵¹.

The Law Society notes that the practical operation of such hybrid provisions remains relatively untested. While recent statutes provide examples of this model, there has not yet been sufficient jurisprudence to assess whether these mechanisms achieve their intended objectives in practice. In these circumstances, the Law Society recommends monitoring and evaluating the operation of existing hybrid appeal provisions before contemplating wider adoption. Any future reform should be informed by practical experience, judicial interpretation, and a clear assessment of whether such mechanisms improve efficiency, predictability for applicants and access to justice.

Q7.11 The Commission invites views as to whether the High Court is the forum for extended appeals.

The Law Society believes that the High Court is the correct forum for extended appeals.

⁴⁹ Consultation Paper, page 254

⁵⁰ Ibid, page 255

⁵¹ Ibid, page 256.

Q7.12 The Commission invites views on other mechanisms which might avoid or mitigate the risk of high costs.

The Law Society advocates for the continued integration of alternative dispute resolution throughout the process of tribunal decision-making.

In addition, we have strongly advocated over the years for further resources to be provided to the courts system by Government. Ireland persistently lags behind its European peers in courts funding per capita, which itself feeds into ongoing delays and backlogs in the courts system.⁵²

Q7.13 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.

The Law Society notes that most statutory appeals are dealt with either by the Commercial List or the Judicial Review/Non-Jury List. Notwithstanding this, creating an Administrative Appeals List within the High Court would be an effective appeals mechanism. As direct appeals to the High Court are not amenable to judicial review, having an Administrative Appeals List would avoid any issues caused by parallel proceedings where JR proceedings are commenced alongside a statutory appeal⁵³.

The High Court currently sits in various specialised configurations including the Central Criminal Court, the Commercial List, the Environmental and Planning List and the Professional Disciplinary List. 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.”⁵⁴

Accordingly, the Law Society is supportive of a dedicated Administrative Appeals List in the High Court.

Q7.14 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.

The Law Society concurs with the LRC suggestions regarding onward appeals⁵⁵.

Q7.15 The Commission invites views on how to reform the system so the distinction between statutory appeals and judicial review is clear.

⁵² Report on Justice Indicators (Law Society, 2026), at page 10. Available at: <https://www.lawsociety.ie/policy-and-law-reform/justice-indicators-report/>

⁵³ Consultation Paper, page 257 at para [7.178].

⁵⁴ Ibid, page 258.

⁵⁵ Ibid, page 260.

The LRC sees merit in the creation of a standardised set of judicial remedies, allowing the courts to tailor relief to each case. The Law Society notes that the type of remedies available to adjudicative bodies often depend on the statutory framework of that body and therefore wonders how changes to remedies by, in effect, the amalgamation of statutory appeals with JR can work in practice.

The Law Society supports any reforms which bring clarity and consistency to appeals but has reservations regarding the practical implementation of these reforms. Whilst reform of appeal mechanisms can be achieved with new legislation (as has happened with the Competition (Amendment) Act 2022 and the Digital Hub Act 2023), it seems that for existing NCABs, the individual statutes of each adjudicative body would need to be amended if changes to existing appeal processes are required.

Q. 7.16 The Commission invites views on the viability and potential impact of the suggested reforms.

The Law Society welcomes the LRC's focus on reforming the appeals process for NCABs in Ireland. The current system is fragmented, with a multiplicity of bodies operating under differing statutory regimes, procedural rules, and appellate pathways. This lack of coherence can create complexity for appellants and undermine confidence in the administrative justice system.

In principle, the Law Society is supportive of reforms that seek to deliver a more streamlined, accessible, and harmonised appeals framework. Greater consistency and better quality in legislative drafting for new and amended statutes offers a practical and achievable means of advancing this objective over time.

At the same time, reform should also focus on improving the quality and consistency of decision-making at first instance, as well as ensuring that adjudicative bodies are properly resourced, independent, and staffed by suitably qualified decision-makers. A more coherent and efficient appeals system must form part of a broader programme of reform, addressing the current proliferation of bodies and the variation in standards and processes across them.

Overall, the Law Society considers that there is a real requirement to enhance the effectiveness and credibility of the administrative justice system in Ireland through practical, incremental reform.

Appendix 2

About the Law Society

The Law Society of Ireland (the **Law Society**) is the educational, representative and professional body of the solicitors' profession in Ireland.

The Law Society's main statutory functions in relation to the education, admission, enrolment, and discipline of the solicitors' profession are provided by the *Solicitors Acts 1954 to 2015*. These statutory functions are exercised by the Council of the Law Society or by the various committees, task forces and working groups to which the Council may delegate certain statutory functions. A separate organisation - the Legal Services Regulatory Authority - is responsible for regulating the provision of legal services by legal practitioners.

The Law Society delivers high-quality legal education and training and also places significant emphasis on civic engagement, supporting local community initiatives and driving diversity and inclusion. The Law Society is committed to participating in discussion and advocacy on the administration of justice and the effective implementation of public policy and law reform.

For further information on any aspect of this submission, please contact the Policy Department of the Law Society of Ireland at: PolicyTeam@LawSociety.ie



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