

## Thurrock Coalition



## Response to the “Transforming Our Justice System” Consultation relating to the “Panel Composition in Tribunals” proposals

Submitted by email to: [CourtsReformPolicy@justice.gsi.gov.uk](mailto:CourtsReformPolicy@justice.gsi.gov.uk)

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### About Thurrock Coalition

1. Thurrock Coalition is the User-Led Organisation for Thurrock. We are a company that has been set up to ensure that people who live in Thurrock have access to all the information they may require to get the support and care that they need.
2. Thurrock Coalition is an 'umbrella' company that consists of 4 organisations, all of which follow the Social Model of Disability and aim to improve the lives of disabled and older people living in Thurrock by seeking to remove environmental, attitudinal and physical barriers that exist in society. We connect to over 1500 individuals and organisations with an interest in disability issues. Thus, we have a direct interest in responding to the “Transforming Our Justice System” consultation relating to the “Panel Composition in tribunals” proposals and welcome the opportunity to provide input and evidence in the context of the consultation.

### Summary

3. A meeting of our Consultation and Campaigning Partner Organisation – Thurrock Diversity Network Limited, a registered Community Benefit Society, was called, and our members consulted and views were gathered around the consultation proposals relating to “Panel Composition in Tribunals.” These are dealt with in turn. The feedback and responses appear below:

### Consultation Responses: Panel Composition in Tribunals

4. We do not agree that the Senior President of the Tribunal should be able to decide the panel composition based on the changing needs of people using the Tribunal system. We have set out our reasons below:
5. The input of the medical expert and of someone with lived experience of disability is vital in appeals before the Social Security and Child Support Tribunal. Further details

and concrete guidelines are required in order to determine how the Senior President will make their decision. There is a need for transparency as to the Guidance for the Senior President with regard to the degree and quality of information and evidence that the Senior President will have access to in order to inform their decision. There needs to be a mechanism to challenge the decision of the Senior President relating to Panel Composition. The decision needs to be subject to external review or scrutiny.

6. In our view, claimants should be given choice of who will sit on each panel (including the type of expert and specific area of expertise) from the pool of Non-Legal Members, with approval from the Senior President. We suggest that approval should only be withheld in exceptional circumstances.
7. We submit that a panel of 3 members is required to ensure equity and justice. A single Panel member is unlikely to have the requisite breadth of knowledge, experience and understanding to reach a fully reasoned decision.
8. The need for continuous professional development, in depth, broad, multifaceted and multidimensional training will be required. It is likely to be cost prohibitive and burdensome for one individual, who is unlikely to appreciate the complexities and nuances of peoples' conditions and the impact upon their daily lives. There is a risk that decisions could be made quickly and erroneously, based upon the prescriptive label of an impairment, rather than considering the spectrum of impacts affecting that specific individual in their daily lives.
9. The Senior President should consider the following factors to determine the use of multiple experts/specialists hearing individual cases (Our responses relate to the Child Support and Social Security Tribunal):
10. In summary, if the proposals are to go ahead, there is a need for:
  - Detailed guidance in order to provide transparency.
  - A broad base of expertise upon which to draw and to fully explain the reasons for the decision to allow or deny additional Panel members in a particular case.
  - A route to challenge or appeal the Decision not to appoint Non-Legal Members in a given case.
11. Additional considerations must include:
  - Establishing if medical evidence is being challenged at appeal.
  - Whether lived experience evidence contradicts the assessor's report following the face-to-face assessment.
  - Any chosen experts, must specialise not just in, for example, "muscular-skeletal" or "sensory" or "neurological" conditions, but in fact specialise in the specific condition that the claimant has.

12. It is vital to have input, informed reasoning and understanding of an individual's impairments and daily needs, that cannot be simply extrapolated from the Court papers alone.
13. The Ministry of Justice must train and employ more legally qualified Disabled people on Panels in order to be more representative of the population.
14. It is noteworthy that Serious Criminal cases are decided by a jury of 12 individuals. Immigration appeals involving human rights, bail, deportation etc. consist of a panel of a judge and a lay member. Therefore, greater weight should be given to Panel-based hearings involving Disabled people in the Child Support and Social Security Tribunal, where quality of life, health and well-being are at stake.

### **Consultation Responses: Impact and Equality Impact Assessments – Panel Composition**

15. We do not agree that the government has correctly identified the full range of cost/benefit impacts, resulting from these proposals. We consider the following to be the equality impacts upon individuals with Protected Characteristics in relation to Panel composition:
  16. In relation to Panel composition, Disabled people will be adversely impacted, as it is unlikely that the legal expert will be best placed to be most up to date in terms of knowledge, understanding and awareness, individual impairments, lived experience and the specific effects will not be given full consideration.
  17. Furthermore, a "one size fits all" approach to measuring the effects of identical conditions upon different people will not be effective in terms of cost, time, and distress caused.
  18. Provision of 3 members should be the Rule rather than the exception. Consideration of reducing the daily rate/fees should be taken before making wholesale changes to the current Panel Composition.
  19. The proposal to alter the Panel composition could affect Disabled people disproportionately, compared to non-Disabled people. Alternative measures should be explored in order to meet the legitimate aim, without such an impact.
  20. As a minimum, we suggest a Panel of at least 2 experts be considered in this context. This will distribute responsibility more evenly and allow the Panel members to confer on vital issues and discuss perspectives and reasoning when reaching a Decision, that may not otherwise be apparent or have arisen. The current Panel of 3, is preferable to take advantage of the wealth of knowledge, experience and understanding of the plethora of issues facing Disabled people, their family members and carers.

21. Furthermore, we do not believe that the legitimate aim/policy objective outweighs the potentially discriminatory effects of the unfavourable treatment. We believe that the aim could be achieved by less discriminatory means, as stated above.
22. A broad spread of expertise and opinion and experience are vital, to ensure that justice is done and seen to be done.
23. Disabled people are experts by experience and removing their involvement in all but exceptional cases will lead to a deficiency within the system and will increase the marginalisation of Disabled panel members and Claimants alike.
24. Greater clarity is needed around how the results of any Pilot schemes of either proposal are gathered, analysed and responded to appropriately. If the Pilots are not successful overall, e.g. costs, resource strain and caseloads increase, will the proposals be scrapped?

### **Conclusion**

25. As a Disabled Persons User-Led Organisation, working alongside Disabled Adult residents of Thurrock we welcome the opportunity to provide information, input and feedback to inform local and national strategies and policies relating to a plethora of topics and issues affecting Disabled people, including equitable access to the appeals system for Disabled people in Thurrock.
26. It is hoped that the information and feedback provided can be used to develop local and national person-centred solutions to bring about improvements and better outcomes for the people we support and represent.

**Thurrock Coalition – November 2016**