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RYDER LJ TAKES THE HELM

THE EDITORIAL BOARD of the *Tribunals* journal is delighted to welcome the Rt Hon Lord Justice Ryder as the new Senior President of Tribunals, following the retirement in September of the incumbent Lord Justice Sullivan. Like both his predecessor and the inaugural Senior President (Lord Carnwath, now Justice of the Supreme Court), Lord Justice Ryder brings to the post an outstanding record as an innovator and leader of drive and vision.



Lord Justice Ryder

Scotland, and hopes to continue in these roles as time permits.

In his 'spare time' he is a trustee of the Nuffield Foundation, Chancellor of the University of Bolton and the editor of various practitioner titles including Clarke Hall and Morrison on Children. He is a commissioned officer in the cavalry and a Deputy Lieutenant of Greater Manchester.

In addition to his position as a judge of the Court of Appeal, Lord Justice Ryder is the current chairman of the Lord Chief Justice's steering group on performance and deployment strategy. He was previously a Presiding Judge, a Family Division Liaison Judge and the judge in charge of the family justice modernisation programme. He has also served as a course tutor for both the Judicial College and the Judicial Institute in

In this issue, we introduce a new, occasional feature called President's Corner, where Chamber Presidents answer questions on their areas of concern. Mrs Justice Rose, of the Tax and Chancery Chamber, and Judge Peter Lane, of the General Regulatory Chamber, are first to be profiled.

Jeremy Cooper, Chairman of the Editorial Board.

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LMS now a smart two-year-old

The Judicial College's Learning Management System (LMS) is approaching its second birthday.

The LMS is the source and host for all Judicial College training materials. It is also the website on which all judicial office-holders can, where appropriate, book their training and access information relating to training events.

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FAIR COMMENT LEADS TO GOOD PRACTICE

The assessment of performance has a key role to play in individual and professional development – a report on the benefits of seven judiciary appraisal schemes, which are tailored for their respective jurisdictions.

*'O wad some Pow'r the giftie gie us
To see oursels as others see us'*

Robert Burns c1785, 'To A Louse'

AS WITH MOST THINGS, people can react positively or negatively to the prospect of being appraised. For those who embrace the process it is an opportunity to learn about what they are doing well and perhaps improve where required. There are others who perhaps feel that they have worked hard, given their best and their efforts should simply be acknowledged and appreciated. They are uncomfortable with the idea that hard work might be open to criticism even when such comment is constructive. There are variables that can affect the comfort levels of both the appraiser and the appraisee during the appraisal process.

That said, there is no question about the benefits of having a performance appraisal scheme, such as the advantages of sustained good performance and improved performance, and these generally have us committing ourselves to a process that our human nature might ordinarily have us avoid. Studies of appraisal schemes across many organisations have recorded benefits such as providing the organisation and individuals alike with the valuable opportunities to focus on work activities and goals, to discuss performance and receive feedback, to identify and correct existing problems, and ultimately encourage better future performance.

According to the Chartered Institute of Personnel and Development, 87% of employers use some form of individual annual appraisals, 27% do them twice a year and 10% more often than that. They do this because it affords them the opportunity to engage with their employees,

improve performance and ultimately provide a better service.

The Institute suggests that appraisals as part of performance management processes should incorporate three strands:

- *Performance improvement* – throughout the organisation, in respect of individual, team and organisational effectiveness.
- *Development* – unless there is continuous development of individuals and teams, performance will not improve.
- *Managing behaviour* – ensuring that individuals are encouraged to behave in a way that allows and fosters better working relationships and/or service delivery.

There are appraisal models that link appraisal to pay and discipline. However, in the judiciary the focus is on the development of the individual by way of performance assessment and assistance for professional development.

What does a good scheme look like?

Inherent in the judicial leadership role is the responsibility to support others effectively, and part of that is to have clear standards of expected performance. A good appraisal scheme will help appraisees to:

- Understand what is expected of them.
- Develop the skills and capacity to meet these expectations.
- Use regular and specific feedback on their performance.
- Contribute to their own development.

Appraisals work best if the appraiser has received training on how to conduct appraisal discussions and use appraisal tools. There is usually a document that allows both appraiser and appraisee to measure performance against set standards. Often appraisees are asked to assess for themselves their own level of achievement and indicate what they have learned or skills they have developed.

Another important aspect of appraisals is the consideration of a person's training and development requirements. As new situations arise, or organisations change direction, or technology moves on, it is important to either refresh skills and knowledge or learn new information. At some point, there will be a need for training or other development activity even when individuals are performing well, and identifying that development need is a valuable part of the appraisal discussion.

Appraisal schemes

According to a report by Professor Jeremy Cooper entitled 'Judicial Training in the Tribunals Service: A report to Sir Robert Carnwath CVO':

'Appraisal is now accepted by most tribunals judiciary as a normal part of the professional life of a tribunal judge or member.

According to the Chair of the Tribunals Judiciary Welfare and Appraisal Group: "Almost all of the TS jurisdictions have appraisal in place or plans to implement it. All jurisdictions with schemes in place appraise their fee-paid legal members and about half appraise their non-legal and specialist members."

The following seven schemes have similar features, such as an agreed number of appraisals per year, an appraisal record/form, use of additional information such as self-assessment forms or 360 degree feedback, agreed ways to conduct meetings, and what to do in the event

of disagreements. It is good to see this level of uniformity but also interesting to note the subtle differences that allow the schemes to be tailored to the respective jurisdictions.

First-tier Tribunal (Property Chamber)

The three tribunals in the Property Chamber – Residential Property, Land Registration, and Agricultural Land and Drainage – each have an appraisal scheme. The expectation is to introduce a new Chamber appraisal scheme in January 2016, which will apply to all three tribunals.

The objectives of the scheme will be to:

- Ensure that high standards and consistency of practices are maintained and enhanced, in order to promote public confidence in the tribunal's judicial performance.
- Enable identification and assessment of individual members' strengths and competencies by reference to the 'defined competencies'.
- Identify individual training and development needs.
- Enable members to discuss points of concern relating to their experience in sitting, training and tribunal procedures.
- Ensure that training programmes are informed by identification of particular needs.

This appraisal scheme is based on a set of defined competencies. Members will be appraised every three years. The appraisers will be senior judicial office-holders who have been trained in conducting appraisals.

The information gathered in an appraisal report form will be passed to the Regional Judge and to the Director of Training and will be used to ensure that members are attaining an appropriate standard of knowledge and competency and to identify training and development needs.

Social Security and Child Support Tribunal

The main appraisal scheme in the First-tier Tribunal (Social Entitlement Chamber) is well established, dating back to about 2000. It applies to fee-paid judges and non-legal members. In the first few weeks of sitting a supportive visit is made by a salaried judge, usually the local district judge. A self-assessment form is later sent out. An appraisal will follow by a district judge, all of whom are trained in appraisal techniques, at about a year into sitting, and thereafter every three years. There is initial oral feedback and a written report upon which the appraisee is invited to comment. The written appraisal will then be either agreed or placed on the file with those comments.

The appraisal process is generally considered useful in professional development, and more widely informative as to training needs. It is fair to say that appraisers often comment that they learn a great deal from those they observe and appraise.

There are complexities in relation to the licensing of medical practitioners which have been taken on board in their particular appraisal scheme designed by the Chief Medical Member. The appraisal is conducted by a judge and a trained medical appraiser (a medical member). This process includes the requirement for a 'personal development plan', a useful practice which may well be of wider interest.

In recent years, members of the Judicial Leadership Forum (President and Regional Judges) have appraised each other as to both judicial and management skills.

There is no formal appraisal scheme for salaried judges in that jurisdiction; however, it is common practice for personal development to

arrange to observe a fellow judge conducting a list and then to discuss the legal issues and the approach to the cases, a practice that is generally of mutual benefit.

Employment Tribunal

The current appraisal scheme for Employment Judges exists for fee-paid judges and does not currently cover salaried judges or Regional Employment Judges. The main purpose is to ensure effective performance and development of fee-paid judges. It also acts as part of the induction plan for newly appointed fee-paid judges. It further assists in the selection process for those seeking salaried appointment or references in other contexts.

For newly appointed judges there is a commitment to carrying out an appraisal within the first 18 months and for other fee-paid judges the cycle is every three years.

The competencies match the judicial skills and abilities which are used for recruitment to all judicial posts and are broken down into six components covering assimilating and clarifying information, working with others, exercising judgment, possessing and building knowledge, managing work efficiently and communicating effectively. They have been amended to reflect the updated Judicial Skills and Abilities Framework 2014.

Assessment includes observation of a hearing, normally lasting a day, together with a review of other evidence which is available including written judgments, contributions to training or interlocutory work and records of sittings, training undertaken, part-heard rates, types of cases undertaken and late promulgations. The appraisee completes a self-assessment report reflecting on progress since their last appraisal and agrees a self-development plan identifying any training or self-development needs at the conclusion of the appraisal.

For newly appointed judges there is a commitment to carrying out an appraisal within

the first 18 months and for other fee-paid judges the cycle is every three years. The appraisal is carried out by the Regional Employment Judge. The information gathered is used within the region to inform regional training and individual development. It is also used for references and career development. It is further provided to the President so that he is aware of the progress of fee-paid judges throughout their careers.

Criminal Injuries Compensation Tribunal

Appraisals in this jurisdiction are carried out every three years. All tribunal judges and members are appraised by peers (apart from the principal judge who is appraised by the Chamber President).

- Medically qualified members always have a medically qualified appraiser involved with the process.
- Tribunal judges are appraised by tribunal judges or members who are ‘ticketed to preside’ at hearings.
- Tribunal members who are ‘ticketed to preside’ at hearings are appraised by tribunal judges or members who are ‘ticketed to preside’.

The CIC tribunal use comprehensive appraisal material which was revised before the current round of appraisals to assess all relevant competencies. Due regard is included to the General Medical Council’s expectation of medically qualified members. The main purpose is to ensure that everyone has the necessary skills and knowledge to fulfil the requirements of the jurisdiction.

The appraisal forms and each individual’s self-assessment form (completed prior to the appraisal) is used to inform training plans and to identify any specific matters appertaining to the individual’s performance. The appraisal process involves two appraisers observing two appraisees for a whole day of hearings. Feedback is delivered orally, accompanied by the draft appraisal report,

the following day. The final version of the appraisal report is then provided to appraisees for them to add comments, before it is returned for the use of the principal judge and the training adviser.

Asylum Support Tribunal

The Asylum Support Tribunal (AST) appraisal scheme is for salaried and fee-paid judges. Its main purpose is to ensure standards of work, inform the AST training programme, develop judges and ensure that basic judicial competencies are maintained.

The appraisal criteria used are those set out in the 2007 JSB Tribunal Competencies – Qualities and Abilities in Action booklet as adapted to the needs of the AST, namely (i) knowledge and values, (ii) communication, (iii) conduct of cases, (iv) evidence and (v) decision-making.

The assessment outcomes they can give are (i) competent, (ii) marginally competent and (iii) below the minimum level of competence.

The AST has a rolling two-year programme; the next round will start after the annual conference in autumn of 2015. All fee-paid AST judges are appraised by two salaried AST judges. Each salaried judge appraises half the fee-paid judges in each round, appraising the other half in the following round. The salaried judges are appraised by the deputy principal judge and the principal judge, alternating.

The information gathered from the appraisals is used for development of individual judges, to inform jurisdictional training plans, for references, for individual development meetings with the principal judge, to inform the annual training conference and to assess if extra mentoring is required.

First-tier Tribunal (Tax Chamber)

The Tax Chamber is working to a policy where judges are appraised every three years. The

intention is that newly appointed judges who have not sat in the Chamber before will be appraised after two years.

Mentoring and appraisal are to be kept entirely separate. It is accepted that a mentor will never conduct his or her mentee's appraisal. Appraisals will be carried out by salaried and fee-paid judges who have trained to perform that role.

Mental Health Tribunal

With the arrival of the new Judicial Skills and Abilities Framework in April 2015, and the retirement of the judge previously responsible for appraisal, the Mental Health Tribunal (MHT) has taken a fresh look at its appraisal scheme, which has been significantly reworked. Olivea Ebanks and Judge Robert Holdsworth have devised a one-day training course for all MHT appraisers on the new framework, and as from April all appraisals have been conducted by freshly trained appraisers on the basis of the new framework.

In terms of individual performance outcomes, historically MHT has rated an appraisee either as 'Satisfactory' or 'In need of further training'. As from April, the wording of the outcomes has been changed to 'Demonstrates required skills and abilities' or 'Urgent development action required'.

The MHT appraisal report form was been reworked and now mirrors the new framework, with each of the six framework 'areas' mirrored by a separate space in the report for observations and evidence as well as the individual outcomes per 'area'. It also has a specific section for the recording of areas of strength and areas of outstanding performance. A more developmental approach is being adopted, with those who are seen to demonstrate the

required skills and abilities nevertheless being encouraged to consider ways to develop their performance further, from a menu of options including observation, e-learning, and post-case discussion.

MHT has historically appraised all members with the exception of circuit judges. This has now changed and serving circuit judges are now included in the appraisal scheme with effect from 1 April 2015, along with retired circuit judges. For now, the MHT has separate published schemes, one for serving circuit judges, one for salaried tribunal judges, and one for all other MHT judicial office-holders.

The aim is to appraise all MHT judicial office-holders on a biennial basis, with the first appraisal arranged some 12 months after appointment. Trained appraisers from within the MHT membership undertake the appraisals. Almost all are fee-paid and MHT now has a good balance of legal, medical and specialist lay members working as appraisers. MHT does not use a peer-appraisal approach, with the focus being appraisal of an appraisee's skills as

a panel member at a hearing rather than their skills as, say, a practising clinician.

MHT has an Appraisal Committee which supports the lead appraisal judge and the appraisal administrators. Minutes of the committee meetings are posted on the MHT pages on the judicial intranet. Appraisers' training and meetings are planned in line with the 2009 Core Document, and the lead appraisal judge keeps in regular touch with MHT appraisers with newsletters as needs be. The appraisal reports are currently all reviewed by the lead appraisal judge, but plans are under way to improve this, using a small group from the committee to conduct

The history of appraisals goes back to the third century in China. It is a tool that has stood the test of time and has increased in popularity in recent years.

quality checking of a good sample of the reports, all suitably anonymised.

New developments

The history of appraisals goes back to the third century in China. It is a tool that has stood the test of time and has increased in popularity in recent years. Used sensitively it can be extremely valuable to employees and teams. This April saw the launch of the new Judicial Skills and Abilities Framework, the foreword of which, written by the Lord Chief Justice and Senior President of Tribunals, states:

‘This framework brings together all the work that has been undertaken in recent years to identify and describe the skills and abilities required by judicial office-holders (both judges and tribunal members) in courts and tribunals including those in leadership and management roles. This framework will replace existing competence frameworks for appraisal schemes and training purposes. Over the next year the Judicial Office will be working with the Judicial Appointments Commission to establish how best to incorporate the framework into the selection processes.

‘Bringing together a single set of skills and abilities will provide a clear set of expectations common to all jurisdictions against which judicial office-holders will be selected, trained, encouraged and appraised. Such a single standard will be a great asset in taking forward the flexible deployment provisions of the Crime and Courts Act but individual judicial office-holders can also use the framework to identify their strengths, assess their personal development needs and consider their career aspirations against the clear statements of expectations.’

In addition, the Judicial College has developed a new cross-jurisdictional Appraisal Skills training

course with the new framework at its heart. By the end of the course participants will be able to:

- Describe the purpose and desired outcomes of an appraisal.
- Explain the key tasks, skills and responsibilities of the appraiser.
- Use the Judicial Skills and Abilities Framework as a basis for feedback discussions.
- Identify the skills required to give effective feedback.
- Structure an appraisal feedback discussion and practise giving effective feedback while remaining objective and unbiased.

The feedback report for the course held in April showed that the aim and learning outcomes average was 97% at ‘fully/substantially met’ by the overwhelming majority of respondents. The course was ‘very/substantially useful’ for all respondents and there was an excellent feedback form response rate of 88%. It is hoped that we will see continued good practice and improvements in our approach to appraisals along with a greater uniformity in the tools we use to support the development of the judiciary.

The following contributed to this article:

Robert Holdsworth, Chair of Mental Health Tribunal Appraisal Committee

Sehba Storey, Principal Judge of Asylum Support and Criminal Injuries Compensation

Paula Gray, Judge Upper Tribunal (Administrative Appeals)

David Brown, Property Chamber Director of Training

Fiona Monk, Regional Employment Judge, West Midlands

Jane Reynolds, Training Adviser, Criminal Injuries Compensation Tribunal

Olivia Ebanks, Education and Development Adviser

A CASE OF BEING MINDFUL

Scientific studies increasingly support a simple daily practice that improves performance, reduces stress and aids clear thinking. *Hannah Bright* offers a tool ready-made for those who sit in judgment.



JUDGES AND tribunal members spend their working lives making important decisions, decisions that affect the lives of people deeply. We all know that getting it wrong can have disastrous consequences for litigants. We also know the pressure placed upon us by that responsibility. Add the pressure of workload, handling increasing numbers of litigants in person, cost-cutting consequences and all the multifarious demands on a modern tribunal and it starts to look as though we are in danger of crumbling under the pressure.

But we are a resilient lot, by and large. We have broad shoulders, poker faces and dry palms. We are ivory towers, delivering justice objectively, unaffected by our own physical or mental state. Aren't we?

Not so. A study of parole board judges in Israel in 2011 found that the decision-making fluctuated depending on when cases were heard. Cases heard early in the morning or after mealtimes were more likely to end with a parole grant than cases heard at the end of the day or before breaks. The reason? The judges' blood sugar levels.

Effects of mood

A number of studies have shown that mood also determines how we process information: good mood means more reflexive, automatic processing of information, while a negative mood means more reflective, deliberate processing. Reflexive thinking tends to lead to a reliance on the status quo and stereotyping, while reflective thinking involves more focus, conscious attention and effort. It does not take much imagination to realise that our moods may

affect the way we approach the processing of information and decision-making.

And as for stress, well it just comes with the job does it not? While we might not think we are stressed, how many of us suffer from neck or shoulder pain from hunching or tightening our muscles in tribunal? How many of us could truthfully say that we feel physically relaxed sitting in the judge's chair? The studies on the impact of stress on information-processing and decision-making are numerous and well known and overwhelmingly show that stress changes the way we do both.

Managing stress

So what are we to do? How can we manage our own stress, physical and mental states and the reality of the task we have to do? One tool in our toolkit may be mindfulness. You will have heard of mindfulness. It is everywhere, from mindful colouring to mindful dog-walking and, like any new trend, there is no shortage of sneering detractors. But it has become a buzzword for a good

reason and a growing body of science may give the judiciary cause to sit up and listen.

Mindfulness is currently recommended by NICE (the National Institute of Clinical Excellence) for the treatment of depression. Increasing numbers of [studies](#) have shown its effectiveness in relieving the symptoms of anxiety, obsessive compulsive disorder, addiction, chronic pain, grief, low self-esteem and an assortment of other conditions. But more significantly for judges and tribunal members, mindfulness has been shown to improve performance, lower levels of stress and aid clear thinking and decision-making. It has infiltrated the police force, the National

It is everywhere, from mindful colouring to mindful dog-walking and, like any new trend, there is no shortage of sneering detractors.

Health Service, local government and schools. Increasing numbers of employers are offering access to mindfulness courses and seeing the benefits in terms of productivity, decreasing days lost to illness and general well-being of the workforce. Even central government has shown an interest, with a recent Mindfulness All Party [Parliamentary Group](#) looking at its benefits and sessions being offered to MPs.

So what is it? And how might it be used by tribunal judges and members? The first thing to make clear is what it is not. It is not 'new age', hippy or mumbo jumbo. There is nothing mystical or esoteric about it. In essence, it is the ability to cultivate a state of mind in which we are aware of everything we are experiencing (sights, sounds, sensations, moods and thoughts) in each moment of time in an objective, neutral way. If you are lucky, you may already live life with this kind of present-moment awareness, undistracted by worries about the future or churning thoughts about past events. But for most of us, developing the ability to be 'present' instead of off somewhere else in our minds, requires some formal practice.

Secular form of meditation

The formal practice, which forms the core of most mindfulness courses, is a secular form of meditation derived from Buddhist practices. The practitioner takes time out (as little as 10 minutes a day to start with) to sit and focus on something occurring in the present, usually their own breath.

That's it. Yes, it really is that simple. But what happens with practice, and this effect is described over and over again by even the most sceptical of beginners, is that over time the formal practice seeps into the practitioner's experience of everyday life. And with it comes a sense of calm, confident control, clear thinking and resilience.

It is subtle, yet profoundly transformative at a personal level.

Professional benefits

So it is good for us as human beings. But what professional benefits might judges and tribunal members reap? Some [judges in the United States](#) have been using mindfulness in the court room for many years. They report benefits including increased awareness of the prejudices, biases and stereotypes that affect all of our thinking. Mindfulness can enable us to pierce our own veils of preconception and listen more clearly, to hear what a witness is really saying. It can improve the ability to process information,

leading to more flexible, reflective thinking and better decision-making. It enables us to take stock, in each moment, of how we feel and what influences might be affecting us. It allows us to take control of our own physiological and psychological processes in order to minimise the impact of ourselves or outside influences on our decision-making, to improve the delivery of justice. And it can enable us to notice that rumbling tummy earlier, so that

we have the presence of mind to stop and get some lunch before our decision-making becomes impaired by low blood sugar levels.

Of course, practising mindfulness is a personal decision. It will not suit everyone, but I would encourage you to give it a try (non-judgmentally). If you are interested, there are any number of courses now on offer from individual sessions and local groups to courses run by universities. If you are strapped for time, there are even smartphone apps offering guided mindfulness courses. A particularly good place to start is [Headspace](#), online or as an app, which offers a free introduction to basic practice called 'Take 10'.

Hannah Bright is an Employment Judge.

Mindfulness can enable us to pierce our own veils of preconception and listen more clearly, to hear what a witness is really saying.

| Too CONFIDENT BY HALF

Leslie Cuthbert explains four factors that are at work when tribunals are asked to make decisions, each of which can induce individuals to fall into a 'dangerous' mental state that clouds their judgement.



OVERCONFIDENCE is a dangerous quality in a tribunal member since it has the potential to lead panels into making inappropriate decisions. Unfortunately tribunal members are exposed to all four of the factors that research studies suggest will lead to overconfidence.

1 'Hard-easy' effect

First, we are likely to become overconfident when facing difficulty, i.e. when we have to make a judgment on a case where there is no way of knowing all the facts. That must be true for virtually every decision a court or tribunal makes, is it not? This factor is known to psychologists as the 'hard-easy' effect whereby we tend to be underconfident with easy problems and overconfident when dealing with tricky ones. This effect is especially true when making accurate future predictions, a task which, if not impossible, is incredibly difficult (yet is one that tribunals are often asked to make!)

2 Familiarity

Secondly, we may become overconfident when dealing with something familiar to us, i.e. when we are doing something we have done a number of times before. Many tribunal members obviously sit on numerous hearings over the course of a year and therefore they are particularly at risk of this factor. As might be deduced, the reason that this factor leads to overconfidence is because we are likely over time to trust our ability as a decision-maker and to become, to an extent, complacent in our approach. How many times, when confronted with a hearing, have you thought to yourself, 'Ah, it's another one of those...?'

3 Quantity of information

Thirdly, overconfidence develops when more and more information is provided to us, i.e. the more we know about something the more we are likely

to think that we can handle the decision we have to make. Quantity of information does not, however, equate to quality of decision-making. Some individuals may be very confident that they have reached the 'right' decision based upon the ever-increasing information that they have received during the course of a hearing. However, research shows that while confidence in your decision increases, the accuracy of a judgment does not necessarily increase significantly the more information that one receives.¹

4 Active engagement

Finally, overconfidence is more likely when we actively engage in a process, e.g. someone who flips a coin themselves believes that they are more able to accurately predict whether the coin will come up heads or tails as compared with someone who is simply watching another person flip the same coin. Hopefully, all tribunal members are actively involved in the hearing and therefore this factor is also likely to be prevalent.

However, forewarned is forearmed! An awareness of these four elements helps individuals to take steps to counteract them. If we accept that we will all inevitably stumble at some point in a hearing and that we need to continue to challenge ourselves and to learn, the risk of overconfidence is reduced.

Therefore, if we have the advantage of sitting with one or more other panel members, we should be open to listening to our colleagues who may be able to remind us of our own fallibility and thereby stop us from deceiving ourselves into making an overconfident blunder.

Leslie Cuthbert sits on the First-tier Tribunal (Health, Education and Social Care).

¹ *Overconfidence in case-study judgments*, Stuart Oskamp, Journal of Consulting Psychiatry 29, no3 (1965): 261-265.

| ‘E’ FOR FLEXIBLE, PORTABLE AND PERSONAL



The Judicial College is committed to providing more e-learning modules. **Ellis Jones** tells how, with the development of the Internet, ‘computer-based training’ has finally come of age.

WHAT IS E-LEARNING? That is a question, as the Judicial College e-learning designer, that I ponder daily. It is evident to me there are vastly differing perceptions of what it is. So I shall try to provide an answer.

Having joined the College in March 2015, after nearly 30 years working in numerous government departments, it immediately struck me how progressive and enthusiastic the College is in relation to e-learning. However, I’m sure the College directors and senior management team will not disagree that, although admirable qualities, there was a need to establish more consistent, structured and far-reaching e-learning principles to ensure it remains a world leader in judicial training.

Difference of opinion

There is, I feel, a defining line within the College’s audience on how e-learning is perceived. Some wholeheartedly embrace the concept of digital learning, see no palpable difference between face-to-face courses and e-learning, accepting both as tools for effective learning. Some see it as an ineffective tool that is made worse by possibly out-of-date IT or access issues. Both opinions have merit.

However, let me dispel some of the myths surrounding e-learning and what the College provides. I refer back to my question ‘What is e-learning?’ Early in my career (circa 1987) e-learning was called computer-based training or CBT, three letters that struck fear into many a heart! It was simple in its concept – simple

graphics, simple text, simple navigation – and simply not conducive to effective learning. This may be doing it a disservice because we all have to start somewhere. However, it has cemented a fear in many potential users to this day. Added to this, many current e-learning programmes continue in the same vein – text-heavy albeit with better graphics – but they still do not, and will not, engage the learner, thus continuing the negative perception.

Instructional videos

Let me ask a question? How does a person change a tap in their kitchen or bathroom? If they are of a DIY leaning, they will do it without instruction or fuss. Some may use a manual, and why not? However, many will search YouTube or a similar website on their smartphone, tablet or laptop and watch an instructional video. Whether it is Bob the Builder or a slick film from one of the huge DIY stores matters not – it is e-learning. This is where we are today.

In the UK, 50% of companies are training more than half of their employees using e-learning, and this is increasing.

In the USA, the e-learning market is worth billions of dollars and many of their large companies and universities have taken it to their respective hearts. For example, Stanford University will have a lecture by a prominent professor set up as a ‘webinar’, thus allowing an audience from not only the 300 in the auditorium but elsewhere in the world. In the UK, 50% of companies are training more than half of their employees using e-learning, and this is increasing. The College’s e-learning approach, produced as an easily accessible tool, could thus easily be shared internationally.

E-learning as a concept is now far removed from those CBT days. The e-learning produced by the Judicial College, for example, has within it music, narration, film clips, interviews, links to YouTube, forums and interactive quizzes. Judicial trainers have at their disposal their own film production team and access to theatre groups if actors are called for. This may sound extravagant but the underlying principle, of course, is always value for money and there is strict governance by the College on any e-learning project agreed.

Training judge Barry Clarke has this to say about e-learning:

‘If you are unfamiliar with e-learning, you might think that it is attractive to the judiciary simply because it is cheaper, and you might fear that it would be a poor substitute for face-to-face training. That would be a mistake. It involves so much more than simply putting online that which we have previously delivered in person. It allows us to train in new ways. It can be more engaging, by using interaction and animation. It can be portable, done on all manner of devices. It can be flexible, done at times of personal choice and following a syllabus selected by the judge.’

The College’s strategy over the next few years is the promotion of and use of e-learning, but it has made clear that it is not a substitute for face-to-face learning.

Defined structure

There is also a strict structure on how the College develops its e-learning courses. I work in partnership with judicial trainers following a defined structure that enables this collaboration to produce interactive and high-quality e-learning. Only after the judicial trainers have critically reviewed and are fully satisfied with the product is it published. The e-learning journey continues, post-publication, because a vital College process is to evaluate our learning.

The evaluation process is still at an early stage. The aim is to mirror the evaluation process currently in place for all face-to-face courses. In keeping with the digital strategy, my aim is to embed an evaluation template within all e-learning and make it part of the course, i.e. within a piece of e-learning that currently takes one hour it will be published as being one hour 10 minutes.

The feedback will again mirror the face-to-face courses by using the Kirkpatrick model of training evaluation. This provides useful feedback from the initial reaction to the e-learning, how the learning has been implemented, how successful it has been to the return on the investment. As a designer, I like to keep things simple, therefore my aim is to establish: ‘Was this learning useful to you?’ and ‘How can it be improved?’

‘Learner is king’

With all learning, in any form, the ‘Learner is king’ and it is imperative that learners’ opinions are sought. These opinions are reviewed and, if applicable, implemented into the design and development process. It is a balancing act as there can be many opposing views. However, if there is an agreed theme or consensus within the feedback I can be certain it needs to be addressed but the merits of individual feedback are also taken into account. In the meantime, and as an interim measure, I will need to use a straightforward evaluation process of mailing a cross-section of recipients to gather feedback on e-learning that is being developed.

The College’s strategy over the next few years is the promotion of and use of e-learning, but it has made clear that it is not a substitute for face-to-face learning. There are courses that would struggle to be effective solely via this medium but e-learning can enhance and compliment

face-to-face events without a doubt. Research confirms that the combination of visuals – image and colour – and auditory input, both of which define perfectly e-learning, increases memory and retention of content. But an e-learning piece does not have to be intricate and sometimes the simplest solutions are the most powerful. For example, having paper ‘pre-reading’ converted to an audio narration piece. Users can listen to it as they would an audio book while travelling to the event. It is said that we subconsciously take on board information while we sleep but I shall keep the idea of listening to pre-course material while in bed to myself!

College’s commitment

The Judicial College business plan states that 15 e-learning modules are to be produced by 2016. We are working steadily towards this commitment and I am confident we shall reach the milestone. For example, we have recently completed and published a comprehensive piece of e-learning for newly appointed judges. It is called ‘Becoming a Judge’ and covers areas such as the ethical implications of social awareness and context. This piece is of an interactive nature and includes narration from subject matter experts, a multiple-choice quiz, film clips of experienced judges sharing their knowledge and scenarios to reflect on. I am keen to engage learners and an e-learning piece of this kind will hopefully address that and be a template for future e-learning.

Although recently published, it has received favourable comments across the jurisdictions and will be the first-stage induction for all newly appointed judges. Interestingly, new judges coming through the ranks have already

a background in e-learning from their solicitor firms and accept it as a recognised means of learning.

There is much work to do and my team and I will be doubling our efforts to make e-learning a fundamental part of the judicial programme ensuring audience fears are allayed and a positive change of hearts and minds is secured.

The College provides consistent encouragement to take forward ideas that allow my team to grow e-learning as an effective learning medium. Directors Professor Jeremy Cooper and Judge John Phillips both have an open and enthusiastic approach to e-learning and my team and I have no hesitation in providing ideas and suggestions to them. We always receive a considered answer however ‘off the wall’ the ideas may be. This provides an excellent environment for enhancing and progressing e-learning and digital intervention for the judiciary.

If readers have any questions on the College’s e-learning programmes, I am more than happy to discuss them.

Ellis Jones is the Judicial College e-learning designer.

MRS JUSTICE ROSE

Dame Vivien Rose is President of the Upper Tribunal (Tax and Chancery Chamber)

What do you see as the challenges in your new job?

For the tax jurisdiction the challenge is to ensure that we implement fairly and accurately the balance struck in the relevant legislation between the citizens' obligation to pay their taxes and the constitutional principle that HMRC can collect only those taxes approved by Parliament.



It is always important to have an overview of how a particular tax works generally as well as a grasp of the nitty gritty of the provisions in dispute. Tax cases force you to think really carefully about what ordinary words mean and what kinds of transactions Parliament intended to catch.

The land registration, charity and other smaller jurisdictions are, like many other tribunals and courts, accommodating an increasing number of litigants in person trying to navigate their way round complex areas of the law. Land registration disputes are often the result of long-running and bitter disputes between neighbours or within families.

The challenge is to achieve some finality and resolution which both sides understand even if one side is, inevitably, unhappy with the outcome. The charities and the Financial Conduct Authority cases often involve allegations of wrongdoing against people who have occupied positions of trust and responsibility – the tribunal is there to ensure that such decisions are properly justified.

What are your areas of priority in your new job?

Over the coming year or so we will see the effect of recent legislative changes reflecting the Government's wish to discourage aggressive tax avoidance schemes. This will lead to an increase

in workload for which we have recently recruited a number of new judges. The cases may also raise new issues of principle in particular about ways of construing statute law.

My other priority is to make sure that the fee-paid and salaried judges in all the Chambers' jurisdictions have the leadership and support they need to get the most from their judicial work.

How do you see the operation of your tribunal being improved by the introduction of modern technology?

I hope that the new IT systems recently rolled out will help create smooth pathways between the First-tier and Upper Tribunal administrations and make sure that everyone has the documents they need at each stage of the proceedings.

The 'paperless' court seems as far away as ever but we should reduce the need for physical files to be sent from place to place.

How do you cope with the stresses of the job?

I find the work very interesting and worthwhile, so that helps. I need to be very organised to combine my tribunal role with the rest of my judicial work in the Chancery Division.

My fellow judges are a huge help in dealing not only with the case load but also with the increasing amount of other work, liaising with other chambers and HMCTS and responding to the consultations about proposed changes to every aspect of the tribunal's work load.

What do you like to do in your spare time? How do you relax?

I love the theatre and travel and spending time with family and friends.

JUDGE PETER LANE

Peter Lane is President of the First-tier Tribunal (General Regulatory Chamber)

What do you see as the challenges in your new job?

I was fortunate to inherit from my predecessor, Nick Warren, a Chamber that was in very good working order. I aim to build on his achievements during his four years in charge.

The General Regulatory Chamber is unique among the Chambers of the First-tier Tribunal in having a large number of different jurisdictions, ranging from animal welfare to transport, by way of environment, information rights and charity, to name only a few.

One of the challenges is to build a sense of Chamber identity, which includes looking at ways in which the talents of our judges and members can be used to maximum advantage. On this front, we have recently trained a number of existing judges to handle transport cases, including some whose original jurisdictions were no longer generating appeals.

When a new right of appeal is being considered against a regulatory decision, I am asked to consider its suitability for being dealt with in the GRC. If it is potentially suitable, then consideration is given to how the enabling legislation should be framed. The subject matter of these new rights is extraordinarily wide. For example, plastic carrier bags and international protocols have crossed my desk relatively recently.

It is also necessary to take a view on the number of appeals that the new legislation is likely to generate. This is far from being an exact science.

What are your areas of priority in your new job?

As well as transport, we recently had an 'expressions of interest' exercise in the Chamber for judges to decide appeals (in fact, 'references') against certain decisions of the

Pensions Regulator, regarding the automatic enrolment of workers in pension schemes. Training on this new work is taking place this month, so as to be ready to deal with the expected cases.

We are also making preparations to consider a new round of appeals against decisions under the Nitrate Pollution Prevention Regulation 2015. These involve restrictions on using land, which drains into waters that are designated as polluted.

How do you see the operation of your tribunal being improved by the introduction of modern technology?

The GRC is, in fact, in the vanguard in working very substantially in a 'paperless' way. Unlike some Chambers, our case files are largely held electronically. Many of the parties communicate with the Chamber's administration by e-mail.

I think it is highly likely that hearings conducted wholly or partly by means of modern technology will become increasingly common, not just in the GRC but across all courts and tribunals.

How do you cope with the stresses of the job?

I am really fortunate to have an excellent personal assistant, registrar and admin team. Thanks to them, the challenges of my role are, by and large, enjoyable. And as if there were not enough variety, I continue to sit in the Immigration and Asylum Chamber of the Upper Tribunal, where the judicial review work, in particular, provides its own interesting challenges.

What do you like to do in your spare time? How do you relax?

A perfect day off would be spent examining some jewel of Romanesque architecture. I am someone who thinks a round arch is more beautiful than a pointed arch.

IF IN DOUBT, SPEAK OUT!

The Judge in Charge of Security, *Mr Justice Popplewell*, offers judicial office-holders advice on what to do if they are concerned about incidents that may cause alarm in the vicinity of tribunal hearings.

I WAS APPOINTED recently by the Lord Chief Justice to be the Judge in Charge of Security, taking over from Mr Justice Irwin. This makes me the main contact for HM Courts and Tribunals Service and judicial office-holders (JOHs) in relation to judicial security issues, and I am supported in this by a member of the Judicial Office, Tiba Gogna. The Judicial Security Committee, which I chair, has been in existence for about five years. It was previously chaired by Lord Justice Gross, then Mr Justice Irwin. Formally, we report to the Judges' Council.

Our job is to monitor judicial security nationally, liaising with (and prompting) HMCTS. Between us, we try to keep track of all significant incidents affecting judicial security, or all those which are reported to us. We try to offer moral and practical support to JOHs affected and to identify whether there are new or recurring problems which may merit intervention at a strategic level. Increasingly, we have been turning our attention to providing information and advice to JOHs aimed at minimising the risks to which they may be exposed. In the future we hope to work with the Judicial College on initiatives of this type.

We have three representatives who sit on the committee from the tribunals – Shona Simon, Jeremy Bennett and Jeffrey Bryer. If you have general security concerns that may be of national importance you can contact them and ask them to raise them with me. Shona also sits on the Tribunal Judges' Executive Board (TJEB). She keeps Chamber/Tribunal Presidents up to date with the work of the committee and can relay

any security-related concerns TJEB members express to the committee.

Reporting significant security issues

Over the last four years or so, HMCTS has engaged in a considerable review of security and formulated a written policy, upon which members of the committee had the opportunity to comment from a judicial perspective. There should now be an HMCTS staff member in every court and tribunal building responsible

– and known to be responsible – for security, and HMCTS have undertaken to keep that up to date. In many instances, security issues can be pre-empted and cases listed in appropriately secure environments, but we all know that occasionally security issues arise unexpectedly.

We suspect that there may be a degree of under-reporting of security incidents by JOHs who sit in tribunals. It is important that you tell the HMCTS staff member responsible for security in your tribunal of any breach of security arrangements you notice which results in actual or potential harm

both inside or outside of the tribunal hearing room so that it can be properly logged and dealt with, and lessons learned for the future. I recommend that you also raise significant security issues or incidents with the judge who is responsible for providing you with judicial leadership and management support.

Support for tribunals

A central 24-hour emergency response is maintained by HMCTS and the Judicial Office to deal with significant security incidents, but in the first instance you should report any incidents

For urgent security problems, ring:

(During working day)

0203 334 0824

(Out of hours)

07659 550652

For judicial welfare helpline, ring:

0800 021 7821

For information on Judicial Harassment Protocol, ring:

0203 334 0824

locally. Any JOH with an urgent problem can, however, ring dedicated numbers (see panel) for advice. Obviously in the event of an emergency you should always ring 999. If you are in need of pastoral support – in relation to anything, not just security issues – there is also a free, confidential judicial welfare helpline (see panel).

Judicial Harassment Protocol

If, heaven forbid, you do become the subject of a specific personal threat, you are eligible to sign up to the Judicial Harassment Protocol. (Note: This does not cover JOHs who sit in reserved tribunals in Scotland due to the different court and policing arrangements which apply there.) This means that your home address is logged with local police so that they are aware of the specific threat made against you and the fact that you are a JOH. There is also a number to ring

(see panel) to obtain more information about signing up to the protocol.

Staying secure online

We have recently published guidance on what we can all do to protect ourselves from threats to judicial security resulting from our use of IT, and on how to react to such threats or harassment should they occur. Much of it is common sense but it contains useful practical guidance, which I urge you all to adopt. You can find the guidance on the judicial intranet at the address below.

Sir Oliver Popplewell is chairman of the Judicial Security Committee.

For security guidance, see: <https://intranet.judiciary.gov.uk/publications/internet-privacy-and-personal-safety-tracking-your-digital-footprint>

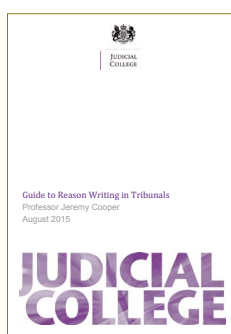
IN BRIEF, AN INVALUABLE GUIDE

By **Paula Gray**, Upper Tribunal Judge

THIS GUIDE to reason writing by Professor Jeremy Cooper sets out the fundamental principles which underpin the provision of reasons in tribunals. The body of the work sets out in generic fashion and with appropriate authorities why we need to provide reasons and what they should contain.

A useful annexe deals with jurisdiction specific requirements or expectations.

The medium is an electronic format in which the information is easily accessible in bite-sized mini-chapters – a veritable click-and-mix if you will. The footnotes have all the usual up-to-date case references and hyperlinks to the relevant current procedural rules of the various tribunals. Issues covered include the need for brevity and lack of jargon, the acceptability of condensed



reasons where the audience is informed in the dispute, the importance of and advice in explaining how the tribunal dealt with conflicts of evidence, the importance of issuing reasoned decisions within an acceptable time-frame following the hearing, and the limited circumstances in which reasons may be amended after issue.

The language is characteristically straightforward and the premises sound. The guide assists both in relation to the content and form of reasons and will be of benefit to all those who write reasons, particularly where fact-finding is involved.

It is an invaluable addition to the virtual library for every judge.

The guide is available at: <https://judicialcollege.judiciary.gov.uk/mod/data/view.php?id=33&rid=396>

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Improvements follow feedback from users

The LMS has a large amount of training materials in each area covering all courses, including an ever-growing list of specific e-learning.

The site is based on the same technology as the judicial intranet. It provides users with improved access to more information and is accessible on any Internet-connected PC, laptop or device. In addition, the LMS enables users to access training material remotely and enrol on training courses and seminars online.

Since the launch of the LMS, the team which administers it has implemented several improvements following feedback from users. The new 'smart' search system enables users to find any reference to a 'case reference' or keyword that is available for them. Direct links to areas are available so that navigation around the site after logging in is not necessary; users go straight to the information. A regular LMS newsletter is produced for all judicial office-holders.

A dedicated team is available for assistance with queries about using the system. They can be contacted at LMS-staff@judiciary.gsi.gov.uk.

LMS registration: Step 1, Step 2, Step 3, Finish

If you have not already got an account you are invited to register with the judicial intranet and the LMS. The process should take a few minutes to complete. To register, go to <https://intranet.judiciary.gov.uk/register> and follow the instructions.

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AIMS AND SCOPE

- 1 To provide articles to help those who sit on tribunals to maintain high standards of adjudication while remaining sensitive to the needs of those appearing before them.
- 2 To address common concerns and to encourage and promote a sense of cohesion among tribunal members.
- 3 To provide a link between all those who serve on tribunals.
- 4 To provide readers with material in an interesting, lively and informative style.
- 5 To encourage readers to contribute their own thoughts and experiences that may benefit others.

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