



JUDICIAL  
COLLEGE

# TRIBUNALS TRIBUNALS SUMMER 2017 TRIBUNALS

## A common thread

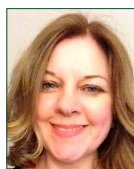
EDITORIAL By **Christa Christensen**



Welcome to the Summer 2017 edition of the *Tribunals* Journal. I start this month by introducing Bronwyn McKenna, our new member of the editorial board team. The board is extremely pleased that Bronwyn has joined our editorial team.

Bronwyn's credentials to contribute to the work of the board speak for themselves in this short introduction from her.

### BRONWYN MCKENNA



I am delighted to be joining the editorial board at such a pivotal time.

Tribunals have been a common thread in my working life from my first job drafting guidance for users on industrial injuries benefit claims to my current roles as a fee-paid judge in the Social Entitlement Chamber and as an in-house trade union solicitor

advising on employment law. I am also a legally qualified chair of Police Misconduct Panels.

As a member of the Administrative Justice and Tribunals Council from 2007 to 2013, I observed a far greater range of tribunals and was able to appreciate their proximity to users, flexibility, use of specialist expertise and capacity for innovation. I sat too on the new Tribunal Procedure Committee when it was

tasked with developing common rules for the unified tribunal system – rules which I now have to apply.

*Tribunals in the UK  
have been on a  
remarkable journey . . .*

Tribunals in the UK have been on a remarkable journey from the Franks

Committee to the Leggatt report and the TCE Act 2007. The *Tribunals* journal has a key role to play in the next stage of the evolution of tribunals through maintaining cohesion between tribunal members and acting as a hub for informed commentary. Will tribunals morph into courts or become 'courts plus'

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as suggested by Lord Neuberger?<sup>1</sup> What does the future hold for the many tribunals outside the unified structure? How can the *Tribunals* journal best nurture a culture of learning among tribunal members? I look forward working with the other members of the editorial board on these questions.

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<sup>1</sup> 'Lecture to the Upper Tribunal on the relationship between the tribunals and the higher courts' July 2009.

Picking up from my editorial in the spring and the announcement of the development by the Judicial College of a [suite of e-learning](#), I would like to highlight an article about this suite that was recently published in *Benchmark*. This can be found [here](#).

Consistent with the board's wish to raise awareness of reform issues, in the widest sense of that phrase, I am pleased to be able to publish the article by Elizabeth McMahon on some reform lessons from the Continent, with a particular focus on Poland.

Moving to Northern Ireland, John Duffy has authored a piece which explains the training regime for members of Appeal Tribunals in Northern Ireland. John highlights some of the links and liaisons that exist with his Great Britain counterparts.

Our Focus piece in this edition comes from John Parrot, a specialist member in the Special Educational Needs Tribunal. John highlights roles of different members and some of the strengths and weaknesses of two- and three-person panels in his jurisdiction.

Let's not forget that this is the summer edition. In a piece co-authored by Mark Sutherland Williams, Michael Tildesley and Jonathan Parkin, we are given five top tips to learn how to surf, Hampshire-style. The key players in this project are revealed in this picture.



*Sir Ernest Ryder, Senior President of Tribunals, with the Mayor of Havant, Councillor Faith Ponsonby, Mrs Justice May and court staff and judges.*

Sam Langworth, from the Judicial Conduct Investigations Office, shines a light on the processes, rules and regulations that govern complaint-handling. This is an important feature of operating in a public domain and Sam dispels some misconceptions regarding those processes. Future articles will provide further focus on complaint-handling in the tribunal judiciary.

The General Regulatory Chamber came into being in 2009 and deals with 60 appellate jurisdictions ranging from animal welfare to gambling and pensions. Peter Lane explains how the chamber makes the best use of its diverse juridical resource and how his chamber might be a microcosm of the future.

Effective communication lies at the heart of ensuring that a fair hearing is achieved for all parties appearing before every tribunal or court. As the manager of that process, judges need to be able to adapt and develop these skills. Emma Bell explains how she has contributed to the development of training on this topic for the Judicial College and argues that role-play is 'fun'.

Hugh Howard sets out his unique and ground-breaking role as the 'critical friend' to the SPT. For those of you who are unfamiliar with such a role, Hugh explains that he has been appointed to ask provocative but constructive questions about issues that are pertinent to the SPT as the Reform Programme progresses.

Hugh's article leads me to the topic of the Senior President's column. Regular readers will know that Ernest Ryder contributes his thoughts on wide-ranging issues which he wishes to bring to the attention of the readers of this journal. However, on this occasion, matters such as election purdah have militated against this and so we are without his column in this edition. He promises us that normal service will be resumed in the next edition.

Christa Christensen is Chair of the Editorial Board [Back to contents](#)

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# In Pole position for lessons

REFORM

By Elizabeth McMahon



Reform in English, *reforma* in Spanish, *riforma* in Italian, *reforma* in Romanian and *reform* in Polish. The word reform is almost universally understood by European Union nationals but to judges in England and Wales it has an additional meaning, one which has already been understood and acted upon by some of our neighbour jurisdictions.

What lessons, if any, can we learn from other countries' experiences of reforming their justice systems? Reform of our justice system has been written and spoken about in depth and detail over the past three years and while the programme itself is well under way the practical results of this 'ambitious and wide-reaching' project will not be known for some time. We have been asked to envisage the 'court of the future' but are these courts in operation already – in Poland?

In 2015, I applied to participate in the judicial exchange programme facilitated by the Judicial Office and organised by the European Judicial Training Network (EJTN). In summer 2016, I was advised I would be spending five days in the district court of Bialystok in Poland between 12 and 16 September 2016. Judges from Spain, Portugal, Romania, the Netherlands, Germany, Italy and the UK would be joining me.

I had conducted some research into the Polish judicial system and Bialystok District Court but this reading was of little value compared with actually experiencing the system, talking to judges and lawyers, watching trials and seeing how the administrative and judicial personnel worked. Somewhat unexpectedly, I learnt much about reform as executed in Poland but I gained a great deal more from this exchange.

## 'Hotel' for visitors

There are 11 court regions in Poland, and the region of Bialystok has three district courts. The one in Bialystok city itself has more than 400 rooms and houses the criminal state prosecutor's office as well as a 'hotel' for visitors. Two people are in charge of the court – the president, who deals with legal matters, and the director, who answers to the president and deals with administrative matters. The court has 80 salaried judges, 26 referendars (akin to our registrars), 22 judges' assistants, and multiple clerks. There is a reading room for parties to read their own and reported cases, and in 2015 the court accepted 136,614 cases.

*... this reading was of little value compared with actually experiencing the system, talking to judges and lawyers, watching trials and seeing how the administrative and judicial personnel worked.*

Bialystok District Court has 34 courtrooms including three which are equipped for international video-conferencing. Every courtroom has video-recording equipment (all hearings are recorded), a computer for the clerk and one for the judge. For every five judges, there are two full-time judicial assistants who prepare cases, carry out research, ensure directions are complied with and the case is ready to be heard. Clerks (who sit in court with the judge) are being given basic legal education at the local university and this has resulted in an increase in the throughput of cases.

So far, so good. However, the Polish system is hampered in that – for reasons regrettably undisclosed to me – the courts cannot list hearings for more than one day at a time. The result of this is that cases requiring more than one day for determination (multi-day trials for example) are heard over an extended period of time because they are adjourned part-heard at the end of each day to another convenient date in the judge's diary. And while cases are listed for first hearing within weeks of being lodged, judges are under pressure to formally open them and then adjourn to a later date for a directions hearing. Given that once a judge is seized of a case it remains with her or him, this can and frequently does result in final hearings occurring years after the case was first listed.

### Portugal, Finland, Netherlands . . .

In the course of discussions, I learned that in Portugal, all first and second instance files are electronic. In 2018, Finland is starting a paperless project, where there will be no papers at all in court. In the Netherlands, which was regarded by the Polish judges in the group to have the 'best court system' in the EU, there are 17 million people, but only 11 courts. There are two or three legal assistants for each judge (there are 200 first instance judges in Amsterdam for example), established for efficiency. Judges never write judgments themselves, although they do make amendments to drafted version. Judges consider their main task to be listening to people and the budget holders consider them too expensive to be doing administrative work and legal research. The Dutch judges have an online network of judicial experts available to them 24 hours a day seven days a week. German judges have no legal assistants.

*Polish judges consider a judicial or legal assistant to be essential, not only for the practical tasks they carry out but for the opportunity to sit and discuss cases and give their opinions.*

The final day saw us all gathered again in the conference room of the district court. The opinion of the Polish judges was that the UK demands the most from its judges compared with the rest of the EU in terms of the administrative tasks carried out, the volume of cases we hear and the very solitary environment in which many of us work. Polish judges consider a judicial or legal assistant to be essential, not only for the practical tasks they carry out but for the opportunity to sit and discuss cases and give their opinions. They consider the role of the trained clerk to be important in ensuring they have everything they need to understand and decide the case.

Judges in Poland tend to change jurisdiction during the course of their career, for example they may start by sitting in the commercial courts, then transfer to criminal and then sit in civil. Applications for transfer are made to the president of the court and are commonplace and are considered beneficial to the court itself to react to differing workloads and to the judges to broaden their experience and perspective. I agree and am impressed that the judiciary in England and Wales is embracing the idea of cross-ticketing.

### Inspired, altered, informed

I would recommend the judicial exchange programme to my colleagues as an opportunity to gain ideas, exchange experiences, teach and learn, be inspired and leave with an altered and more informed perspective about our place in the world as British judges. I learned a number of lessons from the exchange, many of which have ignited my enthusiasm for reform. First, the judiciary and justice system cannot function effectively while there is a divide between administrative staff and managers and the judges. Judges at every level need a much greater say in how the administrative teams support the running of the courts and tribunals. This is the norm in many states in Europe and recognises the knowledge and experience of those 'on the ground' and is an example of a joined-up system.

Secondly, hearing venues need to be centralised and to contain administrative centres. In Bialystok, there has been much greater efficiency in the court system since the large central courthouse was built. All papers are filed and kept in the one building (no couriers, faxes, missing papers), all hearings are in one building, meaning greater communication, exchange of ideas and knowledge, greater understanding between judges of different disciplines and administrative staff.

Thirdly, and following on from that, digitalisation is the way forward in most EU judicial systems. This requires a 'can do' attitude from the judiciary, IT equipment and programs that are fit for purpose and demonstrations of what can be achieved if digitalisation is embraced (no more heavy bundles or late evidence, speedy locating of key words and pages in documents, less delay).

Fourthly, judges need more legal assistance – in the form of legal assistants or registrars. In the Social Security and Child Support jurisdiction, we have been using legally qualified registrars and they have proved most helpful in dealing with simple non-contentious applications and requests. They could be much greater used, however, in carrying out legal research or providing case summaries or chronologies where bundles extend to more than 600 pages, for example. This type of support is common on the Continent but limited here to certain jurisdictions and locations.

Many of these examples of excellence within a justice system are part of the Reform Programme and it must be noted that the Polish courts remain in need of improvement in areas that we have already reformed. For example, in Poland there are usually many directions hearings for each case. There is no presumption that a case could be concluded at first hearing. This leads to delay. In the SSCS jurisdiction, we have waiting times of a matter of months between the date of decision being appealed against and date of hearing (which is usually the date of conclusion). Delays are incurred in Polish courts because judges tend to have cases allocated to them which are retained by them, regardless of the capacity in their diaries. This too can lead to delays where one judge may not be available for a number of months. We do tend to have greater flexibility in allocating cases and, in the Social Entitlement Chamber, reserve them to ourselves only if part-heard or particularly complex.

*Having seen how well a court can run with additional judicial influence and greater, smarter use of technology, I am hopeful that Reform and beyond will deliver the world-class justice system its users and the judiciary deserve.*

### Long overdue

I left the exchange feeling more than ever that Reform is essential and long overdue. The British judiciary is still revered among our European colleagues and I agree that we are adept at and concerned with preserving our expertise and our independence from the state and other influential bodies and individuals. I believe we enable people's cases to be heard fairly and make transparent well-reasoned judgments. As a body we strive for a more diverse judiciary and are open to adapting to the demands of austerity and 21st century Britain. What this exchange did expose is that we are far behind many of our European colleagues technologically. I question whether the Reform Programme is ambitious enough – it is vital that we do reform, and quickly.

In tandem with the established Reform Programme, the role of the judiciary in organising and administering the courts and tribunals arguably requires re-examination and reform – at present, and speaking from my experience in the SEC and the magistrates' courts, our influence over the administration of the courts and tribunals service and ultimately the way justice is delivered is most constrained. Having seen how well a court can run with additional judicial influence and greater, smarter use of technology, I am hopeful that Reform and beyond will deliver the world-class justice system its users and the judiciary deserve.



# Appeals and the principle of parity

NORTHERN IRELAND

By John Duffy



The Appeal Tribunals as currently constituted in Northern Ireland were established by the Social Security Administration Act 1992 and the Social Security Order (Northern Ireland) 1998. This legislation is identical to the Social Security Act 1998 and the Social Security Administration Act 1992 in Great Britain. There is a statutory obligation to maintain the same benefit entitlement in Northern Ireland as in Great Britain and therefore the decision-making processes are very similar. The principle of parity of entitlement is enshrined in Section 87 of the Northern Ireland Act 1998. The Appeal Tribunals are administered by the Appeals Service. It is funded and staffed by the Department for Communities (formerly the Department for Social Development).

My statutory functions as President are contained in the 1998 Order. Paragraph 8 of Schedule 1 provides that:

‘The President shall, after the requisite consultation, arrange such training for persons appointed to the [tribunals] as he considers appropriate.’

The ‘requisite consultation’ is with the Department for Communities and, in the case of medical practitioners, with the Chief Medical Officer of the Department.

The tribunals consider upwards of 20,000 appeals annually. Our membership is as follows: 55 legally qualified members, 117 medically qualified members, 40 disability qualified members and four financially qualified members. With the exception of myself and one full-time legally qualified member, all our members are part-time and fee-paid.

The Welfare Reform Act 2012 reformed disability living allowance (DLA) and introduced the personal independence payment (PIP) in Great Britain. The Welfare Reform (Northern Ireland) Order 2015 introduced similar changes in Northern Ireland and came into force on 9 December 2015. All relevant members of the tribunal have now been trained to deal with PIP appeals. The first such appeals were heard in February 2017. In order to cope with the expected increase in workload, we have recently concluded recruitment schemes for members within most of our above-mentioned specialties. In view of this the membership numbers referred to will increase shortly.

Training for our members includes the following:

- 1) Induction training for newly appointed panel members. This includes initial observations at live sessions and the allocation of an appropriate mentor. Feedback from members about their mentoring experience has been extremely positive to date.
- 2) Refresher training for existing members, both in the substantive law relating to their particular jurisdictions and in other aspects of the judicial role (e.g. interpersonal skills and questioning techniques). At all times we wish to ensure that members acquire the core skills and competences at the outset and receive ongoing training to ensure that those skills are maintained and developed.
- 3) Conversion training for members identified as suitable to be allocated to other jurisdictions.

We have a variety of types and styles of training, as follows:

- 1) Traditional lectures with the assistance of PowerPoint presentations. This is usually appropriate when dealing with new legislation, e.g. the Welfare Reform Order.
- 2) Small-group work incorporating case studies.

- 3) Interactive role-play. I believe that this type of training is invaluable. It involves everyone and is usually memorable (sometimes for the wrong reasons!!) We had some particularly successful update events last year on Employment and Support Allowance. Experienced facilitators from within our cohort of legally qualified members adopted the roles of appellant, witness, representative and presenting officer dealing with various scenarios. They were observed by large groups of recently appointed legally qualified and medically qualified members. Following the role-play we divided into small groups, discussed the scenarios and made outcome decisions in respect of all the appellants. Delegates were surprised to find that there were many and varied decisions from group to group. In spite of this, they learned that one of the most important tasks was to make a decision which could be justified at statement writing stage or on appeal.
- 4) The involvement of outside speakers. We have had presentations from experts to assist us in dealing with, *inter alia*, fibromyalgia, alcoholism and mental health issues within a tribunal environment. Recently, I arranged for a representative from Autism NI to address our legally qualified members as to how best to afford a fair hearing to appellants with autistic spectrum disorder. This is particularly important following the Northern Ireland Court of Appeal decision in *Patrick Galo v Bombardier Aerospace UK* [2016] NICA 25.
- 5) Liaison with and involvement of our GB counterparts. Towards the end of last year we were delighted to invite Judges Steve Jones, Aideen Grace and Damien McMahon to assist us with our initial PIP training events in Northern Ireland. Their input and expertise was invaluable and extremely well received by delegates.

I also employ some indirect methods of training. The reforms envisaged by Sir Andrew Leggett have not yet been implemented in Northern Ireland. We do not yet have an Upper Tribunal. Appeals lie to the Social Security Commissioner. I receive and read all Social Security Commissioners' decisions. I prepare and disseminate circulars to members in respect of many of those decisions. I believe that this provides an invaluable learning tool for members. Kenneth Mullan, the Chief Social Security Commissioner for Northern Ireland, kindly accepted an invitation from me last year to address our legally qualified members about the work carried out by his office.

### Open door

I have an open-door policy for members. They can discuss with me in private any issues of concern. This can assist with their individual learning, provides a valuable opportunity for informal appraisal and, in appropriate cases, can lead to the issuing of circulars to members and administrative directions to the Appeals Service. All forms of appraisal provide an important indirect method of training for members.

*We operate a 'comment form' system at our tribunals. Members are encouraged to complete the form in order to draw to my attention any issues of concern.*

I have a statutory obligation under the 1998 Order to 'supply the Department with such reports and other information with respect to the carrying out of the functions of Appeal Tribunals as the Department may require'. I must also provide to the Department a written report, based on the cases coming before Appeal Tribunals, on the standards achieved by the Department and the making of decisions against which an appeal lies to an Appeal Tribunal. The Department is under an obligation to publish my report. The report is distributed to panel members and is a useful learning source.

We operate a 'comment form' system at our tribunals. Members are encouraged to complete the form in order to draw to my attention any issues of concern. This can include such things as the content of submissions, practical matters arising at hearing or general procedural issues. These are all investigated by my office. This may involve making representations to the Department about best practice and procedure. Any learning outcomes are communicated to members by way of circular and/or letter. A common issue of concern raised within comment forms involves the failure of the Department to send presenting officers to hearings. The issue has been well rehearsed elsewhere. I am engaged in ongoing correspondence with the Department about the matter.

The advent of welfare reform in Northern Ireland has resulted in much liaison between my office and the Department about practical issues such as listing arrangements, the content of submissions and the type of medical evidence to be adduced at hearing. I have recently asked legally qualified members dealing with PIP appeals to contact me via the comment form about any issues of concern arising at hearings. This will help inform future training needs and will assist my dealings with the Department.

We all know that our tribunals are for 'users'. This includes appellants' representatives and officials from the various government agencies (e.g. Social Security, Child Support, HMRC). I have an annual Users' Forum to which all these parties are invited. They are encouraged to raise any issues of concern arising from their experiences at the tribunal. The forum bridges the gap between the tribunal and its users and enables me to provide valuable feedback to members in respect of issues raised. Last year, one of our users raised the issue of medical assessment reports in DLA appeals being audited and then altered without reference to the parties. This practice resulted in considerable evidential difficulties at hearings. I raised the issue with the Department. They agreed to alter their practice by including an addendum note within affected appeal submissions that relevant medical evidence had been altered or audited, thus placing affected appellants on notice. I issued a circular to members confirming the new arrangements.

In October 2015, I introduced a [code of practice](#) for representatives appearing before our tribunal. The code gives a general description of what is expected from representatives, postponements or adjournment issues and some general procedural matters. It has been circulated to members and provides a type of *aide memoire* for them.

John Duffy is President of the Appeal Tribunals for Northern Ireland [Back to contents](#)

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# Learn from the past, look to the future

THE GRC By Peter Lane



It is, perhaps, an overused device for attracting the interest of readers to begin an article with the question: 'What do the following have in common?' But I am going to use it anyway. What do the following have in common? Cabinet papers, pubs, food labels, telephone call centres, agricultural fields, casinos, reservoirs, rivers, plastic bags and microchips.

Given the acuity of this journal's readers, they will already have surmised that these seemingly disparate things can all be the subject of appeals to the General Regulatory Chamber. The GRC's list of potential appellants is equally diverse: ranging from driving instructors, government departments, barristers and estate agents to animal slaughterers, just to name a few.

*Cabinet papers, pubs, food labels, telephone call centres, agricultural fields, casinos, reservoirs, rivers, plastic bags and microchips.*

The GRC came into being in 2009, as one of the chambers of the First-tier Tribunal established by the Tribunals, Courts and Enforcement Act 2007. In particular, the GRC effectively replaced the Information Tribunal, the Charity Tribunal and the Gambling Tribunal. The GRC also subsumed that part of the jurisdiction of the former Transport Tribunal which concerns appeals against decisions of the Registrar of Approved Driving Instructors, while the Administrative Appeals Chamber of the Upper Tribunal assumed the task of determining appeals against decisions of the Traffic Commissioners.

The Information and Transport Tribunals had enjoyed a steady diet of work but neither of them was considered to be of such a size as to warrant a separate chamber within the TCEA system. Although both the Charity and Gambling



Tribunals had only been recently established, the numbers of appeals to them had proved to be much smaller than expected, and their continued existence as chambers was therefore also not a realistic option.

At its inception, the GRC inherited judges and members who had been appointed and trained in what, at first sight, seemed to be very different jurisdictions. The GRC also welcomed the judges and members who decided appeals against decisions of the Local Government Standards Board for England. However, on 1 April 2012, that board was abolished, along with its attendant appellate system.

On the other hand, the years since 2009 have witnessed a significant increase in the GRC's appellate jurisdictions, as Parliament has continued to legislate on regulatory matters. In some cases, existing regimes have been broadened. One important example is the expansion of the functions of the Pensions Regulator to cover the obligations of employers to make provision for their workers to be able to join a pension scheme (known as 'automatic enrolment'). The GRC decides appeals against financial penalties, which the regulator may impose on employers for breaching their automatic enrolment duties.

Although the Localism Act 2011 abolished the Local Government Standards Board, that Act also conferred on the GRC an entirely new jurisdiction: deciding appeals against decisions of local authorities to list land or buildings within their areas as assets of community value. The essential purpose of listing is to give local communities the opportunity to bid for a listed asset, if it is put up for sale. A common example is a public house, which might have recently closed down or be on the brink of closing.

### **The environment, animal welfare . . .**

In the environment field, the GRC receives appeals against environmental stop notices and other similar enforcement decisions. In the past few months, the first appeals have been received against the designation of 'high-risk reservoirs' and the GRC is currently processing appeals against the inclusion of agricultural land within so-called nitrate vulnerable zones in England. The introduction of a charge for single use carrier bags in England has produced yet another right of appeal.

*The result of all this activity is that when we last counted, there were over 60 rights of appeal lying to the GRC.*

The GRC's new 'Welfare of Animals' jurisdiction includes appeals against decisions made by the Food Standards Agency under the Welfare of Animals at the Time of Slaughter (England)

Regulations 2015 and appeals against local authority decisions regarding the licensing of those who undertake the microchipping of dogs.

In the area of professional regulation, primary and secondary legislation has given local authorities new regulatory functions in respect of letting agents and property managers, with a right of appeal to the GRC against penalties imposed for alleged breaches. Meanwhile, appeals now lie to the GRC against certain sanctions of professional regulatory bodies, such as the Bar Standards Board.

The result of all this activity is that when we last counted, there were over 60 rights of appeal lying to the GRC. A number of these stem from European Union directives and will therefore in due course require consideration in the light of last year's referendum result.

How are we learning from the past? The story of the Charity and Gambling Tribunals shows that caution needs to be exercised before time and expense are expended in establishing a new tribunal or chamber, which necessarily involves recruiting and training judges and, perhaps, members, when the likely numbers of appeals are uncertain. Quite apart from the financial consequences, at the human level it can be discouraging for those selected if there turn out to be very few, if any, appeals.

The GRC offers a means of avoiding or, at least, minimising these risks. Upon a new right of appeal arising where it is difficult to predict the level of cases, the president will usually take the initial appeals. As a result, judicial decisions can be speedily made on such matters as the nature and scope of the appeal right and on interpretation of the legislation. If the number of cases then warrants it, an appropriate number of judges can be trained and assigned to sit in the jurisdiction, in the knowledge that there will be work for them to do.

This approach has been taken in new the community right to bid, pensions and professional regulation jurisdictions. Existing GRC judges, including those from the defunct local government standards jurisdiction, have been trained and ticketed to decide appeals in these new areas, as the work generated by them has increased.

The jurisdiction concerning assets of community value has developed in just four years from inception to the point where, a few weeks ago, Simon Adamyk's *Assets of Community Value: Law and Practice* was published. The book runs to more than 400 pages and much of it is necessarily devoted to the GRC's decided cases.

Enabling the GRC's judiciary to work in jurisdictions other than the ones which brought them to the chamber in 2009 has a number of significant benefits. It makes possible a proportionate response, in terms of resource allocation, to the introduction of a new jurisdiction, rather than one wholly based on guesswork (albeit educated). It stops individual jurisdictions being seen as hermetically sealed units, when there may, in fact, be areas of common ground; for instance, on the issue of the weight to be afforded to a regulator's decision-making or on the effect of non-compliance with requirements regarding notices of decision. It enables more and better use to be made of the existing judicial cadre, especially those whose original jurisdictions have diminished or disappeared. It creates opportunities for mixed listing. Finally, it increases the job satisfaction and skills base of the ticketed judge.

*As I think is apparent, these developments in the GRC can be seen as a microcosm of the future world of courts and tribunals.*

The GRC is also able to make flexible use of tribunal members. For example, some of those who formerly sat on Local Government Standards cases have skills appropriate to one or more of the environment jurisdictions, such as engineering and pure mathematics. In the Claims Management jurisdiction, we now benefit from the business and financial skills of members who also sit in the Tax and Chancery Chamber of the Upper Tribunal.

### Challenge of expertise

As I think is apparent, these developments in the GRC can be seen as a microcosm of the future world of courts and tribunals. The desirability of making the best use of judicial (and administrative) resources and of enhancing job satisfaction and career development is beginning to drive projects where judges are not only being assigned across tribunal chambers but also between courts and tribunals. The challenge, of course, is to maintain the necessary expertise over the subject matter, which is one of the hallmarks of tribunals. The GRC's experience suggests this is a challenge that can be met.

Finally, what of the Reform Programme for courts and tribunals? The GRC is fortunate in that, in some ways at least, it has (to paraphrase the American journalist John Reed) seen the future and knows it can work. The GRC's administrative base is located in Arnhem House in Leicester, which is not part of any hearing centre. Insofar as the chamber has a judicial base, it is at Field House (the home of the Immigration and Asylum Chamber of the Upper Tribunal), where the GRC's president and principal judge have their rooms. Apart from them, the chamber's judiciary work either on a fee-paid basis or as salaried judges undertaking other judicial duties. The GRC's case files are electronic, not paper.

I suspect I am unique among London-based chamber presidents in having a PA who works in Liverpool. We manage really well, thanks to the telephone, more modern forms of technology and a dose of good humour on both sides.

The GRC lists hearings across the United Kingdom, as occasion demands, making use of local court and tribunal hearing rooms. In common with other peripatetic chambers, we are keen to ensure that the modernised but smaller courts and tribunals estate of the future will be properly available to us and that processes will be put in place to secure this.

Since beginning to compose this article, the Ministry of Justice has confirmed that a new Professional Regulation jurisdiction has just gone live. It's clearly time to get back to work.

Peter Lane is President of the General Regulatory Chamber

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# Clarity on a stressful experience

## JUDICIAL COMPLAINTS

By Sam Langworth



Words such as 'complaint' will always carry with them their fair share of negative connotations. The concerns an individual may have when finding themselves in the position of being the subject of a complaint can be significantly mitigated by a clear and open complaints process. Work is ongoing to increase awareness of the process for dealing with judicial complaints, among the judiciary themselves and in the courts and tribunals over which they preside.

The Constitutional Reform Act 2005 gives the Lord Chancellor and the Lord Chief Justice joint responsibility for judicial conduct and discipline. The power to sanction a judicial office-holder rests with the Lord Chancellor and the Lord Chief Justice together. The office that supports the Lord Chancellor and the Lord Chief Justice in their joint responsibility for judicial conduct and discipline is the Judicial Conduct Investigations Office (JCIO), formerly the Office for Judicial Complaints. The JCIO handles complaints about the personal conduct of judicial office-holders in accordance with the Judicial Discipline (Prescribed Procedures) Regulations 2014 and supporting rules, which can be viewed on the JCIO [website](#). These rules and regulations govern the entire judicial conduct and discipline process and cover all judicial office-holders, including lay tribunal members, for example.

*The JCIO invariably finds itself contending with a prevalent misconception about its remit.*

The JCIO invariably finds itself contending with a prevalent misconception about its remit. The office does not investigate complaints about judicial decisions and case management; judicial decisions and case management are not related to a judicial office-holder's personal conduct and can only be challenged through the appeal process. The JCIO faces an ongoing challenge in conveying the distinction between personal conduct and judicial function. This is highlighted by the fact that, in the last reporting period, over half of the total number of complaints received contained no allegation of misconduct against a judicial office-holder and instead related to judicial decision and case management.<sup>1</sup> Complaints that fall into this category are rejected without the judicial office-holder concerned being informed of the complaint, reflecting the Lord Chief Justice's direction that judicial office-holders should not be unnecessarily burdened with complaints that raise no allegation of misconduct.

Given the high number of complaints about judicial decisions and case management, the JCIO has recently made changes to its website and information leaflets to stress the parameters of its remit. The JCIO website provides some examples of behaviour that could be investigated, such as the use of racist or offensive language, falling asleep in court, misuse of judicial status, general rudeness, criminal convictions, failure to declare a potential conflict of interest and failure to meet minimum sitting requirements without reasonable excuse.

The JCIO has a full staffing complement of 15, and it is therefore a relatively small office. In the last reporting period, the JCIO received 2,126 complaints and an additional 526 written enquiries, making a total of 2,652 receipts.

### Presidents' vital role

Tribunal presidents, as well as other members of the tribunal judiciary, have a vital role in the judicial conduct and discipline process. Complaints about tribunal judges and lay tribunal members, in the first instance, are considered by the relevant tribunal president, or a tribunal judge to whom the president has delegated an investigation. A complaint about a tribunal judge or member is only transferred to the JCIO in the event that, after investigation, a disciplinary sanction is recommended. Of course, this means that the overwhelming majority of complaints about tribunal judges and members are never seen by the JCIO. In the last reporting period, 12 complaints about tribunal judges and members were transferred to the JCIO. In the event that a complaint about a tribunal judge or member is transferred to the JCIO, the JCIO prepares advice for the Lord Chancellor and the Lord Chief Justice and refers the matter to them for their consideration. Incidentally, if a complaint were to be made about a tribunal president, in their capacity as a judge, this would be considered by the JCIO.

Over the last 12 months, the JCIO has delivered training and awareness sessions on the conduct rules to tribunal presidents and the judges to whom they delegate investigations. These sessions covered a range of topics in relation to the application of the conduct rules (such as the initial assessment of a complaint, out-of-time complaints<sup>2</sup>, considering appropriate sanctions) and provided tribunal presidents and judges with the opportunity to discuss general issues they had encountered when dealing with complaints.

The training and awareness sessions in the tribunals were well received; attendees told us that they were better informed following the sessions and reassured in their ability to deal with the more challenging complaints.

Advisory committees also have a vital role in the judicial conduct and discipline process. Advisory committees handle complaints about magistrates in the first

instance. Like tribunal presidents, they will only transfer a complaint to the JCIO in the event that a disciplinary sanction is recommended as a result of their investigation. The JCIO has recently completed a round of visits to some of the advisory committees and continues to strengthen links with committees throughout England and Wales.

*When first considering a complaint that contains an allegation of misconduct, the case worker will determine the steps that need to be taken to fully assess the substance of the complaint.*

### Investigating allegations of misconduct

Although the JCIO receives many complaints that only relate to judicial decisions and case management, there are still a number of complaints that do contain allegations of misconduct. Such complaints are not made exclusively by members of the public. On occasion, the JCIO receives complaints from members of the judiciary who wish to report what they consider to be the inappropriate behaviour of a colleague.

When first considering a complaint that contains an allegation of misconduct, the case worker will determine the steps that need to be taken to fully assess the substance of the complaint. In some cases, a complaint will fall to be dismissed under the rules without requiring further assessment. If this does not apply, the case worker may listen to a recording of the hearing to assess the complaint. Further information from the complainant or comments from the judicial office-holder concerned might also be used to assess a complaint. Of course, each complaint is treated on a case-by-case basis and, therefore, the methods required to effectively assess a complaint depend on the specific nature of the allegation being considered.

The majority of complaints that contain allegations of misconduct are dismissed following the JCIO's initial assessment. If the JCIO considers that, after assessing a complaint, the complaint could potentially amount to

misconduct, the complaint is referred to a nominated judge. Nominated judges are judges of the High Court and above who are appointed by the Lord Chief Justice to provide advice on complaints that could potentially amount to misconduct. A nominated judge may dismiss a complaint, or advise the Lord Chancellor and the Lord Chief Justice to dismiss a complaint; deal with a complaint informally as a training matter; refer a complaint to an investigating judge for further investigation; or advise that a complaint constitutes judicial misconduct and recommend a disciplinary sanction. In the event that a nominated judge recommends a sanction, the judicial office-holder concerned is invited to provide representations in response, before the complaint is referred to the Lord Chancellor and the Lord Chief Justice.

### Possible sanctions

The disciplinary sanctions that the Lord Chancellor and the Lord Chief Justice may impose are formal advice, formal warning, reprimand and removal. In the event that a recommendation is made that a judicial office-holder be removed from office, whether by a nominated judge or following an investigation by a tribunal president or an advisory committee, the judicial office-holder concerned may request that the matter is reviewed by a disciplinary panel. A disciplinary panel consists of two judicial members and two lay members. After a disciplinary panel has completed its review, the panel provides advice to the Lord Chancellor and the Lord Chief Justice.

In each case where a judicial office-holder receives a disciplinary sanction, a disciplinary statement is published on the JCIO website. Disciplinary statements remain on the JCIO website for one year, where the sanction received is below removal. If a judicial office-holder is removed from office, the disciplinary statement remains on the JCIO website for five years. Where a sanctioned judicial office-holder is also subject to the regulations of a professional regulatory body, such as the Solicitors Regulation Authority or the Bar Standards Board, it is for the judicial office-holder concerned to consider advising the relevant regulatory body. Given that the JCIO publishes disciplinary statements on its website, it does not advise professional regulatory bodies of disciplinary sanctions as a matter of course.

*Ultimately, only the Lord Chancellor and the Lord Chief Justice can determine whether a complaint amounts to misconduct and, if so, issue a disciplinary sanction.*

Ultimately, only the Lord Chancellor and the Lord Chief Justice can determine whether a complaint amounts to misconduct and, if so, issue a disciplinary sanction. In the last reporting year, 42 complaints resulted in a finding of misconduct, less than 2% of the total number of complaints received.

In order to ensure that complaints are investigated in accordance with the appropriate procedures, as set out in the rules and regulations, the Judicial Appointments and Conduct Ombudsman may review how the JCIO, a tribunal president or an advisory committee has handled a complaint. The Ombudsman may make a finding of maladministration, but he cannot investigate the original matter complained of. In the last reporting year, in which the JCIO received 2,126 complaints, the Ombudsman upheld, or partially upheld, 10 complaints.

Whether a senior judge or a member of court staff, being the subject of a complaint can be a stressful experience. The JCIO, with the support of tribunal presidents and advisory committees, ensures that complaints about the personal conduct of judicial office-holders are handled with independence, honesty and integrity. In doing so, the JCIO continues to fulfil its purpose of promoting public confidence in the judiciary.

**Sam Langworth** is a member of the Judicial Conduct Investigations Office

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<sup>1</sup> The statistics in this article are taken from the Judicial Conduct Investigations Office Annual Report 2016–17, which, at the time of writing, will shortly be published on the JCIO's website.

<sup>2</sup> In accordance with the rules, complaints must be made within three months of the last event or matter complained of. A complaint *can* be accepted out of time, but only if the reasons for the delay in making the complaint are considered exceptional.



# My role as 'critical friend' to the SPT

**APPOINTMENT** By **Hugh Howard**



I was somewhat flabbergasted to be asked by Sir Ernest Ryder to be his 'critical friend' for the Reform Programme and Business as Usual as it affects tribunals. In his letter announcing my role he said:

'Striving continuously to improve the way that we engage with judicial colleagues I want a judge who is able to ask provocative but constructive questions about the issues on our table, looking through the lens of judicial office-holders up and down the country and across our various jurisdictions and associations. I have asked Hugh to take on and shape this role for me. He will see papers and will have my authority to go out and speak to colleagues (including judicial associations) about issues of relevance and submit papers on his thoughts. I think it is important that the critical friend is not a chamber or tribunal president but is someone who is nearer to the coal face and who has a clear grasp of the strategic environment in which we are all operating.'

The role is an evolving one and will enable me to give confidential advice as to the impact Reform is having on the ground. I am very keen that it does not cut across the existing 'chains of command' and the present structures that work well. I have spent time catching up with the developments of the past year and have already met with the chamber presidents in their regular meeting to explain my role. Other meetings are being arranged both with the Reform transformation team and judicial associations. My role will not be about taking decisions but giving advice.

My initial impressions are that it is a common misconception that there is already in place a grand master plan and that the only problem is that it is not being shared with judicial colleagues. While there are strategic aims, the details of how we get there and how we join the dots is something I want to highlight. There are lots of separate strands that are being pursued whether that be the consolidation of estates, common IT platforms and appointment of the judiciary, to name but a few.

The role not only complements that of the chamber presidents but also that of lead tribunal judges for each region. All regions now have established Local Leadership Groups whose role it is to influence and shape the Reform Programme as it is implemented at a local level. LLGs, which bring together tribunal and courts judiciary and administrators, are encouraged to come to conclusions by way of consensus. Most members of LLGs are attending judicial leadership master classes to train and inform them in their new role.

I hope my contribution to the Reform Programme and the Senior President Tribunals will be of assistance.

**Hugh Howard** is a Regional Tribunal Judge [Back to contents](#)

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## Fulfilling work of a specialist SEND member

**FOCUS** By **John Parrott**



'Two packages to sign for Mr Parrott,' says my friendly Parcelforce driver. 'Pleased to catch you in for a change and is it my imagination or are these packages getting heavier?' I am sure this is not an unfamiliar routine for many of you who work within the Tribunals Service but what might be different is the nature of the bundles, the focus of the content and the procedures surrounding the work of the Special Educational Needs and Disability Tribunal (SEND) – the original special educational needs tribunal being established by the Education Act 1993.

I have been a specialist member of SEND, a First-tier Tribunal within the Health Education and Social Care Chamber, since 2003. I have an education/special education background, with most of my work specifically within the field of speech, language and communication needs. The roles that helped me gain the skills and knowledge to be appointed as a panel member were through teaching in a range of settings, and then time as a deputy head and headteacher in two residential special schools. My specialist member colleagues have wide-ranging backgrounds which include: teaching and school management positions across the breadth of the education sector; academics from the field of education; educational psychologists, local authority advisers and managers, school improvement partners; and those with experience of voluntary sector organisations that may specialise in a type of special educational need (SEN) and/or disability.

In recent years I have taken an active role in ASENT, the Association of the Special Educational Needs Tribunal, a members group for both judges and specialist members that liaises on members' behalf with the lead full-time judge responsible for SEND, ensuring ongoing dialogue and partnership during these periods of change and reform.

We are a national tribunal (in England) but for many of us we are listed to sit within the region where we live. I am in the south-east and within an hour of London so the vast majority of my cases are now held at the Royal Courts of Justice, a new venue for SEND since December 2016, the move being part of the wider judicial reforms and reduction of the judicial estate. A disadvantage of this arrangement is that you rarely see or sit with colleagues from different areas and that sense of being part of a national team and sharing good practice has diminished over time.

Three years ago the legal framework around Statements of SEN, within which we had operated since 2001, was superseded by the Children and Families Act, the SEND Code of Practice 0-25 and the SEND Regulations, all from 2014, as they relate to appeals around Education Health and Care Plans (EHCPs). These new plans for children and young people with SEN having a more collaborative and broader focus than just education. A second arm of the tribunal can hear discrimination claims against schools/responsible bodies under the protected characteristic of 'disability' as outlined by the Equality Act 2010; a small number of judges and specialist members, including myself, are trained to sit on cases of disability discrimination.

*... the vast majority of my cases are now held at the Royal Courts of Justice, a new venue for SEND since December 2016, the move being part of the wider judicial reforms and reduction of the judicial estate.*

### **Most cases are SEN appeals**

The vast majority of cases brought to the tribunal are SEN appeals by parents under the Children and Families Act 2014, with an increasing number of appeals from young people themselves and a steady but small number of disability discrimination claims. The prime difference between the appeals and claims are that discrimination claims look to past events and try to identify what happened when, and whether discrimination occurred, whereas appeals are looking forward as to what must be contained within EHCPs, whether an assessment for an EHCP should take place or whether an EHCP should be ceased.

The procedure for allocating hearings will be similar to many jurisdictions: responding to a request for available dates a few months in advance and blocking those days in your diary; receiving a listing of your sittings about a month later; bundles arriving by post usually within a few weeks of the hearing date; and then further correspondence and late evidence sent out by e-mail, now via ejudiciary, right up until the day of the hearing.

Cases are listed for either a half day or a full day depending on the grounds of appeal, occasionally longer if particularly complicated or a consolidated SEN appeal and discrimination claim, and an increasing number of appeals are being decided virtually by members on the papers. Bundle sizes currently vary enormously from 100 to 1000+ pages with perhaps an average of 350 to 500, there is not necessarily any correlation between the type or length

of case and bundle size – it is possible to have a wide-ranging full day hearing listed with only 200 pages, and an apparently more limited appeal listed for a half day with 600 pages!

Bundles contain appeal forms, responses and case statements as well any case management decisions and orders. The majority of the bundle is usually about the child or young person concerned and may cover many years of their development or school history. The bundle may contain: school reports and minutes of review meetings; letters from paediatricians or medical specialists; reports from local authority specialist teachers, educational or clinical psychologists, or NHS speech and language therapists, occupational therapists or physiotherapists. Parents often commission psychologists or therapists to carry out an assessment and produce a report for the tribunal. Details of any schools or other educational provision on the table are also included, e.g. Ofsted reports, the prospectus and policies, as well as the costs of the different provision to be decided.

When the bundle arrives, I check the overall basis of the appeal or claim, and make sure I have no conflict of interest with any of the witnesses, educational institutions or local authorities involved and then put the papers away until a couple of days before the hearing. Members of SEND have learnt over the years that many appeals are settled before the hearing date and sometimes literally at 5 pm the night before. Therefore there is always a risk of spending many unpaid hours preparing for a hearing that is not going to take place and so planning that necessary preparation within the last 48 hours before a hearing is now most specialist member colleagues' custom and practice. This situation has led to unpredictability of sitting and subsequent income which is not ideal, so efforts are being made to find solutions and ways of reducing the occasions that members hold days for a hearing, which are then vacated.

### Two-person panels

Historically and successfully, the constitution of a SEND tribunal has been a judge and two specialist members. One of the reforms within this jurisdiction over recent years has been the piloting and introduction of two-person panels for particular types of case or those apparently less complex, although panel members or parties can request a three-person panel if they feel the case warrants it. This is clearly more cost-effective, but presents different challenges for both the judge and specialist member in the level of preparation, conduct of the hearing in terms of questioning and note-taking, and then the decision-making between two people. The breadth of expertise and insight is also reduced by a third.

*Overall, my colleagues are pragmatists and we have done our best to ensure changes and developments are given the best opportunity to succeed despite any reservations.*

These are one of many changes introduced by the tribunal, primarily driven by cost-saving, that we have tried to embrace in a positive way even though we were not necessarily convinced at the outset of the benefits to the working of the tribunal or to the experience for the parties of the judicial process and justice. Overall, my colleagues are pragmatists and we have done our best to ensure changes and developments are given the best opportunity to succeed despite any reservations.

The ethos and *modus operandi* of the SEND tribunal has, since its inception, been focused on informality within a defined judicial process, and accessibility to all, i.e. enabling access to all parents and young people, regardless of their legal knowledge or their financial position in terms of, for example, commissioning specialist reports about their children or instructing solicitors. These aspects have always been very important to me and I hope are reflected in my practice in ensuring equal participation at the hearing and enabling all parties to leave the room feeling that they have been heard and that they have given their evidence and conveyed their opinions and aspirations sufficiently for us to make a just decision within the law. Over time, there has been an increase in represented parents and young people and consequently represented local authorities and responsible bodies; this has naturally led to some hearings being conducted on a more formal and adversarial basis but even within these cases the overarching ethos above is kept in mind and worked towards.

An issue for SEND panels in terms of conducting a hearing fairly is managing the number of participants and witnesses. If both parties are legally represented and both have the maximum of three witnesses, there is potentially 10 people in front of the panel throughout the day which could be further increased if the child or young person attends or permission is granted during case management to either party for an additional witness. Supporting the judge in managing these situations is a critical part of our role.

One of the logistical difficulties of such numbers of participants is finding suitable rooms or courts within the judicial estate that can accommodate everyone comfortably and preferably sitting at the same level, i.e. the panel not being up on a dais. This is often very difficult within existing accommodation and specialist members are adept at furniture re-arrangements in creating the right lay-out and appropriate atmosphere, remembering of course to leave each room or court as found at the beginning of the day!

I have outlined above some aspects of my work as a specialist member in the context of the SEND tribunal and some of the challenges that we have faced and the developments we have accommodated.

Although the processes and procedures of the tribunal have changed over time, I continue to be a very committed specialist member in fulfilling our role. The positives are particularly around making good, sound decisions to support the meeting of a child or young person's SEN; the positive teamwork between judges and specialist member colleagues; and drawing on and using my current and past experiences and knowledge of education in general and of special educational needs and disability in particular.

**John Parrott** is a specialist member of the Special Educational Needs and Disability Tribunal

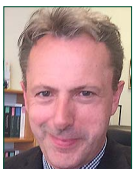
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# Surfing on the waves of change

HAVANT JUSTICE CENTRE

By **Mark Sutherland Williams** (below), **Michael Tildesley** and **Jonathan Parkin**



One only has to peruse previous editions of this journal or the judicial intranet to understand that reform is coming. Change is coming. For some it is just around the corner. For some it has already arrived. Whether it reaches your jurisdiction this year or next, or in five years' time, there does appear to be an inevitability that at some point change, whether it be in the shape of digitalisation, online hearings, or moves of premises, will touch all judicial office-holders and the way we work.

The Senior President of Tribunals has confirmed there will be no 'big bang', but a gradual learning curve with the aim of fundamentally changing how we deliver justice in the future. That change is going to happen is therefore a given in most quarters of the judiciary. Nonetheless, a key and parallel message of the ongoing Reform Programme is that reform

should not simply be imposed upon the judiciary. There should be proper consultation. Indeed, that has been taking place across all jurisdictions for some time. Furthermore, both the Lord Chief Justice and Senior President are actively encouraging the judiciary at a local level to become *involved* in the process of change, through initiatives such as local leadership groups, in order that the judiciary begin working together to maximise the benefits of reform.

*... both the Lord Chief Justice and Senior President are actively encouraging the judiciary at a local level to become involved in the process of change . . .*

The practical question that arises, however, is how do we actually go about achieving that involvement? Given that we cannot stop the waves, how do we learn to surf?

The application of change is both challenging and nuanced. Most judicial office-holders are not, after all, business managers. Moreover, as the senior judiciary acknowledges, there will be no 'one size fits all' solution. Different jurisdictions will have different priorities. Finding time in our busy working lives to also assist with estates planning and contributing to other aspects of reform is likely to require not only an open mind, but also new skill sets. It is for this reason that there have been reform leadership courses and briefings to assist in the understanding of what the change programme involves. The challenge for the judiciary will be finding out what we have in common first and then building upon that to implement the types of reform that are now proposed.

The practical effect of reform came early to West Sussex and East Hampshire when Chichester Magistrates' Court, the home of the regional office for the Residential Property Tribunal (RPT), was earmarked for closure in 2015 as part of the first phase of court closures. The RPT had been based in Chichester for some 20 years and had only moved into the magistrates' court relatively recently at significant cost, as part of the rationalisation of the HMCTS estate locally. It therefore came as something of a surprise to find that the very place the RPT had relocated to was itself set for closure.

The challenge this inevitably created was how to manage such a situation, both from the judicial and from the HMCTS staffing point of view. The RPT judiciary took an early decision that any further relocation needed to be part of a judge-led process. The Reform Programme would give them the opportunity to create a more tailor-made and better equipped hearing centre, with a flexible design, capable of a range of uses, and which maximised the benefits of new technology.

This led to the RPT judiciary contacting sister jurisdictions based locally to ascertain how they were accommodated and whether there was scope for any form of collaboration or combined sharing of facilities and premises. The Employment, Social Security and Child Support jurisdictions were sitting locally in Havant, in the south-east corner of Hampshire, approximately midway between Portsmouth and Chichester. Following Chichester's closure, it became the only part of the court estate remaining between Portsmouth and Worthing.

*A united judiciary is clearly better than a fragmented one . . . Here we strived to do what was best in terms of the overall picture and the longer term.*

#### **Premises redundant**

Although a relatively large building (which had once been a working magistrates' court and the office of the area director for Dorset, Hampshire and the Isle of Wight), the premises had become somewhat redundant. The magistrates' court work had been transferred into Portsmouth and the upstairs of the building stood empty, being used mainly for the storage of files from the larger court centres in Fareham and Portsmouth. The downstairs of the building had fallen into disrepair, the cells had been blocked up, and the building used as a tribunal venue on an irregular basis.

A preliminary visit by the deputy regional tribunal judge for the RPT, in conjunction with the locally based district tribunal judge for Social Entitlement, identified the potential at least for the relocation of the RPT to Havant. The theory of course is one thing. It is the application that often leads to problems in terms of finance, practicalities and, dare we venture, the 'can't be done' culture that sometimes permeates decisions such as these. The difference on this occasion was that all the local stakeholders from the tribunals judiciary had a meeting of minds in terms of facilitating the move to aid their colleagues from residential property. A united judiciary is clearly better than a fragmented one. If previously there has been a tendency for individuals to think solely along the lines of what would be best for themselves or their chamber, that outlook had no place here. Here we strived to do what was best in terms of the overall picture and the longer term.

The next stage was to form, firstly, an informal, and later a structured, Judicial Standing Committee (JSC) made up of the three principal tribunals that would be affected by any change of use in the venue: Residential Property,



Employment and Social Security. The three judges with local responsibility initially met to begin a discussion about what their own particular needs were in terms of the future of the venue and then considered the best way that they could move the project forward together, agreeing shared priorities and ensuring that a united front would be presented to the local implementation project board that was overseeing the closure of Chichester.

There was perhaps a time, and there is perhaps even a view now shared by some, that it is not for the judiciary to become involved in administrative matters. The judiciary, so goes the argument, should be involved in the business of judging. Estate planning, the utilisation of hearing rooms, the physical presentation of the buildings, from the fabric to signage to decoration to maintenance, should be within the purview of HMCTS and not the judiciary. If that was a view that was ever relevant, it does not sit comfortably with the Reform Programme and, furthermore, it was not a view held by this judicial steering group.

### Green light

Once the green light was given for the RPT to move into Havant, the JSC stuck to the course that the mechanics of the move should involve as much the judiciary as the administration. As it was the judiciary that had identified the venue, we wanted to be consulted on how the project would be implemented, how the money would be spent, and how the staff and judiciary would be accommodated.

And we were lucky. The local district tribunal judge already had a working relationship with the delivery and cluster managers for Hampshire and the Isle of Wight. The advantage that gave the JSC was that there was already an element of understanding about how the implementation was likely to be managed. Parameters were set. Roles were understood. The needs of the individual tribunals work were underlined. Resources were shared. Compromises were made.

Once it had been understood where we were going, what we wanted to see achieved and that the project was going to be given the go-ahead, the judiciary to an extent stood back. The initial ground work had been done. The local court manager at that point took over the day-to-day running of the project. She became involved with the local implementation team and could advocate what it was that the judiciary were looking to achieve. She worked closely with the managers in the RPT regional office to understand their business needs and to look at the best ways to achieve that at the new venue. This included developing a large open-plan space, making sure that the correct servers in terms of the IT network were installed, and ensuring that the premises were decorated and brought up to date to the level one would expect in a modern working environment.

## Five tips for a judiciary-led project

### 1 *Decide on what you want*

By engaging with other jurisdictions based locally, we presented a unified plan for the justice centre from an early stage and maintained throughout that collegiate approach.

### 2 *Communicate your why*

In addition to knowing the desired outcome, it is important to know why you want it and that you share your reasons. We made sure meetings were minuted and action points agreed throughout. This avoided repetition and gave the project clear direction. It allowed us to be upfront when things did not go to plan.

### 3 *Choose your stakeholders wisely*

It is essential that those involved in any project have the power to make change happen. This includes navigating the various office-holders within HMCTS and understanding what they do. We included the president of RPT and representatives of the cluster and regional LLG's on the Judicial Standing Committee to give it extra muscle.

### 4 *Don't assume others will be against your proposals*

We found quite the opposite. Local management welcomed our input and did their level best to accommodate the requirements we were looking for.

### 5 *Sweat the detail and listen*

We met regularly, carried out walk-throughs to inspect the work, monitored the cost and made regular suggestions for how improvements could be made. While we stuck to our desired outcome, we were prepared to listen and compromised where appropriate.

Parallel to that stood the JSC, the membership of which was largely reserved to the judiciary, who met regularly. The judiciary followed the progress of the building works, the expected completion date, the internal layout of the venue, and additionally looked at everything from parking to security to internal and external signage, to ensure that the venue, once ready, would be operational from day one.

### The dawning of a new future

The newly named Havant Justice Centre was opened by the Senior President of Tribunals, Sir Ernest Ryder, in May 2017. It was delivered on time and on budget, and stands as a clear example of what a judicial-led process can achieve. It will become a bridge for not only tribunal hearings, but civil and family justice, in East Hampshire and West Sussex. It offers four hearing rooms, together with chambers to allow for fast-track telephone hearings and small claims to be dealt with. It has a range of consultation rooms, a large waiting area with drinks and other facilities. It now houses an administrative centre, with staff and clerks working on the premises to offer additional support. It has full disability access.

For employment tribunals and for other parts of the HMCTS business, it can offer full mediation facilities. It has the advantage of being very close to Havant railway station, which sits centrally on the Waterloo to Portsmouth line. The major A27 road runs to its south, with an easy connection to the A3M, for London and beyond.

*Havant will become an early adopter of a new scheme to introduce monitors into court rooms and chambers. As further digitalisation is introduced, Havant will be ready.*

The potential for Havant does not lie solely with its local appeal in terms of its geographical location. More and more so, other specialist tribunals, including special educational needs, war pensions, and tax, are looking to hold their tribunal hearings at local centres. Gone are the days where parties were expected to travel to central London. There exists a greater recognition now that it is sometimes easier for the judge to come to the parties rather than the other way round.

The JSC has therefore implemented a central booking system. This will allow some of the smaller tribunals, as well as family and civil hearings, to be channelled through one central point of contact. The venue can also be used as a training centre. It can offer such facilities at a low cost. Furthermore, there is scope for other courts, such as the Upper Tribunal and the Court of Protection, to use the venue.

Havant will become an early adopter of a new scheme to introduce monitors into court rooms and chambers. As further digitalisation is introduced, Havant will be ready.

One of the important benefits for the judiciary in implementing this project is that we have learnt from each other. We have shared our experience and our practice. The creation of a JSC has facilitated the development of a shared view and provided the platform for an effective working relationship with HMCTS staff. That in itself represents progress and the future. As a result, Havant now has the opportunity to become a professional, cost-effective and user-friendly multi-jurisdictional centre. Havant is open for business!

**Mark Sutherland Williams** is Chair of the Havant Judicial Standing Committee and a District Tribunal Judge

**Michael Tildesley** is the Regional Tribunal Judge for Residential Property

**Jonathan Parkin** is the Regional Employment Judge for the South West Region

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Central booking system for courts and tribunals wishing to use the Havant Justice Centre:  
tel: 01392 331735 / 01392 331737, e-mail: [SWJudicial@hmcts.gsi.gov.uk](mailto:SWJudicial@hmcts.gsi.gov.uk)

Training, parking and facility enquiries:  
tel: 01243 521582 / 01243-521585, e-mail: [bookingshavantjusticecentre@hmcts.gsi.gov.uk](mailto:bookingshavantjusticecentre@hmcts.gsi.gov.uk)

# Strangers in this strange land

TRAINING By Emma Bell



Imagine you've just arrived in a country that you haven't visited before. This is not a pleasure trip, but one that you've been forced to make. You'd rather be at home, but there is something you must achieve while on this trip. In fact, your mental health, wealth and happiness are entirely dependent upon you making a success of the trip; at least that's how you see it. You've no idea how to speak the language in this strange land and will not have enough time to learn it. What you have to achieve is partly dependent on making yourself understood, as well as familiarising yourself quickly with your surroundings and how things are done here. You strongly feel that the ultimate success of your endeavour, however, is entirely within the hands of the natives.

The country is the unfamiliar terrain of a courtroom; the language is the procedural rules and the applicable law. While the natives are comfortable with the terrain and fluent in the local dialect, you feel isolated, outnumbered and overwhelmed.

Studies show that parties involved in litigation base the fairness of the outcome of a case on the treatment they receive during the hearing (Lund and Tyler 1988). Both defendants and plaintiffs rated the opportunity to 'tell their side of the story' during the hearing as more important than winning their case or minimising costs. Lawyers and their clients gave greater weight to the quality of treatment they received from the judge than to the actual monetary outcome of the case. The two crucial elements cited in the studies are known as 'voice' and 'treatment'. 'Voice' refers to the opportunity the individual party has to present his or her views, concerns and evidence, while 'treatment' relates to being dealt with even-handedly by the judge and with respect and dignity.

As a judge or member, how you interact with the parties or their representatives has the greatest bearing on whether litigants and appellants feel that justice has been done. That is a heavy burden – and a significant opportunity.

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## Captive audience

In 1999, I was an employment law specialist and about to be made a partner of the law firm I was working with. At that time I won a contract to train 2,000 line managers employed by a global plc in employment law. The employment law training was to be delivered to a captive audience of 12 delegates at a time – that's a lot of sessions. We deployed every employment lawyer within the team to do the work, and it was an experience that changed the direction of my career.

The training focused on compliance – 'follow that performance management process and apply this disciplinary procedure and you'll avoid a huge employment tribunal award' was essentially the message.

I found the whole process utterly depressing. Our training omitted one vital aspect – to help the manager understand how to motivate and engage members of his or her team. We were giving each manager a stick, but no carrot. That's when I became deeply interested in the subjects of organisational behaviour, the psychology of motivation and how effective communication can transform relationships. I read in excess of 200 books on those topics within a year, did a coaching qualification and within 18 months began a 16-year journey in designing and delivering leadership development programmes on the psychology of leadership and motivation.

For the past 16 years, I've been able to combine my legal and leadership development careers, initially as an employment law partner and latterly as an employment judge. Our wonderfully supportive President of Employment Tribunals in Scotland enabled me to enjoy the luxury of two hugely rewarding careers. But ultimately, the constraints of judicial office and the surge in my coaching, writing and speaking career meant that, in December 2016, I walked away from my judicial office with both a heavy heart (I was leaving a job I loved) and a spring in my step because of the exciting opportunities that lay ahead.

One of the factors in making the decision was whether I would be able to continue my work with the Judicial College in training judges from multiple jurisdictions on gaining insight into their own styles of communication when sitting, and how to adapt it. The great news for me was that I could.

I am passionate about working with judges and members to understand the impact of their behaviour on the dynamics in a court or tribunal setting, and how they can engage and communicate with parties to ensure that the voice and treatment aspects of 'procedural justice' are delivered consistently. We are, after all, there to serve the users of the system, as well as the ends of justice. I believe that both outcomes are complementary.

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### Initial foray

My initial foray into the judicial training arena as a trainer was to design and deliver a full-day session for our own employment judges in Scotland. After its successful completion, I went on tour around all the Employment Tribunal offices in Scotland to train our members. Both constituencies described the sessions variously as 'critical to our role' and 'some of the most useful training we have ever received'. 'Great', I thought; they could see what I had felt every day when sitting in an Employment Tribunal and using the skills that have become part of my repertoire after 16 years of training and coaching leaders.

Observers from the Judicial College attended one of the sessions that I delivered to my employment law colleagues. As a consequence, I designed and delivered a 45-minute slot at the 'Judge as Communicator' pilot in May 2016. It seems that the feedback from that session supported much more focus on this topic. With the support of the Judicial

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College directors and some of the judicial training leads, we produced content for the January 2017 session covering unconscious bias, key influencing skills, relationship dynamics, conflict resolution and impactful communication skills – with role-play to boot – though, obviously, we didn't call it that!

In our courts and tribunals, the focus for each judge and member is that of dispensing justice. We know from the studies referred to above that justice is a subjective concept for our users; for them to feel that justice has been done, they need to feel that they

have had the opportunity to tell their story, that the judge has listened and that they have been treated with dignity and respect. Whereas litigants and appellants focus on procedural justice, the judicial role is, arguably, focused on delivering substantive justice. Of course, it's necessary to do both.

The tricky thing about having human judges and members is that you are subject to the cognitive biases that plague all human beings. As Lord Neuberger put it:

'The big problem, as it is everywhere, is with unconscious bias. I dare say that we all suffer from a degree

of unconscious bias, and it can occur in all sorts of manifestations. It is almost by definition an unknown unknown, and therefore extraordinarily difficult to get rid of, or even allow for.'

Given the importance of procedural justice, judges and members do require to allow for cognitive biases. My view is that we cannot 'get rid' of them, but that awareness of them is hugely helpful in encouraging the use of strategies that militate against their potentially negative impact on judicial behaviour and approach.

My own session on the 'Judge as Communicator' course begins with a discussion of the most relevant cognitive biases, and, perhaps more importantly, delegates have the opportunity to identify the risks and mitigation strategies with colleagues from various jurisdictions.

The session then moves on to look at the dynamics that operate within a court or tribunal environment. It's illuminating to break down what happens in an interaction, and how misunderstanding and even conflict, can occur. What's more important, however, is to discuss the practical things that judges and members can do to prevent or diffuse conflict or challenging dynamics when they arise. The layout of our courts and tribunals reinforces the role of the judge or member as ultimate decision-maker and holder of order, and that can unconsciously drive particular behaviour in litigants and the individual judge or member that undermines the aims of delivering procedural justice.

During the session, we work on the key communication techniques that enable us to deliver on the 'voice' and 'treatment' aspects of procedural justice, but that also allow the judge or member to keep matters moving and maintain focus on what is relevant to the issue being adjudicated. Some of the techniques that we talk about are well used by delegates, but others are entirely new. By discussing all of the approaches available in communication, delegates are able to broaden their 'conscious' repertoire and to reach for what might have most impact in that moment of difficulty rather than reacting instinctively (and usually unhelpfully, as we discuss during this session).

*These 'resilience factors' are intended to operate as techniques that can be deployed readily when the going gets a little tough. Each delegate is encouraged to choose one factor to ritualise so that it becomes habitual.*

### Role-play

Finally, I admit, we do 'role-play'. But, before you recoil in horror, the feedback from delegates has been that it is hugely helpful to practise the influencing and communication skills in a 'safe' environment to find what works best and feels most comfortable. When the gifted actors create realistic scenarios during day two, it's possible for each delegate to 'diagnose' the dynamics that play out in a courtroom, and identify the approach of the judge that would best diffuse the mounting conflict and shift the interaction to a more constructive dynamic.

The final session of day one focuses on six practical things that judges and members can do to maintain resilience in the face of challenging behaviour and work pressure. These 'resilience factors' are intended to operate as techniques that can be deployed readily when the going gets a little tough. Each delegate is encouraged to choose one factor to ritualise so that it becomes habitual.

For my part, I'm grateful for the opportunity to maintain my links with the judiciary, and I thoroughly enjoy the high levels of engagement and interaction during these sessions. My aim is to support judges and members to enable the users of the system to feel more empowered in advocating their case, and gain a greater sense that procedural justice has been done. I'm sure that's an aim we all share. After all, if we can assist visitors to our strange land to navigate the territory and understand the language, they will be more likely to leave us feeling that justice has been done, whatever the substantive outcome.

**Emma Bell** is a personal development coach and former employment judge

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## Aims and scope of *Tribunals* journal

- 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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