



JUDICIAL  
COLLEGE

# TRIBUNALS TRIBUNALS WINTER 2017 TRIBUNALS

## A seasonal change

### EDITORIAL

By Christa Christensen



Welcome to the final *Tribunals* journal for the year – Winter 2017. The Editorial Board has determined that with effect from 2018, the editions will be called simply one, two and three and will no longer refer to seasons. This will make the publication process a little more flexible as it can sometimes cause difficulties given that there are four seasons; yet the journal is produced three times a year!

I remind readers that the primary way in which the journal is now distributed to Judicial Office Holders (JOHs) is through their ejudiciary email addresses. The journal can no longer be distributed to any old 'gsi' email addresses as these were switched off on 1 November 2017. Readers who are JOHs are therefore urged to ensure that they have logged into their ejudiciary emails so that they continue to receive the journal. Please spread the word.

**SPT Column:** At the start of a new legal year the Senior President of Tribunals, Sir Ernest Ryder, uses his regular column to give us a round-up of recent developments, celebrate successes and to look to the future.

Adrian Stokes provides us with his ever-helpful list of **Recent publications and useful links**.

*...we see the reality of the development of 'One Judiciary' in the context of a pilot scheme in which tribunal judiciary are deployed to the courts.*

It gives me great pleasure to highlight the **Judicial College retrospective** article from Dame Laura Cox DBE. As some of you will know, Laura was for many years front and centre of the development of training for judges. The legacy of her enthusiasm for judicial training in its widest sense, but most particularly in the leadership she offered in the development of diversity and cross-jurisdictional skills training, is legendary. It has been fundamental to building the strong foundations that the Judicial College now has.

In **Canaries in the coal mine** by Employment Judge Lorna Findlay (assisted by Employment Judge Rohan Pirani and Employment Judge Wayne Beard), we see the reality of the development of 'One Judiciary' in the context of a pilot scheme in which tribunal judiciary are deployed to the courts. Lorna gives some invaluable personal insight into her experience of being deployed to sit as a District Judge in the County Court. Lorna identifies some of the benefits and challenges of being part of this pilot scheme. Those insights will, no doubt, be of assistance as further deployment opportunities arise.

In the article **Help for self-represented litigants**, Employment Judge Sian Davies writes about an initiative she has led in South Wales which has created resources for the Employment Tribunal judiciary, for self-represented litigants and HMCTS staff when a case involves a self-represented party.

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These include the creation of a South Wales Employment Tribunal Litigants in Person Scheme (ELIPS) Clinic. This has proved possible through the support of Sian's leadership judges, the local HMCTS Delivery Manager and local practitioners; a great example of collaborative working. Sian refers to the ELIPS Clinic being shortlisted in the 2017 Law Society Excellence Awards in the Pro Bono Category: I am pleased to be able to share the breaking news that the scheme has been successful in being awarded a Highly Commended accolade.

The article by District Tribunal Judge Isabel Montgomery tells us about an organisation that all judges can join and that gives access to a global network of 5000 other judges all interested in equality and human rights issues. Isabel writes about the work of the **UK Association of Women Judges (UKAWJ)**; she sets out its five aims which are closely aligned to the development of the Rule of Law. We are reminded that 'women belong in all places where decisions are being made'. Isabel writes about events in Dublin in 2002 that caused the current President of our Supreme Court to take steps to set up the UKAWJ.

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Given the importance of ensuring that judges' decision making processes are free from any unintentional bias or prejudice, the Judicial College has created some training resources in this area with assistance from external experts. One of these experts is Dr Tom Stafford who is a Senior Lecturer in Psychology and Cognitive Science at the University of Sheffield. Tom has written an article on **Biases in decision making**. He reminds us of research that indicates that all human beings may be subject to biases. He gives some practical strategies that can be deployed to remove or mitigate these and includes a very useful 3 x 3 grid. The Board is intending to publish further articles in this important area within the coming year.

With the advent of the HMCTS Reform process, opportunities have been created to broaden the scope of the delegation of judicial functions to Tribunal Case Workers. Deputy Chamber President Meleri Tudur's article **Delegation: that's what you need?** sets out how the Health, Education and Social Care Chamber and Social Entitlement Chamber have developed the work of Legal Advisors and Registrars since 2011 and how the Reform process established the Tribunal Case Worker project in 2014/2015. The Board is planning to publish a companion piece to accompany this article in the next *Tribunals* journal, which will give first-hand accounts of the work undertaken by Registrars and Case Workers.

Christa Christensen is Chair of the Editorial Board

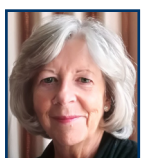
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## Judicial College retrospective

### TRAINING

By Laura Cox



Astonishing as it may seem, we are rapidly approaching the 40th anniversary of the creation of the Judicial Studies Board for England and Wales in 1979. Yet, on reflection, that astonishment is surely due to the fact that judicial training in any form was so long in coming. That people 'starting a new career as judges might need some job training does not seem a controversial proposition', as David Pannick observed in his excellent book *Judges*, published in 1988. By 1979 training for those appointed to judicial office was long overdue.

But over the years there was nevertheless remarkable and sustained resistance to the notion that judges should receive any training at all, even when that training was always to be designed and delivered by judges themselves. Today this resistance seems archaic and absurd, as of course it is. But given the opportunity, in this article, to reflect on where we are now and on the enormous success of the cross-jurisdictional training in judicial skills, a brief look back at where we came from is required, if only to understand and to appreciate how recent this success is and the debt owed to the training pioneers who helped to deliver it.

### The first Judicial Studies Board

Lord Parker, Lord Chief Justice, had addressed a jury for the very first time when he summed up in an important murder trial at the Old Bailey immediately following his appointment as a High Court judge in 1950. As a commercial lawyer, with no training and with no Bench Book or other written materials to turn to for assistance as to how he should approach this hugely responsible task, it seems that he regarded this as an unsatisfactory state of affairs. For, as Lord Chief Justice, it was he who introduced the first formal arrangements designed to assist judges sitting in the criminal courts and in sentencing offenders. One day conferences were held in 1963 and 1964 before they were extended to cover two days in 1965, with provision being made for the first time for sentencing exercises.

The popularity of these conferences led to the appointment in 1975 of the Working Party on Judicial Studies and Information. Notwithstanding the controversy surrounding the introduction of any formalised training programmes, some senior judges suggesting that judicial independence would be fatally compromised, the Working Party wisely recognised the value and importance of such training, at least in relation to work in the criminal courts. Their main recommendation was that there was a clear need for structured programmes to equip judges in the court service for their role in the conduct of criminal trials, and in sentencing offenders.

Their recommendations were all accepted and in April 1979 the Lord Chancellor of the day, Lord Elwyn Jones, announced the arrival of the first independent Judicial Studies Board (JSB), with Sir Tasker Watkins VC as the Board's first chairman. It was hoped that naming it the 'Judicial Studies Board', rather than the 'Judicial Training Board' would help to appease the objectors, the title conjuring up images of erudite discussions on interesting legal topics, learned lectures from eminent experts and participation in programmes of academic study, no doubt regarded as more appropriate for the judiciary as the embodiment of intellect, wisdom, prestige and remoteness from ordinary life. 'A judge', wrote Henry Cecil, 'should be looked upon rather as a sphinx than a person. You should not be able to imagine a judge having a bath'.

Amusing as it now seems, this attitude persisted for many years, especially at senior judiciary level, to the undoubted detriment of judges who attended the early seminars. With the design of such 'studies' being regarded as no more than a spare time activity for those judges involved in the work of the Board, and with the studies being regarded by judges attending the seminars as something to be done **to** them, rather than **by** them, this was never 'training' in any real sense. The Board's responsibilities were also originally confined to full-time and part-time members of the Crown Court judiciary. There were separate arrangements for the training of lay magistrates, but no formal provision of judicial training for stipendiary magistrates or their deputies. Nor was there any formalised or centralised mechanism for the conduct and supervision of training for tribunal members, though some individual tribunals began to organise various forms of training on their own initiative.

1985 saw the welcome arrival of a new JSB, its role considerably expanded to cover the provision of training in the civil and family jurisdictions, the supervision of training for magistrates and oversight of the training of legally qualified members of tribunals.

To begin with, however, the seminars for judges in the courts still consisted of little more than talking heads, a series of lectures from senior judges, practitioners or academics, with provision for some discussion in smaller syndicate groups, but little to enable assessment and evaluation of the training provided or any sensible cost-benefit analysis. To those like myself, who practised in the field of employment law, with the example of a whole panoply of structured and participative training programmes and appraisal systems on offer for working people in the real world, the 'training' on offer for judges was unimpressive to say the least.

*To begin with, however, the seminars for judges in the courts still consisted of little more than talking heads...*

Improvements were slow to come, consistent with the general judicial resistance to change. Specialist committees oversaw the development of training in the different jurisdictions, with programmes still being separately devised by different organisations for courts and tribunals judges. Over the ensuing years single subject training was provided for judges in the courts to address particular specialisms, such as trials involving fraud or serious sexual offences, or the arrival of new legislation, for example in the fields of criminal justice or human rights. The post of Director of Studies was created, to be held by a circuit judge. Residential induction courses and continuation courses were established and written guidance materials and Bench Books were produced to assist busy judges.

## Diversity training

Recognition of the need for some diversity training for judges led, initially, to the creation of the Ethnic Minorities Advisory Committee in 1991, and then to more generalised equality and diversity training with the creation in 1997 of the Equal Treatment Advisory Committee (ETAC), which I was proud to chair from 2003 to 2011 after my appointment to the High Court bench.

As a multi-jurisdiction committee, ETAC benefited enormously from the diversity of its judicial members, the tribunal judges often leading the way in the design and delivery of equality and diversity training and of generic skills training. Judicial skills obviously include the ability to understand disadvantage, to communicate effectively with the increasingly diverse and increasingly unrepresented litigants appearing before us, and to make any necessary adjustments to level the playing field so as to ensure real equality of treatment and a fair hearing for everyone. 'One law for the Lion & the Ox' wrote Blake, 'is oppression', describing in blunt terms what the writer Anatole France described a century later as 'the majestic even-handedness of the law, which forbids rich and poor alike to sleep under bridges, to beg in the streets and to steal bread'.

Discussions on ETAC about the meaning of equality, and about how best judges could fairly handle the ever-changing cast of diverse characters coming before them and the many practical problems that could arise, were considerably enhanced by the contributions made by the courts and tribunals judges sitting in all the different jurisdictions who were members of that Committee. This was where the idea of cross-jurisdictional skills training or training in 'judgecraft' really began, the then Director of Studies, John Phillips, and members of ETAC all recognising the need for such training and the value of a cross-jurisdictional approach. I shall return to this shortly.

During the nineties and noughties practical exercises, video case studies, the inspired use of actors and role play in the various specialist fields had begun to emerge as occasional features at training seminars. And attitudes to training began to change, almost imperceptibly at first, but improved training programmes and the production of useful written guidance made a real impact. Those involved in the design and delivery of courses and course materials began to demand time out of court in order to prepare them properly. Gradually, training began to be seen by judges in both courts and tribunals as a professional entitlement rather than an obligation.

But with that sense of entitlement came murmurings of discontent, as the work of judges became increasingly specialised and regulated and judges began to call for more focused courses, tailored to their individual needs. The JSB carried out extensive research via the Learning Needs Analysis (LNA) and the results were striking.

First, it was recognised that one size certainly did not fit all. Different judges had different learning needs and different ways of learning. In the courts service, criminal judges training to sit in civil cases had particular needs and the reverse was equally true. Secondly, there was seen to be a need for greater professionalism in the design and delivery of training programmes, building on the more practical developments already begun, but with assistance from experts in the field of adult education and with greater emphasis on clearly identified aims of the various training programmes and valid assessments of the learning outcomes. Thirdly, more support was required for judges between the valuable but infrequent residential courses, particularly through the use of electronic media.

But the most striking result of all was the overwhelming call for training in generic judicial skills, with far less emphasis on set-piece lectures and more opportunities for role-play and group discussions on practical problems, facilitated by experienced judges. Large numbers of judges at all levels and in all jurisdictions called for more training on the practical knowledge and skills they needed to do their job, on how to deal with the situations they came across and the people with whom they dealt, rather than on knowledge of the law.

*...judges at all levels and in all jurisdictions called for more training on the practical knowledge and skills they needed to do their job...*

### **Judicial Training Strategy**

Without doubt therefore the last ten years have seen the most far-reaching changes and improvements in judicial training, with the development of the Judicial Training Strategy based on the results of the LNA, and the eventual realisation of the hopes for cross-jurisdictional skills training of the kind envisaged on ETAC all those years ago. April 2011 saw the merger of the Courts and Tribunals Services and, simultaneously, judicial training came of age. The same year saw the creation of the Judicial College, merging the training organisations for courts and tribunals judges, so that any person who exercises a judicial function in England and Wales (approximately 36,000 people in all) is now trained by a single organisation. There is a wider variety of courses, with valuable input from experts in adult education, and with most training in substantive law delivered electronically through the Learning Management System and greater use of e-learning generally, except for the specific 'judgecraft' courses, which have been delivered and continue to be delivered at small face to face seminars.

These cross-jurisdictional seminars in 'judgecraft' have regularly received outstanding praise from the participants. The first, entitled 'The Craft of Judging', was for courts service judges sitting at all levels in the criminal, civil and family courts. As Chair of this seminar and, until recently, of its successor 'The Business of Judging', opening up the seminar to both courts and tribunals judges and coroners (and of the new seminar 'The Judge as Communicator') I was privileged to work on the design and delivery of each of them with the two Directors of Training for Courts and Tribunals, John Phillips and Jeremy Cooper, with the actors from Geese Theatre and the judges and practitioners who take part in the various case studies, and with the highly experienced and expert team of tutor judges, whose contributions to the design and implementation of this training have been of incalculable benefit.

Skills training is important for every judge, at every level. As a judge in the Queen's Bench Division, sitting during an average term as a judge in the civil lists, in the Administrative Court, in Crown Court trials or in an appellate capacity in the Employment Appeal Tribunal or in the Court of Appeal Criminal Division, I often reflected on the multiplicity of different skills I was required to deploy.

I refer not to knowledge and application of the law or of evidence and procedure, but to other, equally important judicial skills required of most if not all judges; those core practical, interpersonal, psychological and sociological skills that all judges need to do their job well.



They include, for example:

- the ability to assess the credibility or reliability of oral evidence
- the ability to listen to litigants and to communicate with them effectively
- the ability to exercise patience
- the ability to maintain authority and remain calm in the face of hostility or incompetence
- the ability to be both courteous and firm
- the ability to cope fairly with the unknown, or to think quickly and creatively to resolve a sudden problem
- above all the ability to ensure that every hearing is conducted fairly and that nothing is said or done which could suggest a lack of impartiality.

'Justice is achieved', wrote Swift, 'when both sides leave court feeling slightly discontented'. As a marker of fairness and even-handedness, I would regard that eventuality as a job well done.

### Skills for life

Sometimes the advocates who appear before us may hinder, rather than help us make decisions, and these days judges increasingly have no advocates at all. In these days of austerity judges who have not been used to being interventionist or inquisitorial are having to become more so. In busy courts with full lists we can make mistakes and we do not always have the opportunity for reflection. No longer can we always rely on experienced court or tribunal staff to help us.

At the end of a hearing, like many judges, I would regularly have to give an *ex tempore* reasoned decision, often in several cases listed on the same day. The aim of course is for accuracy, brevity, clarity and faultless syntax in a succinct and well-delivered oral judgment, though as a number of my more self-aware colleagues would agree, the transcripts that came back for proofing would not always demonstrate that this standard was achieved, especially after a long day.

The maintaining of judicial independence, impartiality and integrity applies not only inside our courts and tribunals but outside in our daily lives, in how we behave towards others and in particular situations. Questions of judicial conduct and ethics arise in contexts other than our daily work as judges.

*There is no right or wrong answer to any of the problems which arise, and the seminars are designed to enhance confidence, not to undermine it.*

All these matters, together with popular sessions on stress and on improving our resilience in the face of the increasing demands of the job, have been the subject of the skills seminars which have proved so popular with the judiciary. The cross-jurisdictional nature of this training has meant that the judges have brought to the seminars their different backgrounds, areas of expertise and experience, and their different ideas for dealing with the people coming before them and with difficult and unexpected situations. The arrival of the tribunals judges on these seminars after 2011 undoubtedly added an extremely valuable dimension to this training. Part of the benefit derived from the multi-jurisdictional approach has been the mutual respect shown for the work of judges in hitherto unknown jurisdictions.

Judges rarely get the chance to see each other in action, and no matter how experienced you are, there is always something more that you can learn or that makes you look at something in a different light, or that stretches or challenges you. No-one is immune from the development of bad habits or from the risk of becoming stuck in our ways. On the other hand, there are often examples of really good judicial practice, which deserve to be shared and discussed with a wider audience. One of the most pleasing features of this training has been the steady improvement in judicial skills that all of us involved in it have observed over the years, and the increasing willingness of judges to take part in the case studies and role plays and to receive feedback as to how they handled a particular situation. No-one is assessed. There is no right or wrong answer to any of the problems which arise, and the seminars are designed to enhance confidence, not to undermine it. The seminars could not have achieved the success they have without the willingness of the judges attending to participate fully and openly in each of the case studies and discussions.

The benefits of such training are enormous. It is no exaggeration to say that I learned something new at every seminar I chaired, and although some of my High Court colleagues have also attended as participants, it is a matter of regret to all of us involved in this training over the years that more members of the senior judiciary have not taken the opportunity to do so. The late Roger Toulson, attending one of the early seminars as an observer, told me that he thought such training should be mandatory for every judge at every level. Those in judicial leadership positions should do more to encourage the senior judiciary to attend.

Jeremy, John and I have now all moved on to other things, as have others involved in this work, and further changes will surely take place as judicial training continues to evolve. But the success of training of this kind is now firmly entrenched and will undoubtedly continue. There has been a clear shift towards training in 'judgecraft', not only in the specific judicial skills courses on offer but across the whole curriculum and across all seminars. And skills training of this kind has in recent years been devised or adapted for newly appointed Deputy High Court Judges, many of whom have not previously sat in any judicial capacity.

During 2016 the College introduced a Faculty in order to provide a structure for the rationalisation of all cross-jurisdictional training, including judicial skills, social context training and leadership and management skills. It will be the role of this Faculty to provide guidance to enable good practice in the delivery of all judicial training involving activities, skills and knowledge applicable and common to all judicial office holders. These highly participative seminars therefore look set to take judicial training to new levels, so long as the resources are there to deliver it. There is of course still some way to go in this respect.

David Pannick considered:

'Attendance at a Judicial College for a course lasting one or two months would not be an excessive requirement for new judges [...] judges would similarly benefit from sabbatical leave at regular intervals to enable them to attend a Judicial College to study legal and non-legal developments particularly in the actuarial, sociological and psychological fields.'

In the current climate there is little hope of that for the judiciary in this country. But, almost 40 years on from the arrival of the first Judicial Studies Board, we should be pleased that resources are now the main concern, rather than judicial opposition to the notion of such training. That is progress. And the promise by judges on appointment to 'do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will' merits training which is specifically designed to help them to understand and to carry out that promise. I am delighted to have been a member of the team of people who helped to deliver it.

Dame Laura Cox was a High Court Judge 2002 – 2016 and  
Chair of the Judicial College cross-jurisdictional skills seminars until 2016.

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## Canaries in the coal mine

### CROSS-JURISDICTIONAL WORK

By [Lorna Findlay](#)



A 'canary in the coal mine' was the expression used by a fellow Employment Judge to describe my first foray into Birmingham County Court, following training for this cross-jurisdictional pilot scheme. I was the first from Midlands (West) Employment Tribunal to take the plunge, and she used that expression to indicate that I should warn those following of dangers ahead.

A couple of months previously, in February 2016, 26 of us had arrived at Warwick University, ready for training. We were judges from the Employment Tribunal who were, admittedly, rather apprehensive, but ready to do what was required to equip ourselves to sit as judges of the County Court (covering work usually allocated to District Judges) under a 'pilot' cross-jurisdictional deployment scheme.

The impetus for the pilot scheme was the coincidence of the perceived fall in the caseload of the Employment Tribunals with the vision of the Reform Programme for there to be 'One Judiciary' capable of flexible deployment across jurisdictions.<sup>1</sup>

We had been given around 40 hours of pre-event reading to do. We all had (varying levels of) previous experience in civil proceedings from our years in practice, but we were all salaried Employment Judges, and had been for at least three years by that stage. The 'Jackson' reforms had passed most of us by.

At that point, and given the amount of revision required, I was rather grateful that a decision had been made that we would not sit in Family cases initially, only Civil, although now that I have been sitting in the County Court for more than a year, I am more ready to contemplate that.

### First impressions

Two intensively packed days of training later, we were ready to complete our 'shadowing' and to begin to sit. I decided to commence as soon as I could, whilst the training was still fresh in my mind.

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<sup>1</sup> 'Perceived' – see below. The Fees scheme has, as many will know, now been declared to be unlawful by the Supreme Court, on 25 July 2017.

We all felt, I think, that we could have done with more of the formal training, rather than just two days to cover the vast range of jurisdictions and issues encountered by District Judges of the County Court. Still, needs must, and I believe that most of us found our 'shadowing' days, when we sat in with experienced District Judges, to be extremely valuable experiences. All of those I shadowed were both helpful and receptive, and I believe that we each gained from learning how the other worked.

It is one of the challenges (yet advantages) of the scheme that I and my colleagues have repeatedly found ourselves debunking myths, both about what Employment Judges do, and how we work. For example, it seems to be a common misconception that we always sit with lay members, and that, as a result, we take much longer to resolve disputes than we otherwise would. Non-legal members are experienced in their own fields, however, and frequently add a different dimension to decision-making, or help to cut through to the heart of the case – so that they do not necessarily add to decision making time at all, when they are involved.

Also, these days, Employment Judges only sit with non-legal members in the minority of cases; members are required to sit in certain cases which involve issues of discrimination or public interest disclosure ('whistleblowing'), for example, and an Employment Judge may direct their involvement in a suitable case, but otherwise judges sit alone. Whether a 'full panel' is involved or not, cases are actively managed to ensure that a proportionate time estimate is achieved.

The other myth is that 'Employment Judges have had no work since fees were introduced in 2013'. In fact, salaried Employment Judges have been kept busy because the reduced numbers of cases lodged has been balanced out by judicial retirement, by (until very recently) the restricted ability to use fee paid judges due to budget constraints, and because many of the cases which are left are particularly complex or hard-fought – and, possibly, particularly so where a fee has been paid in order to bring the claim.<sup>2</sup> This is, perhaps, reflected in the fact that median awards for successful claims increased markedly between the introduction of fees and the declaration of illegality.<sup>3</sup>

My overall experience of 'shadowing' was that there was more community of experience between Employment and District Judges than there might at first appear. Employment Tribunal Procedural Rules, whilst inevitably less formal and complex, do mirror the Civil Procedure Rules to a significant degree, and although there is significantly less focus on costs in the Tribunal, the overriding objective is very similar in each jurisdiction. In both the civil courts and the Employment Tribunal, too, there has been a growing emphasis on active case management.

*It is one of the challenges (yet advantages) of the scheme that I and my colleagues have found ourselves debunking myths...*

So the shadowing part of the training was extremely useful – discussing cases with experienced District Judges boosted my confidence, and reassured me that I would be able to cope when I started to sit.

## **The value of cross-jurisdictional training and deployment**

I have heard many discussions amongst judges as to the value of cross-jurisdictional training, and about how useful the concept of 'judgecraft' actually is. My experience of this pilot scheme has reinforced my belief that it is, indeed, a meaningful concept. My years of experience of dealing with unrepresented litigants in the Employment Tribunal have been of great benefit, for example, when dealing with such parties in a small claims list, or with the growing band of self represented parties in other types of civil claim.

More generally, I find that I am using the same skills that I usually do when sitting in the tribunal, in terms of identifying what the issues are, explaining the process to the parties (if necessary) and managing the case so as to ensure that they keep to the issues/rules of procedure, before digesting and analysing the evidence then reaching and communicating my conclusion.

Covering a new area of the law, or bringing oneself back up to date, will always be challenging, and I find that the most difficult days are those when I have been allocated two (or more) very different jurisdictions – on one occasion, having dealt with a heavy possession list in the morning, in the afternoon I had to deal with a number of insolvency hearings.

In this situation, access to reference materials is crucial, and this has greatly improved since the introduction of eJudiciary and distribution of laptops – I have been really grateful for my 'MiFi' device as most courts do not yet have WiFi.<sup>4</sup>

<sup>2</sup> Given the statutory nature of the tribunal, judges (and members) have been appointed in cohorts (and often, in the past at least, at around the same age) so that a multiplicity of retirements seem to occur within a short period.

<sup>3</sup> Although fewer claims succeeded – see for example paragraph 42, *R (Unison) v Lord Chancellor* [2017] UKSC 51.

<sup>4</sup> 'MiFi' is a mobile broadband device.

I have also found it helpful to identify in advance which party (if any) has the most neutral brief, (e.g. a representative of the Official Solicitor) and, hence, who is likely to be most useful in identifying what the case is really all about.

I have sought some feedback from colleagues in the County Court, and have been assured that the Employment Judges who have taken part in the pilot are believed to be progressing well. A number of us have now been appraised by District Judges, and, mostly, have found the experience to be a useful (and positive) one.

County Court judges are particularly grateful for our help in relation to dealing with Equality Act 2010 cases - all of the Employment Judges who sit at Birmingham Civil Justice Centre have now been approved to sit in Equality Act cases in the County Court, as we apply the Act routinely in our work at the Tribunal.

Although most Equality Act claims are relatively complex, I have stumbled across such a claim (a reasonable adjustments claim, related to housing), in the middle of a small claims list. I was able to use my specialist knowledge of such claims to suggest a resolution which was acceptable to the parties, as otherwise there would not have been sufficient time to hear it, and it would have been necessary to adjourn it with further directions.

I have also case managed a 'Multitrack' Equality Act claim, which involved access for disabled worshippers to a Sikh temple, and have also dealt with an application to strike out (for abuse of process) a High Court claim which was said to be an attempt to re-litigate unsuccessful Employment Tribunal proceedings. So things are looking more promising, and I hope that we are beginning to prove our worth.

## The challenges

I am not suggesting that there have been no problems.

- I believe that there is a difficulty of perception, in that some District Judges may not be aware of the challenging and legally complex nature of some claims within the Tribunal's jurisdiction, so that they may have some difficulty in accepting that Employment Judges can operate at the same level as they do.
- I think that it would be helpful if there was more collegiality – for example, more regular joint meetings between the Employment Judges involved in the pilot and the District Judges at the court centre where they sit, to iron out any difficulties and share information.
- It would be good to have some further training in best practice when dealing with the pile of 'box work' that is left for us every sitting day. If we make Orders that do not accord with accepted practice, it does not help anyone, and there will just be problems further down the line. Perhaps some specific 'box work' training could be organised.
- Employment Judges should be offered the same training opportunities as District Judges and Deputy District Judges – my colleagues and I were invited to Costs Management training earlier this year and found it very helpful, both in terms of the subject matter, and also through being able to learn from discussion with the District Judges. Perhaps next year we could be invited to the Annual Training conference that District Judges attend.
- Nomenclature has proved something of a problem. We were told that we would be referred to as 'Employment Judges sitting as judges of the County Court', but I have sometimes been referred to as a 'Deputy District Judge', which I am not, but rather a salaried judge of equivalent grade to a District Judge. I have had a sign placed outside the courtroom saying 'Employment Judge sitting in the County Court' – this tends to cause some consternation amongst the parties, who perceive it to be something of a 'health warning'. In one such case, I was asked: "Excuse me, madam, but what are you?"! For simplicity's sake, I tend just to introduce myself as "the judge who will be dealing with this case today".

*I was able to use my specialist knowledge of such claims to suggest a resolution which was acceptable to the parties...*

## A successful pilot scheme?

Overall, I would say that the pilot scheme has been a successful attempt at cross-jurisdictional deployment.

Employment Judges have been able to use new skills and ways of working in their own jurisdiction – for example, in my own Employment Tribunal region, we now sometimes ask represented parties to produce draft case management orders (electronically) before (or after) case management hearings, as routinely happens in the County Court. This can help to create more time to deal with complex matters. Hopefully, we have also helped our District Judge colleagues with their workloads, and have added something by our familiarity with ways of improving access to justice for unrepresented parties, and through our specialist knowledge of the Equality Act.

Employment Judges involved in the pilot also feel that the County Court could learn from some administrative and case management techniques employed in the Employment Tribunal – for example, the numbering of documents in a file, so that the order of receipt is clear; telephone hearings by means of direct connection conference calls (without the need for a conference call supplier to call the administration first); or track allocation (and the sending out of standard directions) by administrative workers, save in unusual circumstances when a judge needs to be involved. There are, no doubt, other areas where more dialogue would lead to improvements of practice and procedure in both jurisdictions.



## Some thoughts for the future...

If I was to pick out just one change that I would like to make to my own jurisdiction from my experience so far in the County Court, it would be to repeal rule 62(5) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, which states (amongst other things) that:

'In the case of a judgment the reasons shall: identify the issues which the Tribunal has determined, state the findings of fact made in relation to those issues, concisely identify the relevant law, and state how that law has been applied to those findings in order to decide the issues.'

This prescriptive rule leads, in cases of any complexity, to lengthy judgments and significant repetition as judges seek to avoid criticism on appeal that they have omitted any of the steps prescribed, or any of the arguments taken.

By contrast, in relation to decision making in the County Court, see [English v Emery, Reimbold and Strick \[2002\] EWCA Civ 605](#). Holding that Article 6 ECHR goes no further than the common law, the Court of Appeal recognised that the basic test is that issues which are vital to a judge's conclusions should be identified, and the manner in which they have been resolved should be explained, so that parties should be able to tell why they have won or lost – and so that both the parties and any appellate court should be able readily to analyse the reasoning that was essential to the judge's decision.<sup>5</sup> The court recognised that 'It is not possible to provide a template for this process'.<sup>6</sup>

The result is that the judge in the County Court need not spend excessive amounts of time separating facts from reasoning, nor produce what the Employment Appeal Tribunal has called 'an anxious parade of knowledge' of the law so as to avoid an appeal. The judge simply has to provide the gist of why a party has won or lost, and lengthy judgments are not encouraged.

I appreciate that the issues in an employment case are often necessarily (as they usually arise out of a relationship rather than an event) more numerous and/or complex than is usually the case in the civil jurisdiction of the County Court, but in both jurisdictions, the Employment Judge/Tribunal or District Judge is the primary tribunal of fact.

Given the public interest in the finality of judicial decision making, if the manner in which reasons are given in the County Court does not infringe article 6 ECHR, or the common law, it is difficult to see why it would be otherwise in the Employment Tribunal.

*With thanks to Employment Judges Rohan Pirani and Wayne Beard for their assistance and thoughts.*

<sup>5</sup> See paragraph 16

<sup>6</sup> Phillips MR, paragraph 19.

Lorna Findlay is Acting Regional Employment Judge (Midlands West)

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## Help for self-represented litigants

### SELF-REPRESENTED LITIGANTS

By Sian Davies



The Employment Tribunal (ET) usually, but not exclusively, deals with litigation brought by prospective, current or former employees against their prospective, current or former employer. With the introduction of issue and hearing fees in 2013, the ET's typical workload shifted away from unfair dismissal and 'money' claims, towards complex discrimination and 'whistleblowing' claims requiring multi-day hearings.<sup>1</sup>

The ET has always dealt with large numbers of self-represented litigants, both claimants and respondents. Typically, tribunal panels are faced with trying to ensure 'equality of arms' for self-represented claimants against respondents who are represented by experienced solicitors and counsel, although self-represented respondents are by no means rare, especially for small businesses and charities. Now fees have been abolished an increase in all types of claims will follow, along with an increased requirement for advice and support.

Previously, when self-represented parties sought advice from the tribunal, a standard 'no advice' letter was issued referring them to local law centres. With the closure of law centres nationwide and restricted budgets for organisations offering free legal advice and representation, ETs are experiencing ever increasing levels of self-represented parties.

In Wales, the Regional Employment Judge (REJ) asked me to assist in establishing a working party to explore ways in which the ET could signpost sources of advice, whilst remaining impartial. This led to the publication of leaflets and the establishment of a *pro bono* advice clinic at the ET.

<sup>1</sup> Fees were recently held to be unlawful by the Supreme Court in [R \(Unison\) v Lord Chancellor \[2017\] UKSC 51](#).

This report is intended as a practical explanation of steps that can be taken to assist self-represented parties and presumably could be adapted for use in other tribunal jurisdictions.

## **Litigants in person working party (the group)**

### **Aims**

The group wished to produce two documents; a directory for internal use and a leaflet (published bilingually in Welsh and English) available to parties signposting sources of legal and practical advice and support.

A secondary benefit of the group was creating a network of organisations across Wales providing *pro bono* advice and support; a forum for sharing information at meetings or via email.

### **How did we establish the group?**

The initial meeting involved representation from the ET (REJ, Employment Judge and HMCTS Team Leader), Advisory, Conciliation and Arbitration Service (ACAS), Equality and Human Rights Commission (EHRC), Employment Lawyers Association (ELA), Personal Support Unit (PSU), local Advice Centres, Citizens Advice, barristers engaged in *pro bono* work and representatives from local Law Schools and Universities.

This initial group of 15 was brought together by personal invitation, based on our knowledge of local representatives and provision of *pro bono* advice and support. Initially invitations were extended to individuals based in South Wales only. Membership of the group has expanded to 25 and now covers all of Wales. New members were suggested by group members or found through investigation of areas which appeared, at first, to be somewhat of an 'advice desert'. I was assisted in this task by Law Works, a charity which aims to achieve access to justice by promoting *pro bono* work and helping to establish advice clinics.

### **How did we create the documents?**

#### **Directory**

The internal directory was compiled with information provided by the group members about their organisation; the onus was placed on the organisations to provide the wording and we adapted the information into a standardised format. We categorised organisations as 'primary' or 'secondary' agencies; primary agencies are those that deal directly with members of the public (eg ACAS and Citizens Advice) and secondary agencies, who do not deal directly with the public but may take referrals from primary agencies (eg EHRC and the Bar Pro Bono unit). The internal directory provides contact details and specifies the geographic scope of each organisation's service. Importantly, it sets out which services an organisation can and cannot offer.

The directory has restricted circulation to group members, HMCTS administration staff and Employment Judges. It provides a useful source of information for HMCTS staff when dealing with telephone queries and for Employment Judges engaged in case management.

#### **Leaflet**

The leaflet was based on a template already in use in ETs in Birmingham and London. It identifies primary agencies, giving contact details (email, phone and website) and a short description of available services. A distinction is made between those agencies that provide legal advice and those that provide other forms of support (such as the emotional and practical support offered by the PSU). It includes a link to online Presidential Guidance on case management. Two versions of the leaflet have been produced bilingually; one for South and Mid Wales and another for North Wales.

#### **Availability of leaflets**

The REJ and HMCTS delivery manager agreed leaflets should be physically displayed in the ET reception and that, upon receipt of a claim from an unrepresented litigant, copies of the leaflet are sent to both parties upon service of the claim. Where the respondent is unrepresented, the leaflet is sent to parties upon receipt of the response form. The delivery manager ensures sufficient supply of leaflets and that the latest version is saved in the region's shared documents drive, so copies can be emailed to parties as directed or if requested.

#### **Benefits**

The group provides a forum for sharing information; for example, we have learned about a *pro bono* scheme advising local rugby club employers and a Welsh Government fund for loans to pay for tribunal fees in discrimination complaints.

The ability to refer parties to the leaflet benefits both the judiciary and the administration staff when faced with queries and requests for advice from unrepresented parties.

It enables the administration staff to provide a helpful response when faced with queries that the tribunal cannot advise upon.

*The ability to refer parties  
to the leaflet benefits  
both the judiciary and the  
administration staff...*

During a preliminary hearing held in person, the Employment Judge can give an unrepresented party a copy of the leaflet. If the hearing is by telephone the relevant contact details can be relayed or direction issued that the administration staff email copy of the leaflet.

It is hoped that signposting has benefits for all judicial post holders; non-legal members benefit from sitting on cases where the claims are clearly defined and the evidence focussed properly on the relevant issues.

### **Legal advice clinic – Employment Tribunal Litigants in Person Scheme (ELIPS)**

With the support of Law Works, ELA pro bono committee established a weekly ELIPS legal advice clinic at London Central ET in 2015. Volunteers give up a day to assist self-represented litigants (both claimants and respondents) by providing on the day advice and representation. This clinic achieved HMCTS approval as a permanent scheme and is endorsed by the President of the ET.

Since October 2016, Cardiff ET hosts a monthly ELIPS clinic, usually staffed by one solicitor and one barrister, who assist litigants on a first-come first-served basis, giving priority to those with hearings on the day. The clinic volunteers can also offer advice to litigants who do not have a hearing if they have sufficient time.

### **Background**

Frequently claimants bring complex discrimination and 'whistleblowing' complaints presented in a long narrative, without clear identification of claims and issues, or those matters included by way of background as opposed to those which the claimant suggests prove discrimination. The complexity of the legal tests the tribunal must apply, leave self-represented parties in difficulty expressing their claim or response in a manner that satisfies the structure of the applicable test.

A couple of examples; the claimant in an indirect discrimination complaint must assert that the respondent has applied a 'provision, criterion or practice' (PCP) to all staff which, whilst appearing neutral, in fact operates to the detriment of the claimant and others who share their 'protected characteristic'. In a complaint of failure to make 'reasonable adjustments', a PCP must be identified which places the disabled claimant at a 'substantial disadvantage'. Although claimants articulate their perceived sense of injustice, they frequently experience difficulty in identifying the PCP in both these scenarios.

Previously in Wales ET, case management was typically dealt with in telephone hearings. Although telephone preliminary hearings are a useful and expedient way of dealing with case management where both parties are represented, we found they were not always the best way to bring clarity to the claim or assist self-represented parties to understand the issues involved or grasp what evidence they would need to adduce.

As a result, the REJ decided to list such cases for preliminary hearings in person. These sorts of case benefit greatly from volunteer involvement and so the ELIPS clinic is scheduled to coincide with case management preliminary hearings. The decision to focus ELIPS at case management stage, was made to facilitate assistance at an early stage with the aim of achieving clarity of claims and issues going forward to liability hearing.

Volunteers can also assist with the identification of suitable cases for judicial mediation, which is offered as an alternative method of dispute resolution.

### **How was the clinic established?**

We initiated discussions with ELA members of the group, to extend the ELIPS scheme to Cardiff ET. ELA established the clinic with the support of Law Works, who provide insurance and clinic support officers to assist with the establishment of new clinics.

ELA recruited volunteers in various ways; email, personal contact and arranging a lecture and social evening in Cardiff with Professor Michael Ford QC as guest speaker. Cardiff based Employment Judges attended the social evening to lend their support. Established for a year now, the success of the scheme is such that we hope to increase its regularity to run twice a month. The President of Employment Tribunals (England & Wales) is supportive and has agreed to attend an ELA event in Cardiff in the Autumn, aimed at increasing the number of volunteers and the frequency of clinic days.

The clinic has been shortlisted for the 2017 Law Society Excellence Awards in the Pro Bono category; we hope that this positive publicity will also help boost volunteer numbers.

With sufficient numbers of volunteers engaged, ELA administration staff retain responsibility for scheduling rotas of volunteers and providing posters to publicise the clinic.

*Volunteers give up a day to assist self-represented litigants (both claimants and respondents) by providing on the day advice and representation.*

To ensure smooth running of the clinic, we involved our HMCTS listing clerk, team leader and delivery manager. They take the necessary practical steps; displaying posters in public areas, making a consultation room available from which to run the clinic and appropriate listing of cases to coincide with clinic dates. Our listing clerk sends a copy of the case list to ELA to distribute to their volunteers two days prior to each clinic.

The aim is to list more complex discrimination and 'whistleblowing' claims for preliminary hearings on ELIPS clinic days. Employment Judges are informed of clinic dates and asked to identify suitable cases upon initial sift.

On clinic days, where an unrepresented party is taking advice from an ELIPS volunteer, the Employment Judges are usually willing, where possible, to allow additional time prior to starting the hearing for consultation to take place.

### Benefits

Judicial feedback is positive; savings in tribunal and judicial resources have been identified. With the assistance of volunteers to clearly identify claims and issues, it has been possible to list shorter hearings.

Self-represented parties are often directed at case management stage to clarify their claim or response, which can lead to delay. Frequently, without advice, self-represented parties experience difficulty in understanding what is required to properly particularise their claim or response.

With timely advice, it is likely that savings are made as further preliminary hearings are not required to deal with failures to properly comply with directions and liability hearings can be listed promptly, avoiding delay in the litigation process.

Both parties are assisted by having a clear understanding of the issues at an early stage in order to focus their efforts on preparing for liability hearing. It is in everyone's interest to have impartial advice about the strengths and weaknesses of the claim or defence and if necessary have assistance with effective presentation. Represented opponents are appreciative of the benefits of volunteer representation to achieve clarity and narrow issues.

The availability of such advice supports access to justice and furthers the overriding objective in helping to place parties on an equal footing. The approach may also have wider application in the context of the current reform programme, given the need to reduce demand on the use of the courts and tribunal estate and to reduce the length of hearings, insofar as that is consistent with fairness.

### Quotes

The following are quotes about the ELIPS scheme, from different perspectives:

#### Volunteer

"Whilst it was tiring and quite full on, I really enjoyed the day and I felt that we had provided a valuable service both to the ELIPS users and the tribunal. I feel proud to be part of the volunteer rota and I encourage people to join up at every opportunity."

#### Employment Judge

"The claimant had presented a claim form which was confused and not easily understood. However, with the assistance provided the claimant was able to focus her claims and I was able to record the limits of those claims clearly. This had the added advantage that the length of hearing was much clearer: I must record that having read the file and seen the response I was expecting that this was a case that would occupy four days of tribunal time. With the narrowing of issues this case is now listed for two days."

#### User

"Thoroughly recommended – extremely helpful. So very grateful. Useful not only today but with advice going forward."

"Genuinely have doubts over whether I could have managed alone."

#### Useful links

[www.lawworks.org.uk](http://www.lawworks.org.uk)

[www.thepsu.org](http://www.thepsu.org)

[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

Sian Davies is an Employment Judge (Wales)

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## UK Association of Women Judges

A GLOBAL NETWORK

By Isabel Montgomery



"Women belong in all places where decisions are being made" said trailblazing US Supreme Court Justice Ruth Bader Ginsburg. "It shouldn't be that women are the exception".

These powerful words, uttered by the 'Notorious RBG' in an interview for USA Today in May 2009, serve as a useful introduction to the work of the UKAWJ, an association which places issues affecting women at the very core of its aims and is, at this point in time, the only judicial organisation in the UK to do so.



The UKAWJ strives to improve conditions for women and to achieve greater equality for women. It seeks to address matters adversely impacting upon women, regardless of whether those women are part of the legal system, or simply caught up in it. Judges are well placed to identify areas where the needs of particular groups are not being well met. By focusing on issues affecting women, the UKAWJ is ideally positioned to tackle issues which other organisations may struggle to prioritise. By ensuring that such issues have a voice from within the judiciary, the UKAWJ can help raise awareness and bring about change.

The aims of the UKAWJ are as follows.

- a. To encourage co-operation and collaboration among women judges.
- b. To contribute to the understanding and resolution of legal issues facing women.
- c. To increase understanding of the broad range of social, economic, psychological and cultural factors that influence women affected by the court system.
- d. to increase understanding about women judges, their numbers, the processes by which they are selected, the barriers which may interfere with their selection, with a view to achieving a judiciary which more accurately reflects the population it serves.
- e. To increase understanding of human rights law and the role of the judiciary in implementing that law to promote and protect the rights of women on an equal basis.

It can be seen therefore that there are two overlapping strands to these aims. The first is that of promoting greater understanding and better resolution of legal issues facing women in general. The second is encouraging collaboration among women judges.

Breaking down barriers to selection with the aim of achieving a strong, diverse judiciary which more accurately reflects the population it serves is likely to enhance the perception of fairness within the system and encourage those from a wide variety of backgrounds to apply for a judicial post.

*...new members instantly become part of a global network of judges who share an interest in equality issues and human rights.*

### **The international perspective**

To put the UKAWJ into context, one must look first at the International Association of Women Judges (IAWJ), an organisation which now has approximately 5,000 members in 82 countries. Joining the UKAWJ as a full member automatically confers membership of the IAWJ, so new members instantly become part of a global network of judges who share an interest in equality issues and human rights. Created in 1991, the IAWJ is a non-profit, non-governmental organisation, whose members represent all levels of the judiciary worldwide and share a commitment to justice, equality and the rule of law. The IAWJ provides support for women in the judiciary and also promotes access to justice.

It works with members around the world to:

- pioneer judicial education programmes to advance human rights, uproot gender bias from judicial systems, and promote women's access to the courts;
- develop a global network of women judges and create opportunities for judicial exchange through international conferences, training programmes, the IAWJ newsletter, website and online community;
- foster judicial leadership and support judicial independence; and
- collaborate with other organisations on issues of equal access to justice.

Current IAWJ projects include building the capacity of judges in the Dominican Republic to address gender based violence, reducing the problem of human trafficking in Haiti, enhancing access to justice in Malawi and building networks of support and dialogue for women judges in Egypt, Jordan, Libya and Tunisia. Through these programmes, those involved with the IAWJ have the opportunity to make a real difference.

A number of IAWJ judges, including representatives from the UK, were invited to participate in a recent two-day Summit on 'Human Trafficking and Organised Crime' hosted by the Vatican. The IAWJ's various programmes on this subject area were highlighted alongside the perspectives of the different nations represented.

It wasn't until 2002 that the UK first became involved in the IAWJ in any significant way. The IAWJ conference was held in Dublin that year, presided over by the then IAWJ President; the late Miss Justice Mella Carroll, who had the distinction of being the first female High Court Judge in Ireland.

Only a small group attended from the UK, but the UK contingent comprised some very dynamic women judges, including Baroness Hale, now President of the UK Supreme Court. Those who attended found the Dublin conference so inspiring that they resolved to do something to ensure continued involvement with the IAWJ.

In June 2003 Baroness Hale set up a meeting at the Royal Courts of Justice, a meeting which was very well attended by the female judiciary in England and Wales. That step taken, the UKAWJ was born. It was set up as an independent association affiliated to the IAWJ and, from the outset, it was agreed that gender would be no barrier to membership. Any judge who supported the aims and objectives of the new association would be warmly welcomed.

The UKAWJ's first Conference and AGM was held in Birmingham in March 2004, when a Constitution was adopted and the first officers and committee elected. It was agreed that there would be representatives of all four regions of the UK on the committee, despite the different legal systems operating in Scotland and Northern Ireland. That first conference attracted an illustrious line up of speakers, including Lord Falconer, who was then Lord Chancellor. The then Senior Presiding Judge for England & Wales, Sir John Thomas, was also present and extremely supportive.

Since then, the UKAWJ has been proactive in arranging annual conferences and many events, covering a wide range of topics and with contributions from excellent, high profile speakers. Sandi Toksvig (co-founder of the Women's Equality Party, author and comedienne), Karen Armstrong OBE FRSL (British author and expert on comparative religion), and Magnus MacFarlane-Barrow, OBE, (CEO and Founder of international charity Mary's Meals) are all recent speakers.

Difficult topics such as Female Genital Mutilation have been addressed, with speakers from a wide variety of different perspectives and backgrounds coming together to share their knowledge and experience. Sessions have also focused on the stresses of judicial life, and how best to manage these to avoid impaired performance at work and the potential for ill health.

Topical themes are chosen every two years to allow complex issues to be explored and discussed in detail from different perspectives. The topic of 'Women in Prison' was chosen as the theme for the period from 2014 to 2016, with speakers examining the huge impact of incarceration on women, and very often their children, and exploring the reasons why women often serve longer sentences than men for less severe offences. Considering these issues gave the judges who attended greater insight into the impact of a custodial sentence on the family unit as a whole. Such insight is potentially of relevance to any judge, regardless of the jurisdiction in which they sit.

*Attendance at a UKAWJ conference is always an interesting experience, with opportunities to network and a packed agenda of stimulating speakers.*

In 2016 the theme chosen was 'Religion, Culture and the Law'. Speakers at last year's conference included Mohamed Keshavjee, author of *Islam, Sharia and Alternative Dispute Resolution: Mechanisms for Legal Redress in the Muslim Community*, and film maker Deborah Perkin, whose film *Bastards* tells the story of how an illiterate young woman took on tradition, her own family and the Moroccan justice system for the sake of her child. Indian author Ratna Vira flew over to discuss her book *Daughter by Court Order* and the complex situation of daughters and their inheritance.

The 2017 conference continued the theme of 'Religion, Culture and the Law' and included presentations on such diverse topics as the disadvantages faced by widows in countries around the world, including the often degrading 'mourning rituals' forced upon them, the challenges faced by the 31,000 women currently living with HIV in the UK (for more information please visit this page [www.sophiaforum.net](http://www.sophiaforum.net)), and the legal duties of Local Authorities in relation to Travellers, particularly those within travelling communities caring for a disabled child or family member.

Sir Mark Hedley, a retired High Court judge and one of the panel of experts chaired by Professor Mona Siddiqui undertaking an Independent Review into the Application of Sharia Law in England and Wales, gave a most interesting presentation in advance of the Review's report, which is due to be published very soon.

Michelle Brewer, a prominent asylum and immigration law barrister, spoke movingly of the difficulties facing pregnant women in immigration detention. She pointed out that, despite the fact that many of these women have high risk pregnancies, they are often denied the routine anti-natal care they would have received automatically in the community. They may be subjected to medical examinations, and even required to give birth, in the presence of security personnel. These are issues which judges need to be aware of when making decisions that will affect these women's lives.

## Conferences

Attendance at a UKAWJ conference is always an interesting experience, with opportunities to network and a packed agenda of stimulating speakers. However, the UKAWJ offers many other opportunities to get involved. Some events involve sharing our experiences to encourage and inspire others, as was the case with the very successful 'Meet the Judges' event held in Birmingham in May 2017.

Around 80 students and members of staff from Birmingham University and the College of Law attended, and heard directly from judges representing every level of the judiciary, including Baroness Hale, Lady Asplin and Lady Carr, about the path that had led them to a judicial role. The event concluded with a lively Q & A session, before the UKAWJ party headed off to relax in a nearby restaurant.

UKAWJ members also have the opportunity to attend the IAWJ conferences, which occur every two years. In 2016 the IAWJ conference took place in Washington, DC, with over 900 members from 82 countries attending. Justice Ruth Bader Ginsburg spoke of the 'bright side' of life in America, with the increase in number of women law students, teaching staff and Federal Judges, but balanced this against the 'bleak side', referring to the numbers of women still enduring poverty, gender disparity in earnings, and the fact that the problems of sexual harassment at work and domestic violence continue to persist on a widespread basis. However, she was quick to acknowledge that many nations face far greater problems due to the denial of basic human rights to women and girls.

Previous IAWJ conferences have taken place in such diverse locations as Arusha, London, Seoul, Panama City and Sydney. Friendships are built up over the years and ideas exchanged between delegates from very different cultures and backgrounds.

The next biennial conference, entitled 'Building Bridges Between Women Judges of the World' will be held in Buenos Aires from 2nd to 6th May 2018. It will focus on how delegates can contribute to improving justice systems to make them more effective, efficient and independent. However, in addition to the programme of speakers and presentations, there will be time to relax and enjoy the delights of Buenos Aires.

Known as the 'Paris of Latin America' Buenos Aires is a cosmopolitan city, rich in history, culture, architecture and music, and those attending will have plenty of opportunity to enjoy social and sightseeing events as well as the educational programme. There will even be (optional!) free tango lessons! If interested, please check the [IAWJ website](#) for more details.

Through the auspices of the UKAWJ, members have the chance to forge links with judges and judicial trainers in many parts of the world. In March 2016, committee member HHJ Rachel Karp was the UKAWJ member of the UK Supreme Court Delegation visit to Myanmar. They had access at the highest levels, including a meeting with Daw Aung San Sui Kyi.

The UKAWJ focus was on gender issues, in particular attempting to encourage the then new power sharing government of Daw Aung San Sui Kyi to enact domestic violence legislation complying with international standards. This proposed legislation was to have been the first such legislation to be enacted in Myanmar.

The UKAWJ offered to assist with devising judicial training on the new law, mentor women judges and assist them in forming their own association. Subsequently, the UKAWJ funded and hosted two Myanmar women judges to attend the IAWJ Conference in Washington in May 2016.

Sadly, significant delays in implementing the Protection of Violence Against Women Law, as well as the deteriorating political situation in Myanmar, has had major implications for this initiative.

In May 2017, HHJ Sue Williscroft joined Justice Ann Walsh Bradley from the Supreme Court of Wisconsin to meet judges and take part in a discussion about the future of legal training in Lahore, Pakistan. Next time you are feeling under pressure, spare a thought for judges in Lahore who work six days a week and routinely have up to 100 cases on their lists! Support has been offered for judges in Kyrgyzstan, who have recently formed their own Association of Women Judges.

A regional event held recently in Budapest focused on the theme of 'Gender Issues in Migration'. It offered a unique opportunity not just to hear from a fine array of excellent speakers, but also to gain insight into the views and attitudes of the Hungarian judiciary in the week before the very controversial legislative changes permitting the mandatory detention of all asylum seekers in the country aged 14 and over came into effect. Developments such as this in Hungary, and proposed legislative changes in Poland, which many fear could erode the judiciary's independence in that country, serve to emphasise the importance of building links and working together with judicial colleagues struggling to support the rule of law and the independence of the judiciary.

## Membership

The UKAWJ currently has a membership of around 175, but that number is growing and those within the association are keen to encourage judges from across the judicial spectrum to join. Tribunal judges are currently under-represented, and it is hoped that situation will change as awareness grows of what the UKAWJ stands for and the opportunities it offers in terms of establishing links with judges from around the world.

*Next time you are feeling under pressure, spare a thought for judges in Lahore who work six days a week and routinely have up to 100 cases on their lists!*

Topics for events are always chosen with the diversity of the judiciary in mind, and programmes aim to be of interest to those sitting in a wide range of jurisdictions. A better understanding of the challenges facing a woman released from prison or living with a diagnosis of HIV, or being pregnant during immigration detention, is as relevant to a tribunal judge as it is to a judge within the court system.

Issues that arise in England or Wales are often equally relevant to judges sitting in Scotland or Northern Ireland. Awareness of issues arising in one jurisdiction can inform and enlighten those sitting in another. As the judicial system evolves to encourage greater movement and interaction between those sitting in the traditional court system and those sitting in tribunals, there has never been a better time to establish links that cross jurisdictional boundaries. Experience and problems can be shared and good practices developed and enhanced.

There may have been a perception in the early days that the UKAWJ was little more than a self-promotional group, focused primarily on increasing the number of women judges and achieving more family friendly terms and conditions for women in the judiciary. Certainly it has campaigned on such issues, with some success, but that perception, if it ever existed, was undoubtedly wrong. The UKAWJ is about much more than that: it provides a route whereby important, and often difficult, issues affecting women can be raised and addressed within and by the judiciary. It promotes increasing access to justice, and works towards removing obstacles to justice. Fundamental to its ethos are the concepts of improving equality for all and protecting human rights, not just in the UK but worldwide.

I started by quoting the words of Justice Ruth Bader Ginsburg and will conclude with the words of her distinguished colleague, Associate Justice Sonia Sotomayer: "Lawyers have a professional and moral duty to represent the under-represented in our society, to ensure that justice exists for all..."

The UKAWJ is striving to put that noble aim into practice.

*(Details of how to join can be found on the [UKAWJ website](#).)*

*Full membership of the Association is open to any person who holds, or has retired from, a judicial appointment (including tribunals), whether salaried or fee-paid. The Association welcomes applications from men and women alike. Full members can take advantage of reduced rates for conferences and social events, and in addition, membership confers automatic membership of the IAWJ.*

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Isabel Montgomery is a District Tribunal Judge (Social Entitlement Chamber)

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## Delegation: that's what you need?

### PILOTS IN TRIBUNALS

By Meleri Tudur



Delegation of judicial functions has been an issue in tribunals for some time and with ongoing development of case officer roles, is a current 'hot topic' in courts. Although the concept is far from new, with registrar roles well established in several jurisdictions, there are competing views about it, with concerns voiced about the perceived blurring of boundaries between the judiciary and the administration. Despite these concerns, the new role of Tribunals Case Worker (TCW) continues to spread across Tribunals Chambers, and even pre-introduction sceptics are now extolling their virtues.

### Background

Following the implementation of the Tribunals Courts and Enforcement Act 2007 and the various Tribunals Procedure Rules, many tribunals were for the first time empowered to deal with requests and applications on an interlocutory basis by judge alone.

Taking the First-tier Tribunal Special Educational Needs and Disability (SEND) as an example, the old tribunal regulations were drafted so as to impose strict procedural requirements on the parties, provided very little discretion to the tribunal chairs and no powers for them to act alone to consider interlocutory applications.

All such applications were dealt with by a full panel of three judicial office holders at weekly preliminary hearings, with formal decisions issued in respect of them. Following the implementation of the new procedure rules however, the volume of interlocutory applications became a major issue for SEND, highlighting the need for substantial judicial resources to deal with them.

In 2011, both the Health, Education and Social Care Chamber (HESC) and the Social Entitlement Chamber (SEC) engaged with a new initiative, piloting the use of legal advisers from the magistrates' courts as tribunals' registrars using delegated judicial powers to process interlocutory work.



In HESC and the SEND jurisdiction specifically, two legal advisers were selected for the first pilot. Both were qualified lawyers with significant experience and had worked in the various aspects of magistrates' work over many years. They had experience not only in criminal cases, but also youth and family matters, which was considered to be of greater relevance given the nature of the Tribunal's work, dealing exclusively with issues relating to children with special educational needs and disability.

### The pilot

The HESC Delegation of Powers Order was signed on the 22 June 2011. For the first two weeks of the pilot, the registrars worked under close supervision, side by side with an experienced tribunal judge, who had sight of every draft order and direction before it was issued. Every order contained a standard clause informing the parties that they may apply for the order to be reviewed by a Tribunal Judge within 14 days of the date of the order.

Thereafter, the supervision was relaxed and although a tribunal judge was present in the office for most days, the orders were issued without further scrutiny. Both registrars had open contact with the judicial lead and permission to contact her by phone or email at any time about issues of concern.

The pilot was structured so that one registrar was in the office every day, providing administrative staff with access to legally qualified personnel throughout office hours. A rota was set up where the registrars work in the jurisdiction on a one week on, one week off basis agreed following consultation with the registrars about their preferred method of working. Their view was that it would enable them to build on the skills learnt in training and retain those skills over time, without losing touch with their 'home' jurisdictions.

In view of their considerable legal experience and training, the registrars considered every request received and the decision as to which they could process and which required a referral to a Tribunal Judge was theirs. The only interlocutory orders that registrars are not authorised to make are final orders bringing proceedings to an end. Registrars do not consider post-decision applications for costs or permissions to appeal.

### Training and supervision

The basic induction training for the role of a legally qualified registrar, constituted of the following:

1. A full day's training alongside fee paid tribunal judges who were being cross-ticketed into the jurisdiction. The training programme included a session on the Tribunal Procedure Rules, the scope of the jurisdiction and appeal procedures and legal issues arising as well as interlocutory applications.
2. Two days of 1:2 training prepared and delivered by a judge dealing specifically with boxwork issues and approaches, working through guidance notes and template orders, followed by work on specific examples within live files with an experienced tribunal judge.

For legally qualified registrars, a two-day course delivered by a judge in the context of a small group of up to 12 delegates could cover the black letter law, basic principles and worked examples showing the application of delegated powers. The skills taught could then be practiced on the job, with short intense input by a tribunal judge, working on live files, using prepared template orders, guidance and working examples to provide practice in the application of skills.

For second and further tranches of appointments, every registrar was allocated a peer mentor, and the initial induction training is delivered by a judge over two days. They then work alongside the judge for the first week. They are then rostered to work at the same time as their peer mentor for the first month, and thereafter enjoyed the same monthly meetings and open communication channels with the supervising judge.

Once their induction training is complete, registrars are invited to attend the same training days as every other judicial office holder within the jurisdiction and participate alongside the judiciary on training days. Once a year, specific registrar training is delivered by the jurisdictional lead judge, to visit any particular areas of difficulty and issues.

One of the concerns prior to the implementation of the Registrars' Pilot was the level of input and intensity of support required by the judiciary to ensure consistent decision making and high quality drafting of orders by legally qualified case officers. Physically moving away but retaining open lines of communication was necessary because SEND judges work in a national jurisdiction and are not allocated to hearing centres. As a result, once the initial intense training and the development of a working relationship is completed, the supervising judge meets with registrars as a group, initially once a month, then moving to quarterly, whilst retaining open channels of communication by email/ phone. Most enquiries or problems are referred by email and can be answered usually, within a day.

*...it would enable them to build on the skills learnt in training and retain those skills over time, without losing touch with their 'home' jurisdictions.*

## Progress

The number of requests processed by registrars increased dramatically over time as they became established in the role and from the data gathered, within three months of taking up the position, the registrars were at least as productive on average as an experienced tribunal judge in processing requests and continued to increase their output.

During the pilot, three very positive outcomes were noted:

1. The registrars were confident in dealing with a broader spread of requests than had been anticipated, with the number of requests referred to a judge significantly lower than expected.
2. The amount of work that the registrars processed led to a significant reduction in judicial input to cover box work from four days a week to three days a fortnight.
3. The number of orders being referred back by the parties for review by a Tribunal Judge was very low and much lower, even, than when the work was being undertaken by Tribunal Judges.

After the initial success of the project, registrars received training in other HESC jurisdictions. In Care Standards and Primary Health Lists jurisdictions, every case is the subject of a telephone case management conference to set a timetable for progressing the case to hearing. Parties are required to send in advance a draft set of proposed directions for discussion during the conference.

The senior registrars have been trained in such telephone hearings and this is an area of work which is well within their capabilities. As their experience of SEND work increased, so has their remit and registrars now consider applications for submission of late appeals and whether time for making the appeal should be extended.

Any applications which they consider fulfil the criteria are registered and any which they consider do not are referred to a Tribunal Judge who will consider the request themselves and decide whether to refuse the appeal or register.

The success of the first pilot in HESC led to the making of a business case to expand the number of registrars in the pool and the resource available. The second stage of development was the use of registrars as case progression officers, making telephone contact with parties before the final hearing to identify the possibility or probability of the case being settled and the likelihood of the hearing being ready to proceed on the allocated date.

Although this process started as long ago as 2013, the calls have not been consistently used because of a significant rise in the Tribunal's workload leading to a reallocation of resources to cover interlocutory requests. Proactive case management by registrars remains an ambition, but with implementation of legislative changes and increasing appeal volumes resources are currently used to their maximum keeping up with the current workload.

Digitisation of files means that the registrars can now work remotely as well as within the office and an electronic system of shared email boxes enable the registrars to flag more complex requests and applications for the salaried judges' attention or refer them for telephone case management. Telephone hearings are currently conducted by salaried judges, but these too are regarded as potentially within the capacity of experienced registrars following additional training.

## Tribunals Case Worker Project

With the advent of HMCTS Reform, there was an opportunity to extend the use of delegated powers across all tribunals and to deliver much needed judicial support to release the judiciary to undertake more complex interlocutory work and hearings.

The Tribunals Case Worker (TCW) Project was a very fast moving and ambitious project to realise the opportunities offered by the delegated powers schemes.

Set up in 2014, by 2015 the first TCWs were in post and the success of the project has led to their being deployed across several Tribunals Chambers. Initially proposed for Tax, SEC and the Immigration and Asylum Chamber, TCWs were also deployed to the Mental Health jurisdiction in HESC. There is also interest displayed in other jurisdictions, as the benefits of the support offered to the judiciary are realised.

The difference between TCWs and registrars is that TCWs are administrative officers who are not legally qualified. They may possess a law degree or equivalent technical experience in courts and tribunals but they are not required to be legally qualified. Their role is different to that of registrars, and each Chamber defines the work to be carried out by the TCW within their jurisdictions.

*...once the initial intense training and the development of a working relationship is completed, the supervising judge meets with registrars as a group, initially once a month...*

Both roles can exist side by side and complement each other. Once experienced in the Tribunal's work, a registrar can mentor a TCW, who has no legal qualification but who would be competent to tackle the most straightforward tasks.

For Tribunals Case Workers (TCWs), the induction training pack was devised as part of the HMCTS Reform Project as a generic training pack designed through collaboration between the Training Design Team and judiciary. Given the cross-jurisdictional nature of the appointments, whilst the pack provided the general framework, there was a requirement for each Chamber to devise its own jurisdiction-specific module for delivery as part of the training package.

Training for case officers will be considered by a working group and it would seem appropriate that there will be a future role for the Judicial College in the context of the exercise of delegated judicial functions.

The approach in HESC, accepted by the TCW project, is that training should be devised and at least be in part delivered, by members of the judiciary with an extensive knowledge of the jurisdiction and the interlocutory or other work in respect of which the powers are to be delegated. Judicial mentors should attend training to build a working relationship with the case officers and to begin the process of developing the open lines of communication which will be required.

Identification of the training need within the jurisdiction, can only be done once the work for delegation has been identified and the individuals selected have had their needs assessed. The preparation of tailored training packages can be achieved within the broader training needs for every individual appointed.

The variety of delegations across tribunals is interesting: in some, the TCW undertakes day to day interlocutory applications, in others consider late appeals and prepare case summaries for judges. It is the considerable flexibility which makes TCWs such a useful resource to the judiciary.

Future potential is also an area of interest. Whilst the different levels of work and responsibility delegated means that there is an inherent career structure, the expectation is that over time, additional qualifications and courses will become available to support the aspirations of those who would like a career in the decision-making field.

There is currently a review of TCWs going on across the Tribunals and Lorraine Fensome has been tasked with undertaking the information gathering for the review. There will at some point in the future be a formal post project implementation review but in the meantime it has been agreed that it is now an opportune time to take stock of what work is being undertaken, how the training has gone and to understand the reasons for any variations in practice across the jurisdictions. This is a continuously developing area of work with significant potential and the outcome of the review is awaited with anticipation.

Meleri Tudur is the Deputy Chamber President of the  
First-tier Tribunal (Health, Education and Social Care)

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## Biases in decision making

### ANTI-BIAS STRATEGIES

By Tom Stafford



There are two kinds of bias typically studied by psychologists, both of which a judge will wish to avoid.

The first are the 'social biases', where we automatically form impressions of people, or leap to conclusions, based on the social group that they are a member of. Examples of social bias would be if we instantly warm to someone who speaks with the same accent as us, or if we assume someone from a different ethnic group is unlikely to be telling the truth.

The second kind of biases are 'cognitive biases', which are systematic tendencies in our thought processes that can lead us into error. The most famous is confirmation bias, whereby we seek information which can confirm our beliefs, inadequately testing beliefs by seeking out potentially contradictory information. Another cognitive bias is the 'anchoring effect', whereby, when making judgements about numerical quantities, we are overly influenced by the first number given to us (the anchor). So people who are first asked if Attila the Hun invaded Europe before or after 500 AD will give an earlier estimate when then asked for the exact year than people who are first asked if Attila the Hun invaded Europe before or after 1200 AD. The year in the initial before/after question anchors their subsequent estimate, distorting it in a similar way that shopkeepers hope that a price of £8.99 will make you think about an item as costing about eight pounds rather than the more accurate nine pounds.

## Judicial bias?

Half a century of work by experimental psychologists has revealed two things about biases: We are all vulnerable to them, and they are difficult to account for, even if you know about them. Even for judges? Yes, even for judges.

One study found that 97% of US judges believe they are above the average in their ability to 'avoid racial prejudice in decision making', a statistically unlikely state of affairs which probably reflects judges overestimating their abilities with respect to those of their peers. Another study of white American judges found that they displayed the same automatic, 'implicit', negative associations with race as found in the general population.<sup>1</sup>

Finally, a study which asked judges to review genuine trial materials found that the sentences recommended were influenced by irrelevant suggestions – either when introduced by the suggestion of a prosecutor or by a probation officer. These irrelevant suggestions became 'anchors', demonstrating that judges – and judicial decisions – are prone to the anchoring effect, just like the rest of us.

Although there are few quick fixes for bias, there are diverse strategies which individuals and organisations can adopt which work against both cognitive and social biases. Many of these will already be recognised by working judges, or explicitly incorporated in legal procedures.

The requirement for written justification, reliance on objectively verifiable evidence, and even the adversarial system of prosecution and defence all play a role in preventing any individual from allowing their biases to run away with themselves.

*Although there are few quick fixes for bias, there are diverse strategies which individuals and organisations can adopt...*

## Anti-bias strategies

Our work has focused on providing a framework to assist judges in thinking about their current anti-bias strategies, and about future bias strategies which they could adopt.

Our framework asks you to consider two dimensions on which any anti-bias strategies can be categorised. The first dimension is the locus of effect; we can divide anti-bias strategies by what their primary target is:

**Personal strategies** – which aim to change an individual's thoughts or behaviour  
**Interpersonal strategies** – which target interactions between two or more people  
**Institutional strategies** – which target the norms and regulations of the whole institution

We are often focused on the personal level – what can I do about bias, how can I avoid bias – but we should not forget that our work involves others, who will also have their own biases, and we can play an important role in addressing their biases, just as they can play a role in addressing ours (by holding us to account or asking for justification for potentially biased decisions).

Importantly, for anti-bias strategies to take hold they need to be moved beyond the level of individuals, so they are sustained by institutional support, not just individual effort (although of course the requirement for individual effort doesn't go away). Research shows that individuals often lack the perspective or resources to combat bias on their own, whilst successful and sustained change in outcomes requires institutional change.

The second dimension of our framework is the effect a strategy has on the bias.

**Mitigation strategies** – work against bias (but leave the bias intact)  
**Insulation strategies** – remove the trigger for a bias, preventing it from occurring  
**Removal strategies** – diminish the bias directly

Ridding ourselves of bias may be the best longer-term goal, but is likely to be slow and difficult. There is evidence that social biases born of ignorance, those which result in workplace discrimination on the grounds of sexuality, disability, or ethnicity, can be diminished in time by increasing workplace diversity.

Insulation strategies can be highly effective – for example university exam scripts are marked anonymously, so any prejudices towards students of different social groups are simply not triggered in those grading the scripts. Hiring panels are forbidden from asking certain questions (such as whether a job candidate hopes to get pregnant) and we can think of this as an insulation strategy. Insulation strategies have the drawback of not always being possible (for example you can't hide candidate gender during job interviews), and of leaving any potential bias unquestioned. They are important, but – like the other strategies – insufficient on their own.

<sup>1</sup> Rachlinski, J. J., Johnson, S. L., Wistrich, A. J., & Guthrie, C. (2009). Does Unconscious Racial Bias Affect Trial Judges. *Notre Dame Law Review*, 84, 1195–1246.



Mitigations strategies are perhaps the least likely to be effective, but easiest to immediately apply. This category includes everything from trying to avoid risk factors for bad decisions (like fatigue, hunger or being rushed) to systematic recording of decision outcomes so that any potential bias can be identified.

This gives us a 3 by 3 grid, which we can use to think about how we approach bias. What strategies do we already deploy, and where do they fit within the framework? Are there parts of the space which are under-populated, and could we think about adopting additional strategies there?

**A 3x3 model**

	Mitigate	Insulate	Remove
Personal	Avoid risk factors (hunger, fatigue), articulate reasoning, 'imagine the opposite'	Remove information that activates bias	Cognitive training (e.g. relearning associations)
Interpersonal	Identifying others' biases is easier; challenging conversations	Subdivide tasks to ensure independence of procedures; reveal identifying information last	Exposure to diversity ("Contact hypothesis")
Institutional	Tracking outcomes; predeclared criteria; recording process of decisions; norms of fairness	Procedures that remove bias activating information;	Avoiding biased outcomes (e.g. quotas / shortlisting requirements)

Shown here is the 3 by 3 grid populated with some examples of each type of strategy. It is neither incontestable nor exhaustive, but is intended to provide illustration of some of the strategies which are, or could, be adopted.

In conclusion, working against bias in our decisions is like healthy eating. You would not eat an apple and claim you had a healthy diet. Similarly, you cannot go on a bias awareness course and claim you now make unbiased decisions. Guarding against bias requires good habits, and good procedures. Effective anti-bias strategies need to be adopted for the long term by individuals, but also by the institutions within which we work.

Psychologists have been industrious in cataloguing the biases that can plague decision-making. The portrait of human rationality that has resulted is an overly pessimistic one. We can, and do, take effective action to reduce our biases.

For references to the studies mentioned in this piece and more information please see [this website](#).

Tom Stafford is a Senior Lecturer in Psychology and Cognitive Science at the University of Sheffield

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## External links

### RECENT PUBLICATIONS

By Adrian Stokes



This section lists recent publications of interest to readers of the Tribunals journal with a very short description of each (where this is not obvious from the title) and a link to the actual document.

It is not intended to be a comprehensive list but is intended to bring to the attention of readers some publications of interest but which they might have missed. It also gives a number of useful links.

[Live testing starts for the Social Security and Child Support 'Track Your Appeal' service](#)

This is an announcement about progress of the 'Track Your Appeal' service, part of work to create a digital service for Tribunal users. (17 July 2017).

[Senior President of Tribunals – Annual Report 2017](#)

Sir Ernest Ryder's second report. (28 July 2017)

## Publications (continued)

### [Benchmark – July 2017](#)

The July edition of Benchmark.

### [Benchmark – October 2017](#)

The latest version of Benchmark.

### [HMCTS Annual Report and Accounts 2016-17 \(19 July 2017\)](#)

## Delegation of Functions to Tribunal Caseworkers First Tier Tribunal

There have been a number of announcements extending the above delegation schemes. The following are links to the announcements for various Tribunals:

### [Social Entitlement Chamber](#)

### [Immigration and Asylum Chamber](#)

### [Tax Chamber](#)

## Useful Links

### [International Organization for Judicial Training](#)

This is an organisation consisting of 123 members (August 2015), all organisations concerned with judicial training from 75 countries. The Judicial College is a member.

### [The Advocate's Gateway](#)

Provides 'free access to practical, evidence-based guidance on vulnerable witnesses and defendants'.

### [Unconscious bias](#)

Website regarding unconscious bias including various tests.

### [Tribunal Decisions](#)

### [Rightsnet](#)

### [Child Poverty Action Group](#)

Adrian Stokes is a Disability Qualified Member in the First-tier Tribunal (Social Entitlement)

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# A new legal year

## SPT UPDATE

By Ernest Ryder



When I published my Annual Report back in July, I predicted that the coming year would bring its challenges, but should also yield its rewards.

After a summer in which I hope you will all have taken some time out, the new Legal Year is now in its stride. We have already had some notable success to celebrate.

First, I was delighted to sit on the Bench as two outstanding members of the tribunals judiciary were sworn-in to their new office as Justices of the High Court of England and Wales. Congratulations to the deservedly elevated Mr. Justice (Peter) Lane and Mrs. Justice Gwynneth Knowles.

Second, I was very proud to be with the tribunals judiciary at the opening of the legal year in Westminster Abbey where (as well as at various regional events) we processed in our ceremonial robes of office for the first time.

Those of you who have heard me speak before – and I hope that is now the majority of you – will have noted my focus on *One System, One Judiciary and Quality Assured Outcomes*.

That central theme, around increasingly integrating the judiciary across courts and tribunals, involves opening up genuine career development opportunities and a wider cultural acceptance of the status and standing of all parts of the judiciary. In that context, both of the above successes are important steps in the right direction, which must be to have a judiciary that is valued, innovative and specialist.

So, as the legal year marches on, where next?

The future will involve a strong emphasis on the added value that our specialist and innovative system of justice brings to the rule of law and in particular access to justice. There will be a renewed emphasis on the skills and abilities necessary for leadership at all levels with training and development to match.

There will be a focus on cross assignment and deployment opportunities to build on the experience of the employment judges in the county court and the civil justice project involving the judges of the property tribunal. In discussion with the President of the Family Division we intend to develop new collaborative and cooperative endeavours to investigate how courts and tribunals can make decisions about the same vulnerable people in their respective jurisdictions in collaboration with each other.

I intend to pursue the general recruitment policy used for the salaried First-tier judiciary where initial indications are of an outstanding quality and a broad and diverse talent pool justifying the decision to undertake a generic recruitment exercise.

*The future will involve a strong emphasis on the added value that our specialist and innovative system of justice brings to the rule of law...*

A great deal of my time and that of a dedicated group of our reform judges has been spent on the Reform Programme. The glamourousness of governance is probably inversely proportional to its importance! Taking time to work with the new Lord Chief Justice of England and Wales, his new Senior Presiding Judge and her new deputy, has been critical. The Lord Chief and I have agreed a new reform framework and have created a Judicial Reform Board which will bring together the courts and tribunals jurisdictions and projects. The new framework will focus on coordination and engagement with the judiciary, listening more carefully to what judges have to say about the ways in which they work and how we can improve the quality of justice. The new board will have a cross-jurisdictional steering group drawn from the Judicial Engagement Group chairs and will report to Tribunals Judicial Executive Board and Judicial Executive Board. I will write again with more detail and information in due course.

Our judges working in the reform programme have helped to develop an impressive array of software products and processes which are being trialled across different tribunals. At the same time, we are actively engaged in discussions with colleagues in Scotland to ensure that our different reform projects are capable of compatible working both before and after devolution. I will be putting together a special bulletin which brings together the 'Tribunals Laboratory' so that everyone can see what is being developed.

We are developing a tribunals estate strategy which aims to identify where all of our tribunals will sit by 2022. My strong indication is that any proposed move should give rise to better access to justice and/or better quality accommodation. This year's maintenance budget of almost £60m will be used in its entirety and there is a small revenue supplement of £5m to help with those projects that always get forgotten but which are important to the quality of life of judges and users alike.

Our performance this last year has been the best in a decade despite the challenges of widely fluctuating workloads. I am very grateful to you all for your part in that success. I am sure that with your help we will build on that success during this legal year.

Sir Ernest Ryder is the Senior President of Tribunals

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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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