

THERE'S A PLACE FOR US, SOMEWHERE . . .



When preparing a hearing room that takes into account the needs of the parties, there are many factors to consider. *Andrew Bano* examines the implications of several of them.

THE IMPORTANCE of suitable hearing rooms and a satisfactory environment for tribunal users has long been recognised. In its first annual report in 1959, the Council on Tribunals stated that when visiting tribunals they had ‘. . . paid particular attention to the suitability of the accommodation provided from the point of view both of the work of the tribunals themselves and of the convenience of those appearing or waiting to appear before them’. Subsequent inspection visits by members of the Council and of its successor the Administrative Justice and Tribunals Council – now alas no more – paid close attention to the standard of tribunal accommodation, often stressing the need for good disabled access and the undesirability of tribunals and criminal courts using shared facilities.

Design specification

The Standards and Design Guide for new tribunal accommodation issued in January 2010 drew a distinction between formal and informal hearing rooms. For formal rooms, the guide identified the need for a small dais in order to give the judiciary a clear view of the parties, including those not giving evidence, but stated that there would usually be enough space to rearrange a table in front of the dais to allow formal rooms to be used for informal hearings. The design specification for informal tribunal rooms called for an ‘an informal business-like meeting room with a simple layout without distractions’, with a large central oval table for the tribunal panel and the parties to sit opposite each other.

The creation of HMCTS as a single body to administer both courts and tribunals and a need to rationalise the courts and tribunals estate has meant that, increasingly, tribunals find themselves

sitting in accommodation which falls short of previous design standards. Faced with that situation, tribunal members may have to meet the challenge of doing whatever they can do to make up for the defects in the accommodation.

Legal requirements

The first step is to ensure that the hearing complies with any legal requirements. Most tribunals are required to hold hearings in public. An example of the strictness with which such a requirement may be interpreted is *Storer v British Gas PLC* [2000] 1 WLR 1237, an employment tribunal case in which a hearing took place in a part of the tribunal building to which access could be gained only through a door with a number-coded lock. The Court of Appeal set aside the tribunal’s decision on the ground that there had been a breach of the requirement for a public hearing in rule 8(2) of the Industrial Tribunals (Constitution and Rules of Procedure) Regulations 1993. If a hearing has been arranged in a part of a court or tribunal building which is normally private, such as a judge’s room, it may therefore be necessary to consider whether the conditions needed for a ‘public’ hearing have been satisfied. Pressure on tribunal accommodation or the absence of a tribunal venue at a particular location may occasionally lead to a hearing being arranged at a location such as a hotel, and on such occasions it may again be necessary to ensure that there is public access to the part of the building in which the hearing is to take place.

The ‘enabling’ role of tribunals envisaged by Leggat can be thought of as encouraging tribunals to consciously identify anything which prevents users from playing a full and effective

part in tribunal proceedings, and that approach is likely to be particularly relevant in overcoming difficulties resulting from tribunal hearings in accommodation not intended for that purpose. Tribunal members will need to consider, in particular, whether the accommodation creates difficulties for users with disabilities, whether the layout of the room makes it more difficult for the parties to communicate with their representatives, and whether the greater formality of rooms such as courtrooms is likely to increase a party's anxiety to the extent that it is more difficult for them to present their case.

The Standards and Design Guide envisaged that the furnishing of tribunal rooms would be flexible, so that the furniture in a formal tribunal room could be rearranged to make it suitable for less formal hearings. A tribunal that normally sits in an informal room which finds itself sitting in a formally furnished room – such as the type normally used by employment tribunals – will not usually be able to insist on the tribunal panel and the parties sitting together at one table, but it may be possible to create a more informal sitting by arranging for the tribunal members to sit at a table in front of the dais, as envisaged by the design guide.

Courtroom sittings

A similar approach can be taken when a tribunal finds itself sitting in a courtroom. The obvious first step in such cases will be for the tribunal to sit if possible at the clerk's table in the well of the court, rather than on the judge's bench. The parties should be asked to sit next to their representatives, rather than behind them, and as close as possible to the front of the court. Parties with impaired hearing may well encounter greater difficulties in a courtroom than in a tribunal room, and if a hearing loop is not being used it may be necessary to check that hearing-impaired parties are able to follow the proceedings.

Tribunal hearings in accommodation which is not ideal make good 'judgecraft' even more important than usual.

In some cases security may be an issue. When sitting in an unfamiliar venue, tribunal members should familiarise themselves with the emergency evacuation procedures and also ensure that anything which has been done to make a hearing less formal does not affect the tribunal's ability to summon assistance if it is needed. It is also important to ensure that means of escape from the tribunal room have not been compromised – even in a normal setting it is a good idea to check that doors which are intended to allow tribunal members to leave the tribunal room quickly in an emergency have not been locked.

The anxiety experienced by tribunal users, even in normal circumstances, is often not fully appreciated and that anxiety is likely to be greatly increased by a tribunal hearing in a court environment, particularly if it is a criminal court. In those circumstances, it is obviously sensible to spend perhaps a little more time than usual explaining the nature of proceedings before a tribunal and

trying to counter any feeling that the tribunal user may have that he or she is on trial.

Tribunal hearings in accommodation which is not ideal make good 'judgecraft' even more important than usual. A tribunal member who demonstrates a clear understanding of what the case is about and what Leggatt called the 'point of view', as well as the 'case' of the citizen will do much to allay the fears of an anxious tribunal user. Clear, open and sensitive questioning will reassure the user of the professionalism and skill of the tribunal member and go a long way to allaying the anxieties of a tribunal user in a challenging environment.

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