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| SENIOR PRESIDENT |
| OF TRIBUNALS |

Senior President of Tribunals' Annual Report



February 2016

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Introduction

By the Senior President of Tribunals, Sir Ernest Ryder

The administrative justice and tribunals system has undergone a remarkable transformation in recent years. Sir Andrew Leggatt published *Tribunals for Users: One System, One Service* back in 2001; and the Tribunals Courts & Enforcement Act that it inspired received Royal Assent in 2007. Less than a decade on, the tribunals landscape looks dramatically different – and much the better for it.



Some things have not changed, however, nor should they. Tribunals are and will continue to be an essential component of the rule of law. Perhaps with the notable exception of our party/private law work in employment and property, the service we provide enables citizens to hold the State to account for the daily decisions taken across a broad and diverse terrain – decisions which have a significant impact on people's lives. Ultimately, we are here to safeguard justice: justice for all citizens, whether parties to proceedings or the public generally.

As a relatively new Senior President, I am privileged to have inherited a system that has a proud hallmark. We are specialist decision-makers, using innovative and informal techniques, to provide effective and accessible justice for our users. As this report demonstrates, although we are far from complacent, other parts of the justice system will be able to learn from us when developing proposals for reform. That is a theme to which I will return.

I have gained much in my first five months in this role, from conversations with tribunal judges, members and users across the United Kingdom. One of the commitments I have made to them is that I will be a listening Senior President. I will talk to them – and take on board what I hear – across a very broad agenda. I will also travel to and sit in our jurisdictions across the UK.

A case for change

I have been appointed as Senior President at a time when the case for reform of the courts and tribunals is compelling. The case is recognised and accepted by the Government. The £700m funding secured in the Chancellor of the Exchequer's Autumn Statement to reform courts and tribunals is a significant vote of confidence, and particularly pleasing given the wider financial constraints across the public sector. We must make the most of this opportunity: helping those who

work inside the justice system to deliver what is best for our users. We need not and should not interfere with this hallmark. At the same time the necessary ingredients are in place to help our judges to adopt and facilitate a more inquisitorial and problem solving approach:

- by making the most out of new, flexible and broad powers to allocate the right type of work to the right type of decision makers; and
- by using the modernisation funding to improve and modernise the supporting infrastructure – including IT and buildings – so that users have access to our specialist judicial expertise at their convenience, using tools and technology they routinely employ in other parts of their lives.

If we get this right, tribunals will be able to identify and solve problems more quickly and easily, and be able to arrive at the nub of a case, resolving wrong decisions and weeding out the hopeless cause. That service will be delivered through modernised hearing rooms; in community buildings in remote locations; by video link on laptops, tablets and phones; or iteratively online with parties and decision makers increasingly being able to avoid a traditional face-to-face hearing.

Our vision is of:

- *one system* – supporting the needs of all our diverse users, without consigning any to a second class service;
- *one judiciary* – with specialist expertise, deployable across courts and tribunals flexibly and responsively as caseloads require – supporting service delivery as well as career progression; and
- *quality assured outcomes* – facilitated through innovative problem solving and inquisitorial dispute resolution, supported by modern infrastructure, and backed by performance monitoring and appraisal.

In the following sections of this report, I outline some of my thinking, and some of the progress we are making in key areas. Consistent with my predecessors' reports, I also annex to my report contributions from my Chamber and Tribunal Presidents, and other key leadership judges, setting out the positive progress we continue to make.

Before turning to the main substance of this report, I would like to pay tribute and say thank you to my predecessors in this role. The context in which I have taken over the Senior Presidency is quite different from the one Jeremy Sullivan inherited from Robert Carnwath; and indeed very different from the position Robert took on as the inaugural Senior President. But the system today would not

be where it is without their inspired leadership. Indeed, much of the progress about which we are able to report over this last twelve months will have been achieved under the leadership of Jeremy Sullivan, who retired as Senior President – and from the Bench – in September. Jeremy: the tribunals system wishes you all the very best for a long and happy retirement!

Our 'business as usual' system

Morale

We achieve nothing, as a system, without the expertise, dedication and professionalism of our judiciary. We have around five and a half thousand judicial office holders across the various Chambers and Tribunals under the unified tribunal structure. I have been in post for only a relatively short time but I am proud to preside over a system with so much quality, commitment, and drive.

The context is of course a challenging one. Tribunals reform has been a constant for over a decade. The new Courts and Tribunals reform programme will inevitably generate uncertainty and in addition we must provide for devolution of tribunals in Scotland and a review of working conditions necessary to implement reform. This is against the backdrop of judicial pay restraint, budget cuts and changes to pensions among other things. It is no surprise that judicial morale is an issue, as highlighted in the judicial engagement survey. But the image of low morale has not been my experience from my visits across the country. Rather, the enthusiasm shown for reform, with judges involved in innovation and the development of good practice, as well as for the delivery of justice in the here and now, has been inspiring.

The embedded leadership structure in tribunals has, I believe, helped to support and foster morale; but we must not be complacent. The response rate to the Judicial Attitude Survey at 89% was very high and highlighted some clear issues. There is still much to be done to improve judicial morale and it is important that the voices of all of our colleagues are heard. Judicial associations and the umbrella Forum of Tribunals Organisations are critical to this. I will make it a feature of my Senior Presidency to work collaboratively with the representatives of the judicial councils and associations – and have already gained much from my initial meetings and discussions with them.

Returning to the theme of reform and engagements with judges and members, it has been said before, and I am eager to say it again now: reform will not be “done to” the judiciary. Every aspect of the work now underway will involve judicial participation; much of the programme will require judicial leadership. It is essential to harness judicial expertise and use it. The judiciary must be engaged at every stage, and if the reform of the justice system is to be successful, the vision for the future must be led by the judiciary who are responsible for delivering it.

Devolution

Scotland

I am pleased to say that my first visit as Senior President was to Scotland where I met the Lord President, tribunals leadership judges and judges of each of the UK- or GB-wide jurisdictions sitting in Scotland.

The devolution of reserved tribunals in Scotland from the current UK structure will raise a number of complex and sensitive issues, affecting both judiciary and users. These include safeguards around specialisms, the existing policy on cross-border sittings and deployment, status and career progression for judicial office holders and judicial terms and conditions (including pay and pensions) both in respect of transferees and new appointments. I am grateful to Mr Justice Brian Langstaff who has agreed to lead for the UK reserved tribunal judges and members in the discussions with the UK and Scottish Government that must now follow.

I expect each Government to honour their commitments to engage the judiciary on the detail. A cross-border judicial working group, led jointly by Lady Anne Smith (the President of the Scottish Tribunals) and Mr Justice Brian Langstaff, is beginning to work with officials and Ministers in London and Edinburgh to progress a sensitive range of issues. My Annual Report is published hot on the heels of the public consultation from the Scottish Government on the first draft Order in Council which – if enacted – would sit underneath the present Scotland Bill to define more of the detail behind the devolution proposals as far as they affect the Employment Tribunal (Scotland). I expect to be able to report progress by the time my next Annual Report falls due.

Wales

The issues inherent in Welsh devolution for the administrative justice and tribunals system are at a different stage from those involving Scottish tribunals. Proposals for change are, as yet, less hard-edged.

In March 2014, the Silk Commission recommended that “There should be clarity and coherence in the relationship between Welsh tribunals and those operating on an England and Wales or Great Britain basis, and there should be coordination on such matters as training and on the effect of decisions taken in Westminster on the organisation of devolved tribunals. There should also be consistent appointment, remuneration and disciplinary processes, clearly independent from government: independence of the judiciary is as essential in the tribunals service as in other courts”.

While I am responsible for the reserved, unified, tribunals system, I have no specific role in respect of Welsh devolved tribunals. I will continue to work very closely with the Lord Chief Justice as he focuses with Welsh Ministers on progress in governance, training and pastoral matters. I am also pleased to report the strong links forged between the devolved and reserved Welsh tribunals judiciary,

by Deputy Upper Tribunal Judge Libby Arfon-Jones, who continues to play a leading role (despite having now retired from salaried judicial office). I am extremely grateful to Libby for her work in chairing the Welsh Tribunals Contact Group.

Justice out of London

A feature of the unified tribunals system is its jurisdictional reach across Great Britain, or in some instances the whole of the United Kingdom. Each of the 'volume' jurisdictions (social security, immigration, and employment) extend beyond the traditional boundaries of England & Wales.

Even in England, much of the tribunals business takes place out of London. A number of our Chamber and Tribunal Presidents are based outside London (or spend only short periods in London when business dictates) and many of our HMCTS support services are in back offices, for example, in Loughborough, Leicester, Darlington and Birmingham.

The delivery of tribunals business is very far from London-centric. That was the Leggatt vision: local justice. That is what has been achieved. As technology helps us to change, that vision will only be enhanced and enriched.

I have already travelled extensively to see tribunals venues; and I plan to make further visits a feature of my term in office.

Welfare

I have a statutory responsibility for the welfare of tribunal judicial office holders. It is a responsibility that I and my Chamber and Tribunal Presidents take very seriously.

As the Lord Chief Justice reported in his Annual Report, during the past year, a new policy and procedure was launched to assist judges who are unwell, while safeguarding the interests of their colleagues who have to carry out their duties in their absence. The sick absence rate for the judiciary is very low, but for those who are suffering serious or long term illness an occupational health provider is used to ensure appropriate support is provided. All salaried judges are able to access a 24-hour helpline and seek immediate and further counselling and support.

The health and safety of the judiciary and our users is of paramount importance and appropriate security measures are put in place in all court and tribunal buildings. We are in the process of contributing detailed observations on the design of buildings and hearing rooms for the future, which safeguard all of our users, including the judiciary.

I am grateful to Libby Arfon-Jones, who has continued as the lead judge on welfare matters. Her contribution in this regard (in addition to her work in Wales) continues to be invaluable.

Litigants-in-Person

The needs of “litigant in person” are becoming better understood across the justice system, as the implications of various changes, for example to legal aid, become clearer. Self-representing parties are becoming a commonplace. In tribunals, of course, parties representing themselves have been the norm – or at least nothing out of the ordinary – since our creation. Indeed the relative informality of tribunal proceedings and the more inquisitorial approach taken in most jurisdictions are intended to make them as accessible as possible to users. Legal (or any other) representation is not a necessary part of access to tribunals justice. Consequently, the tribunals judiciary have a great deal of experience in dealing with litigants in person, who for us are our users.

We intend to develop and build on the good practice that individual tribunals already follow, for example in relation to vulnerable and incapacitated users, and to share that good practice with our colleagues in the courts through the Civil and Family Justice Councils.

Many of the innovations we are considering as part of the Reform programme such as online dispute resolution will ultimately benefit those pursuing their claim without legal representation.

Diversity

It continues to be the case that the tribunals present an improving story on diversity. According to the most recent statistics, the number of female judicial office holders in tribunals has increased slightly and now stands at 44%. The number declaring their ethnicity as Black Asian or Minority Ethnic (BAME) has remained at 9.5%. While the percentage of BAME judges under 40 is higher – nearly 15% – which suggests that the overall percentages will increase over time.

We have more work to do. Wider issues about career progression through to the more senior judicial grades (including but not limited to leadership and management roles) must become a more central focus. To encourage diversity and well being, as many judicial posts as can practicably be offered on a part-time basis will continue to be so in the tribunals judiciary. I look forward to picking up on these themes with Judge Alison McKenna who leads the diversity work across tribunals, as well as with Judge Paula Gray who has very ably stood in for Alison while she has been away for part of this year recovering from illness.

Reform

Flexible deployment/assignment

As Senior President I have the power to assign tribunals judiciary between chambers under the Tribunals Courts and Enforcement Act. There is also the additional flexibility to deploy from

tribunals to courts and vice versa.

In the current economic climate, restrictions on recruitment have meant that assignment is increasingly the way in which we meet business needs. Indeed, that makes good sense whatever the economic climate. Combined with fluctuations in workload, this has led to an increase in the use of assignment. A large scale exercise in the First-tier Tribunal Immigration & Asylum Chamber attracted over 300 applicants for 200 posts needed to deal with a backlog of appeals from the Home Office. This was targeted specifically at judiciary in the Social Entitlement Chamber and the Employment Tribunal who were experiencing declines in workload. A more recent exercise in the Health, Education & Social Care Chamber attracted over 200 applicants for 20 posts.

Similar exercises have seen the deployment of tribunals judiciary into the Court of Protection and a pilot exercise to deploy Employment Judges into the county court.

In partnership with HMCTS, we are looking for ways to better forecast fluctuations in workload and pro-actively assign judges to meet business need. In the future we would like to consider offering appointments across the First-tier Tribunal rather than to a specific Chamber. This will allow for even greater flexibility to match judicial resources to fluctuations in workload and better prospects for career development.

Right level of person for each case

Presently, a case in the First-tier Tribunal is likely be heard by a 'Group 7' judge regardless of its complexity. We have the flexibility, however, to allocate cases to any level of judge so that we can better match the judge to the case. An example of this is an appeal in the War Pensions and Armed Forces Compensation Chamber. The appeal focuses on the impact on the claimants of the atomic tests in the 1950s and 60s. This case raises some complex issues and will be heard in the First-tier Tribunal by a High Court Judge. Reform presents an opportunity to review the current framework and to see if it needs to be more flexible to allow different levels of judge to hear cases depending on the complexity and the matters in issue.

The tribunals have pioneered the use of legally qualified Registrars to perform delegated case management for the judiciary and a project is taking forward the introduction of non-legally qualified caseworkers to deal with specified matters under the delegated authority of a judge. The first tranche of caseworkers are due to be appointed in the spring and their use will be monitored with interest.

Appraisal [and 'performance management']

There is a long tradition of appraisal in tribunals. Appraisal schemes are embedded in many places

quite successfully across the First-tier and Employment Tribunal, though not yet in the Upper Tribunal or EAT.

The Tribunals Judicial Executive Board had previously considered whether there could be benefit in finding and disseminating best practice from the various schemes across the Chambers and Tribunals which currently operate appraisal. That led to a network of appraisal leads from each relevant jurisdiction being established, with the aim of pooling knowledge of what is being done; sharing best practice on how to do it; and linking in to the Tribunals Judicial Executive Board, the Judicial College and Judicial HR.

Against the context of greater cross-assignment, Chamber Presidents have recently discussed a proposal to share appraisals of those judges who sit in several jurisdictions to save time and the expense of appraising such judges in each jurisdiction separately.

I am grateful to Judge Robert Holdsworth for the work he is doing leading the network and helping to develop our appraisal schemes.

Use of fee-paid judiciary

The majority of tribunal judges and non-legal members are fee-paid. The specialist knowledge and experience they bring to the jurisdictions in which they sit is a valuable contribution to the specialist needs of our users.

For some, a fee-paid appointment has made tribunals an attractive start to a judicial career as it allows practitioners to build experience while combining it with practice, and other personal responsibilities. But tribunals have always differed from the courts in that a fee-paid appointment in the former is not necessarily seen merely as a pre-requisite for a salaried judicial career to follow, as it is for most Recorders and Deputy District Judges. Many serve as judges and members with no intention of ultimately seeking a salaried post.

The tribunals workload is at the mercy of policy changes in Government departments and can therefore fluctuate. The flexibility afforded by the use of fee-paid office holders has therefore enabled the system to operate more effectively and efficiently. It is however important that fee-paid judiciary sit regularly enough to develop and maintain their judicial skills – both in terms of 'judge craft' and jurisdictional expertise. This has been a challenge in a time of fluctuating workloads and budgetary constraints. For example, reductions in the volume of new cases and appeals in Employment Tribunals and Social Security and Child Support (part of the Social Entitlement Chamber) have led to much fewer sittings being scheduled. The difficulties here, of course, are for the individual office holders, as well as for the system at large.

Fee-paid judiciary can be and are used flexibly to match judicial resources to business need with

the increasing use of assignment. Expressions of interest exercises in the Immigration and Asylum Chamber and the Court of Protection attracted a great deal of interest from the fee-paid judiciary.

I would expect there to be proposals in parallel with the Courts & Tribunals Reform programme to refine and develop working practices for our fee-paid judiciary which will need to reflect the practical needs of the tribunals.

IT Development

The provision of improved IT facilities is long overdue and the roll out of modern laptops, tablets and phones to all of the tribunals judiciary, including our fee-paid judiciary, is very welcome.

In his final report as Senior President, Sir Jeremy Sullivan predicted that online dispute resolution was one of the most innovative and cost effective ways to ensure that tribunals remain accessible to users. Working with HMCTS, capital has been secured for IT development. A central part of our vision for the future of tribunals is that services will be 'digital by default'. We must ensure that this vision is delivered over the next 4 years and that Sir Jeremy's prediction moves closer to reality.

'Digital by default' is a position we will keep referring to as the reform programme gathers pace. In some of our jurisdictions the current end to end process of lodging and pursuing a claim is, in some jurisdictions, already delivered digitally; but there is much more than can be done on remote case management, online itineraries and listing, and hearing room utilisation.

Very recently, I visited the back office of the Traffic Penalties Tribunal in Wilmslow, Cheshire which operates a near paperless system; appellants lodge their appeal online and receive a pin number which enables them to access their appeal online. When the appeal has been registered, an adjudicator can decide at the outset whether the appeal should proceed. The system is designed so that the entire process can be completed digitally but in the event that a claim proceeds to a face-to-face hearing, the evidence is viewed through the adjudicator's laptop on a large video screen. This is an example of the many possibilities that exist which we can develop across tribunals generally. We intend to use Social Security and Child Support (part of the Social Entitlement Chamber) which deals with high volumes of cases with appellants almost always representing themselves, to pilot this style of online dispute resolution as one of our first priorities in the Reform programme.

Conclusion

Ahead of us lies a challenging, but exciting, period of much change in the way in which justice is provided to our users. Sir Andrew Leggatt remarked, and my predecessors have reinforced the point in their annual reports, that tribunals are for users, not the other way around. If we aspire to provide quality assured justice to our users, we must use this opportunity for reform to provide our judges and members with the best available tools to do their job.

Thanks

I would like to record my thanks to Mr Justice Brian Langstaff who has stepped down as President of the Employment Appeal Tribunal, and will be doing so as Chair of the Tribunals Procedure Committee relatively soon, for the sterling work he has done in leading both. I welcome Mrs Justice Ingrid Simler who succeeds him as President of the EAT.

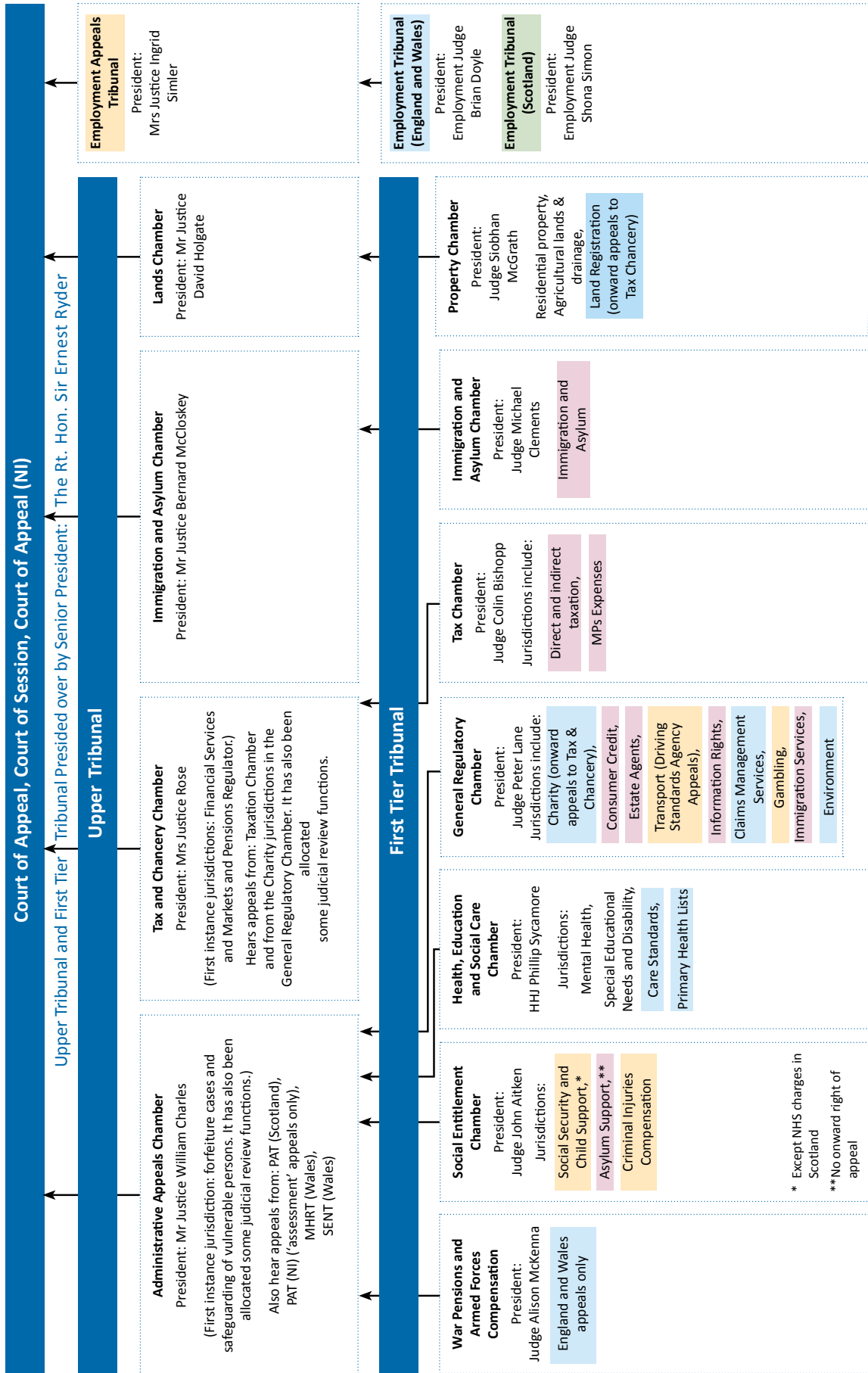
There is also a change of leadership in the Upper Tribunal, Lands Chamber where Mr Justice David Holgate succeeds Mr Justice Keith Lindblom, now Lord Justice Lindblom after his much deserved elevation to the Court of Appeal. I welcome David, and thank Keith for his dedicated service.

Thanks are also due to Upper Tribunal Judge Nick Wikeley for taking over the reins at the War Pensions and Armed Forces Compensation Chamber during the long-term absence of its President. Nick has done a superb job and I am very grateful to him for the flexibility and leadership he has shown.

Annexed to this report are the individual contributions from the Chamber and Tribunal Presidents and those who lead on cross-border issues. They provide a detailed picture of tribunals business and I am grateful to all of them for the work they do.

A handwritten signature in black ink, appearing to read 'Ernest Ryder', with a long horizontal line drawn underneath it.

Sir Ernest Ryder
Senior President of Tribunals



Annex A

Upper Tribunal

Administrative Appeals Chamber

Chamber President: Mr Justice (William) Charles

The Jurisdictional Landscape

The role of the AAC is principally to hear appeals, almost exclusively on points of law, from parts of the First-tier Tribunal. The greatest percentage by number is social security work, which amounts to 92 %. Other categories of case involve mental health, special educational needs, information rights, criminal injuries compensation and a wide range of regulatory matters. In safeguarding cases UTAAC hears first appeals from the Disclosure and Barring Service and appeals are not restricted to points of law (so hearings are potentially longer and sensitive evidence may have to be received). Appeals in all cases lie, with permission, to the Court of Appeal.

About 10% of cases have oral hearings. Most are held in London (Field House and, during the long vacation, the Rolls Building). Upper Tribunal judges also sit in HMCTS venues throughout England and Wales such as Cardiff, Manchester and Leeds.

As expected, the number of applications for permission to appeal and appeals from the F-tT(SEC) (i.e., social security and child support cases) has been much lower in the current reporting year than the previous one, returning to the levels of four years ago from a peak of twice as many cases in early and mid-2014. The huge rise had been a consequence of the F-tT(SEC) determining large number of employment and support allowance (ESA) appeals, as some claimants' awards of existing benefits failed to qualify for conversion into awards of the new benefit and as others lost entitlement when the conditions of entitlement were further tightened up. For a while, ESA cases represented over half the social security and child support case load of the UT(AAC). This was at a time when several judges in England and Wales had retired and had not yet been replaced and so a backlog of applications for permission to appeal developed, which was cleared in the first half of 2015. The overall decline in the number of ESA cases during 2014 was dramatic, with the number of new

cases each month at the end of the year being about a quarter of the number at the beginning of the year. A decline was to be expected when the conversions came to an end but, as is well known, this decline came prematurely because the contractor carrying out most of the medical examinations on behalf of the Department for Work and Pensions withdrew before all the conversions had been carried out, with the result that appeals to the F-tT(SEC) fell with the inevitable knock-on effect for the UT(AAC). The fall in medical examinations also affected the number of disability living allowance cases. However, the overall work level of new cases in the UT(AAC) has not fallen quite as sharply because there have been compensatory increases in the number of housing benefit cases (mostly cases concerned with the under-occupation reduction), jobseekers' allowance cases (mostly cases brought by the Secretary of State in early 2015 where sanctions were originally imposed before 2013) and tax credit cases (where the increase is largely attributable to the F-tT(SEC) clearing a backlog that had arisen due to a doubt about its power to admit late appeals.

Now that there is a new contractor carrying out medical examinations, the F-tT(SEC)'s work is increasing again. This can be expected to feed through to the UT(AAC) but not to the levels of two years ago. The UT(AAC) is also now beginning to see a number of cases concerning entitlement to the recently introduced personal independence payment, which have already replaced disability living allowance cases as the second largest category of the UT(AAC)'s social entitlement work. It is not yet clear how numbers of these new cases will compare with the numbers of disability living allowance cases, but the transfer of claimants from the old benefit to the new one may result in a temporary increase.

Three-judge panels sat in four social security cases this year, to consider the extent to which the size of a room was relevant when considering whether it was a bedroom for the purpose of the under-occupation reduction of housing benefit (*SSWP v Nelson (HB)* [2014] UKUT 525 (AAC); [2015] AACR 21), the approach to be taken to the opinions of health care professionals who are physiotherapists on claimants' mental health conditions (*ST v SSWP (ESA)* [2014] UKUT 547 (AAC); [2015] AACR 23), the validity of the Regulations making provision for the termination of existing awards that do not qualify for conversion into awards of ESA (*SSWP v PD (ESA)* [2014] UKUT 549 (AAC); [2015] AACR 24) and the extent to which the Jobseekers (Back to Work Schemes) Act 2013 was retrospective in its effect (*SSWP v TJ (JSA)* [2015] UKUT 56 (AAC)).

Single judges have considered the validity of a trans-national telephone marriage (*SB v SSWP (BB)* [2014] UKUT 495 (AAC); [2015] AACR 15), various aspects of rights to residence under European Union law (e.g., *VW v SSWP (SPC)* [2014] UKUT 573 (AAC) and *TG v SSWP (PC)* [2015] UKUT 50 (AAC)), the determination of the competent state responsible for awarding benefits under European Union law (*SSWP v HR (AA)* [2014] UKUT 571 (AAC); [2015] AACR 26 and *SSWP v AK (AA)* [2015] UKUT 110

(AAC); [2015] AACR 27), children's entitlement to disability living allowance (*BM v SSWP (DLA)* [2015] UKUT 18 (AAC)), whether a person should be deemed still to possess capital that has been used to pay a debt (*VW v SSWP (IS)* [2015] UKUT 51 (AAC)), whether an overpayment is recoverable where payment could have been suspended (*AH v SSWP (DLA)* [2015] UKUT 108 (AAC)), various issues arising in respect of the new personal independence payment (e.g., *RH v SSWP (PIP)* [2015] UKUT 281 (AAC), *PE v SSWP* [2015] UKUT 309 (AAC) and *DA v SSWP (PIP)* [2015] UKUT 344 (AAC)) and considerations relevant to proceeding with a hearing in the absence of a vulnerable adult claimant (*SW v SSWP (DLA)* [2015] UKUT 319 (AAC)).

Child support cases have required consideration of the correct approach to income from an employee benefit trust (*DR v SSWP (CSM)* [2015] UKUT 274 (AAC)), overseas earnings (*CH v SSWP (CSM)* [2015] UKUT 381 (AAC)) and whether receipt of working tax credit by a non-resident parent precludes the making of a variation (*TW v SSWP (CSM)* [2015] UKUT 440 (AAC)).

Following the appointment of six new salaried judges in 2014 as detailed in the last SPT's report, the Chamber's judicial groups' structure was reviewed allowing lead judges to move to new areas and new judges to be allocated to key jurisdictional areas. In London a duty judge is now available each week to deal with issues arising in social security and child support cases that have not yet been allocated to a judge or where the relevant judge is away. This is intended to reduce internal delays.

The first gambling appeal to the Upper Tribunal was decided in January 2016 after an oral hearing at which both parties were represented by Queen's Counsel (*Gambling Commission v GK* [2016] UKUT 50 (AAC)). It is a major case concerning the extent of powers of the Gambling Commission in refusing an operating licence.

Examples of other cases heard, including mental health and freedom of information, are set out in the table at the end of this section.

Since January 2015 28 new onward appeal rights to the UT(AAC) have come into force. Many come under the category of environment and food safety including:

- Household Waste Receptacles (GB wide) (in force from 15th June 2015)
- Invasive Species (in force in England by 12th April 2015 and in Wales by 14th July 2015)
- Single Use Carrier Bags in England (in force from 5th October 2015)
- Selling or advertising products containing meat (in force for England from 13th

December 2014)

- Meat Labelling (in force for England from 1st April 2015)
- Fish Labelling (in force for England from 13th December 2014)
- Honey Labelling (in force for England from 24th June 2015)

Other new jurisdictions include (in relation to non-environmental regulation)

- Letting Agents (England and Wales) in force in England from 27th May 2015
- Lobbying (of UK Government) in force from 1st April 2015
- Microchipping of Dogs (England) in force partly from 6th April 2015 and the rest from 6th April 2016
- Nagoya Protocol (re genetic resources) (UK wide) in force partly from 9th July 2015 and the rest from 12th October 2015
- Ticket Touts (“secondary ticketing”) (GB wide) in force from 26th May 2015
- Appeals from the Council for Licensed Conveyancers (in force from 29th June 2015)

Upper Tribunal (AAC) in Scotland

One of the two salaried Judges based in Scotland required a further period of extended sick leave in March – April 2015. During that time his duties were very largely covered by Judge Lunney. On 31 August 2015 the other salaried judge, Douglas J May QC, converted to a fee paid appointment. He had been in post as a salaried Upper Tribunal Judge and Social Security Commissioner for twenty two years. No competition is planned to replace him owing to the downturn in work in the Chamber and the uncertainty caused by the proposed devolution to the Scottish Government of the reserved administrative justice jurisdictions in Scotland under clause 33 of the Scotland Bill.

Judge May QC and Judge Gamble the remaining salaried Judge, have made detailed submissions on the issue of the devolution of the Upper Tribunal, especially the Administrative Appeals Chamber, to the Lord Justice Clerk who, in the then vacancy in the Office of Lord President of the Court of Session, was co-ordinating the views of the

Judiciary in Scotland on the implementation of clause 33. In their submissions, Judges May and Gamble have argued for the continuation of as many as possible of the present beneficial features of the Administrative Appeals Chamber as and when devolution of that Chamber is implemented. In particular they have called for the continued appointment of specialist salaried judges and the retention of cross border working in any replacement for the current Administrative Appeals Chamber after devolution. They have submitted that amendments to the Tribunals (Scotland) Act 2014, which currently relates only to devolved tribunals, should be made to make any new Upper Tribunal for Scotland fit for purpose once it replaces the current Upper Tribunal as the appellate body from First-tier Tribunals which are currently reserved but which will become devolved as and when clause 33 is implemented

Upper Tribunal (AAC) in Northern Ireland

The UT (AAC) currently has jurisdiction in Northern Ireland to deal with appeals from the First-tier Tribunal in relation to freedom of information and data protection, certain environmental matters, certain transport matters, the regulation of estate agents, consumer credit providers and immigration service providers, and appeals in Vaccine Damage cases. It also hears appeals from the Pensions Appeal Tribunal for Northern Ireland in assessment cases.¹ There is a small but significant on-going caseload in freedom of information and dataprotection and war pension assessment cases.

Two salaried judges sit in Northern Ireland. They combine their UT (AAC) functions with their roles as Chief Commissioner and Commissioner respectively.

In the period under consideration, the UT (AAC) has received the first appeals arising from the Goods Vehicle (Licensing of Operators) Act (Northern Ireland) 2010. One of the Northern Ireland salaried judges has joined the UT (AAC) Transport Judicial Group which has jurisdiction in connection with appeals arising from the 2010 Act.

The relocation of the Tribunals Hearing Centre (THC) from Bedford House to the Royal Courts of Justice (RCJ) took place during the weekend of 24 to 27 April 2015. The rearrangement was necessitated by current financial restraints within the Northern Ireland Courts and Tribunals Service. The administrative office and judicial personnel of the UT (AAC) and eleven other devolved tribunals are now located in a new unit within the RCJ. The THC has office facilities for twenty-five administrative staff and has two discrete tribunal hearing rooms. There is access to two additional hearing rooms which are located away from the THC itself. The two Upper Tribunal Judges have their own chambers which are also at a remove from the THC. The relocation has had an impact on working practices

¹ For example see *Secretary of State for Defence v FA (AF)* ([2015 NCom 17] in the table of cases at the end of this section

in the RCJ. In 2014 the visitor footfall through the THC in Bedford House was 6500. In addition tribunals continue to operate during the summer months.

During the opening months of operation of the THC there have been some teething problems. Everyone is finding their way and adjusting to a new dynamic. The administrative staff remain wholly committed to delivering a first-class service to the public in challenging circumstances. They have responded to the move in a robust and patient manner and continue to undertake their roles with their usual efficiency, politeness and enthusiasm.

Upper Tribunal (AAC) in Wales

The Chamber's longstanding practice has been to hold in Wales hearings involving a Welsh party unless the parties request otherwise. And, from the beginning of 2015, Upper Tribunal Judge Mitchell has been based in the Cardiff Civil Justice Centre for one week each month. Along with judicial work, the Judge liaises with court staff about processing of appeals lodged in Wales and listing arrangements. Judge Mitchell has also met locally-based judges, the centre's Personal Support Unit and officials of the Welsh Government to explain the work of the Chamber in Wales.

Appeals, and applications for permission to appeal, against the decisions of those devolved tribunals within the jurisdiction of the Chamber remain rare. In the period relevant to this report, there were no cases from the SEN Tribunal for Wales and fewer than five from the Mental Health Review Tribunal for Wales.

A Judge of the Chamber monitors, and disseminates information to fellow judges about, the development of Welsh law and its divergence from that in England. The most significant development was the disapplication in England of the SEN provisions in Part IV of the Education Act 1996 and their replacement with a new scheme under the Children and Families Act 2014. For the time being, Part IV only applies in Wales although the Welsh Government has issued a draft Bill which would create an Education Tribunal for Wales. The Bill retains the Upper Tribunal as the second-tier appellate body. The Chamber made representations to the Tribunal Procedure Committee about the appropriate provision for Wales in the light of the above changes.

A Judge of the Chamber has been appointed to the Law Commission's advisory group for its project about the form and accessibility of Welsh law.

People and places

In June, the Chamber played host to Judge Dollat a first instance judge at the Paris Tribunal Administratif as part of his wider visit to courts and tribunals in England.

The chamber has now, following last year's new appointments, seventeen salaried judges, sixteen of whom sit mainly in England and Wales and are based in the Rolls Building London, and one of whom, as mentioned above, is based in George House, Edinburgh.

The chamber is also fortunate to have a cadre of twenty-seven fee-paid Deputy Judges who sit regularly; nineteen sit wholly or mainly in England, eight sit wholly or mainly in Scotland. Deputy Judges deal mostly with appeals from the Social Entitlement Chamber and the War Pensions and Armed Forces Compensation Chamber. Two Deputy Upper Tribunal Judges retired from office in October 2015; Judge John Wright QC, who is based in George House, Edinburgh, retired on 5 October and Judge Michael Mark who is based in the Rolls Building, London, retired on 29 October. Both were first appointed as Deputy Commissioners in 1997. I am very grateful to Judge Wright QC and Judge Mark for their valued contributions to the Chamber over the years.

The Chamber also has a number of fee-paid specialist Judges and Members who sit on appeals from Traffic Commissioners, Information Rights cases transferred on a discretionary basis from the F-tT to the UT and specialist members who sit on Disclosure and Baring Service cases. We benefit from and are grateful for the specialist knowledge they bring to the Chamber and their contribution to its work. In July 2015 HH Michael Brodrick stood down as lead judge for the Chamber's Traffic Commissioner appeals work though fortunately continues to sit as a judge in this judicial group. I am delighted that we have been able to retain Judge Brodrick's extensive experience and expertise.

The Chamber's judges' work has continued to be supported by a team of 10 specialist Registrars and 2 Legal Information Officers led by Simon Cockain, Senior Registrar in London. Christopher Smith is the AAC's Registrar in Edinburgh and Niall McSperrin in Belfast.

The Chamber's London based administrative staff work in the Rolls Building. The day to day work is managed by Delivery Manager Kim Webb who took over this role from Paul Farren in summer 2015. Keeley Martin is Operational Manager for the Upper Tribunal AAC, Tax & Chancery and the Lands Chamber. Heather Woodfield has overall management of the Chamber in her role as Cluster Manager for the Central London Tribunals. Gillian McClearn continues in her role as operational manager in Belfast. The Secretary to the Administrative Appeals Chamber of the Upper Tribunal in Scotland, Mrs Terry Stewart,

retired on 31 January 2016. It has been 50 years since she joined the Civil Service. The judges will be sorry to lose her considerable expertise and her great abilities to motivate the staff in the office in Scotland. Mrs Stewart had also taken charge of the administration of the Employment Appeal Tribunal in Scotland from 3 August 2015. Her successor Pamela McMullen will continue to administer that tribunal along with the UT (AAC) in Scotland.

Important Cases

File No	Name	Description	Issue
([2015] NICom 17) C1/12-13 (AF)	Secretary of State for Defence v FA	PAT (NI)	In this case a Tribunal of Pensions Appeal Commissioners has given guidance on the appropriate approach for an appeal tribunal to take when in appeals against decision where the decision is to refuse to make a temporary award or where the decision is silent as to whether such an award should be made. The Tribunal concluded that the appropriate approach does not interfere with the objective of the Secretary of State to reserve the decision on the appropriate tariff level to himself and, where thought appropriate, to amend the tariff.

File No	Name	Description	Issue
<p>HM/1518/2015</p> <p>[2015] UKUT 376 (AAC)</p>	<p>Secretary of State for Justice v KC and C Partnership NHS Foundation Trust</p>	<p>Mental health</p>	<p>This case concerned the conditional discharge of a restricted patient who lacked capacity to consent to the conditions which the First-tier Tribunal (F tT) had decided where necessary and appropriate. The Secretary of State submitted that, following the Court of Appeal's decision in <i>B v the Secretary of State for Justice</i> [2012] 1 WLR 2043, no F-tT could direct a conditional discharge of a restricted patient on conditions which would effectively result in a deprivation of their liberty outside hospital.</p> <p>The Upper Tribunal dismissed the appeal holding that the F-tT had the power to impose, and so direct, a conditional discharge on conditions that would, on an objective assessment, give rise to a deprivation of liberty because it was authorised by the Court of Protection under the Mental Capacity Act 2005 or pursuant to the deprivation of liberty safeguards (the DOLS) contained in the 2005 Act (the MCA authorisations) and so complied with Article 5 of the European Convention on Human Rights. The Upper Tribunal confirmed that neither the Court of Protection nor the DOLS decision-maker could override the conditions identified by the F-tT but could only choose between alternatives that included them. The Upper Tribunal provided detailed guidance for decision-makers on the approach involved.</p>

File No	Name	Description	Issue
CAF/3624/2013 [2015] UKUT 332 (AAC)	JM v Secretary of State for Defence (AFCS)	Tribunal procedure and practice (including UT)	<p>The appellant claimed compensation under the Armed Forces Compensation Scheme (the Scheme) for injuries and depression which he alleged were due to bullying. The issue before the Upper Tribunal was whether the F-tT had correctly concluded that his conditions were not caused solely or predominantly by service. The Upper Tribunal held that the correct approach to determining the issues of cause and predominant cause under the Scheme were as follows:</p> <ul style="list-style-type: none"> • To identify the potential process cause or causes, the events or processes operating on the body or mind which caused the injury; • To discount potential process causes that were too remote or uncertain to be regarded as a relevant cause; • To categorise the relevant cause or causes by deciding whether the circumstances in which each operated were service or non-service causes. • If all of the relevant process causes were not resulting from service causes then to apply the predominance test. <p>In applying the predominance test the Upper Tribunal held that a decision-maker should generally consider whether, without the 'service cause', the injury would (1) have occurred at all, or (2) have been less than half as serious.</p> <p>The Upper Tribunal set aside the decision and remitted it to a differently constituted F tT to be re-decided in accordance with its guidance.</p>

File No	Name	Description	Issue
<p>CAF/3206/321 1/3214/3217/3 220/3226/322 9/3232/3237/3 242/2013</p> <p>[2014] UKUT 477 (AAC)</p> <p>[2015] AACR 20</p>	<p>LA and others v Secretary of State for Defence (WP)</p>	<p>War pensions and armed forces compensation</p>	<p>The 10 appellants unsuccessfully claimed war pensions under article 41 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 on the basis that their disablement (or their former partner's death) was attributable to exposure to ionising radiation while serving during the nuclear testing programme in the 1950s and 1960s.</p> <p>Following a joint hearing the First-tier Tribunal (F-tT) rejected their appeals holding that it had not been shown that there was such exposure or that it had led to the claimed conditions. In assessing the claims the F-tT had to apply the article 41(5) test of the 2006 Order which required that where, upon reliable evidence, a reasonable doubt existed whether the relevant medical conditions was attributable to military service, then the benefit of that reasonable doubt should be given to the claimant. The appellants appealed against that decision to the Upper Tribunal and the issue before it was whether the F-tT had applied the article 41(5) test correctly or had adequately explained how it had done so.</p> <p>The Upper Tribunal held that the article 41(5) test placed an onus on the claimant to establish by reliable evidence possibilities that a reasonable doubt existed as to whether the conditions set out in article 41(1) were fulfilled. The test required a principled approach based on the evidence and so the F-tT had to carry forward both (a) those matters about which it had no reasonable doubt, and (b) those matters which it regarded as possibilities (including its reasons for its assessment), into (c) the judgmental exercise where, by reference to (a) and (b), it had to explain the reasons for its conclusion on whether the article 41(5) test had been satisfied.</p> <p>That judgmental exercise involved an evaluation of the respective cases of the parties by reference to all of the competing evidence and argument and on that basis (a) the relative strengths and weakness of those cases, (b) their ingredients and so the possibilities they advanced, and (c) the matters they relied upon (including those about which they assert the decision-maker can have no reasonable doubt). The Upper Tribunal set aside the decision and remitted it to a differently constituted F tT to be re-decided in accordance with its directions.</p>

File No	Name	Description	Issue
<p>JR/1707/2011</p> <p>JR/2196/2012</p> <p>JR/539/2012</p> <p>JR/595/2012</p> <p>JR/577/2013</p> <p>[2014] UKUT 497 (AAC)</p> <p>[2015] AACR 16</p>	<p>R(SB and others) v First-tier Tribunal and Criminal Injuries Compensation Authority</p>	<p>Criminal Injuries Compensation</p>	<p>The five claimants were all victims of separate unrelated assaults. They each claimed criminal injuries compensation and had appealed against the decision of the Criminal Injuries Compensation Authority (CICA) to either the First-tier Tribunal (F-tT) or the Criminal Injuries Compensation Appeal Panel (the F-tT's predecessor). In each case the F-tT acted on the basis that its jurisdiction extended to all issues arising on the application for compensation. The claimants all applied to the Upper Tribunal for judicial review of the F-tT's decisions. The principal issue before the Upper Tribunal was whether the F-tT's powers were limited to determining the issue which was the actual subject of the appeal.</p> <p>The Upper Tribunal held, among other things, that the F-tT had fully discharged its functions once it had decided the issue (or issues) which was the subject of the review decision under appeal, and it had no power to decide any further matters (its jurisdiction was functus). This prohibition included other eligibility grounds which had not been the subject of the decision under appeal. Accordingly, any remaining issues that arose in order to determine whether any award of compensation should be made under the scheme (including the amount of any such compensation) fell to CICA to decide. Any such further decisions made by CICA would attract a further right of appeal to the F-tT. The F tT therefore acted outside its powers in all five applications when retaining to itself, and then deciding, issues that had not been the subject of the review decisions under appeal.</p> <p>The Upper Tribunal remitted the cases for reconsideration by CICA.</p>

File No	Name	Description	Issue
<p>CSE/912/2013</p> <p>[2015] UKUT 143 (AAC)</p>	<p>DF v Secretary of State for Work and Pensions (ESA)</p>	<p>Tribunal procedure and practice (including UT)</p>	<p>The claimant's entitlement to employment and support allowance (ESA) was superseded after he was awarded zero points under the limited capability for work assessment following a report by a registered medical practitioner. The claimant appealed against that decision and, after various tribunal hearings had taken place, his appeal was eventually rejected by a First-tier Tribunal (F-tT). The claimant appealed to the Upper Tribunal against that decision and also upon human rights grounds. It was submitted on his behalf before the Upper Tribunal that the absence of pre-publication hearing lists meant that both tribunal hearings were not public hearings, thereby infringing his human rights (other grounds were also made but withdrawn during the hearing).</p> <p>The decision concerned the public hearing requirement of both the Upper Tribunal Rules and the First-tier Tribunal (Social Entitlement Chamber) Rules, at common law and under Article 6(1) of the European Convention and Human Rights and whether pre-publication of the hearing list of scheduled public hearings was required. The Upper Tribunal judge held that the minimum requirement for a public hearing was that it took place within reasonable office hours and at a publicly recognised court or tribunal hearing centre even if no pre-publicity of listed cases was available, unless it could be shown to be a stratagem to deprive a claimant of a public hearing. That even if the judge had been persuaded on this aspect of the case he would not have given a declarator that the hearings were invalid under section 21 of the Crown Proceedings Act 1947 as he had no power to do so in an appeal under section 11 of the Tribunals, Courts and Enforcement Act 2007. The Upper Tribunal set aside the decision of the F-tT as it had erred in law and remitted the case to a differently constituted tribunal to be decided in accordance with its directions.</p>

File No	Name	Description	Issue
GIA/980/2011 [2015] UKUT 52 (AAC) [2015] AACR 13	Fish Legal and Shirley v Information Commissioner , United Utilities, Yorkshire Water, Secretary of State for Environment Food and Rural Affairs (DEFRA)	Information rights	<p>The appellants had each separately sought various items of information from three different water companies. The companies all denied that they were under a duty to reply under the Environmental Information Regulations 2004. Both appellants complained to the Information Commissioner who decided that the companies were not public authorities for the purposes of the 2004 Regulations and therefore he had no power to adjudicate the complaints. The appellant's appeals to the Upper Tribunal raised two issues: first whether the respondent companies were public authorities for the purposes of 2004 Regulations and second whether the public authority issue was one that could be decided by the First-tier Tribunal (F-tT) or whether it had to be the subject of a judicial review.</p> <p>The Upper Tribunal decided that the public authority issue was within the jurisdiction of the F-tT and that the companies were public authorities for the purposes of 2004 Regulations, not by virtue of being under State control, but by virtue of their special powers, following the test set out by the Court of Justice of the European Union (case C-279/12).</p>

File No	Name	Description	Issue
GIA/79/2014 [2014] UKUT 526 (AAC)	Secretary of State for Environment Food and Rural Affairs (DEFRA) v The Information Commissioner and The Badger Trust	Information rights	<p>This case concerned the Department for Environment, Food and Rural Affairs' (DEFRA) policy on badger culling as a means of controlling bovine tuberculosis in cattle. The Badger Trust sought copies of the relevant documentation from DEFRA under the Environmental Information Regulations 2004. DEFRA provided all of the requested information except for four "risk and issue" logs which related to meetings of the Project Board which was responsible for developing the policy. The logs contained various details including an overview of the potential risks to the project; mitigation measures and contingency plans. DEFRA justified the withholding of the logs under the two exceptions in regulation 12 of the 2004 Regulations, namely: the disclosure of internal communications and the confidentiality of proceedings where such confidentiality was provided by law.</p> <p>The Badger Trust complained to the Information Commissioner who directed that DEFRA should disclose the disputed information on the basis that the internal communications exception did not apply and, while the confidentiality of proceedings exception did so, the balance of the public interest was in favour of disclosure. DEFRA appealed against that decision and the case was transferred to the Upper Tribunal. The Upper Tribunal concluded that the Information Commissioner had balanced the public interests correctly and, subject to redactions of personal data, the disputed information should be disclosed.</p>

File No	Name	Description	Issue
MISC/3872/2014 [2015] UKUT 207 (AAC)	PJ v Secretary of State for Environment, Food and Rural Affairs	Environment	<p>This represents one of the first cases to be decided within a relatively new jurisdiction for the Upper Tribunal. The appellant was a farmer whose land formed part of a water catchment area which the Secretary of State for Environment, Food and Rural Affairs had decided to designate as a Nitrate Vulnerable Zone (NVZ). He unsuccessfully appealed to the First-tier Tribunal (F-tT) against that designation on the basis that his farm was not the only contributor to nitrate levels within the catchment area. The Environment Agency's submission to the F-tT had included figures based upon various modelling systems, including one named SIMCAT. The Upper Tribunal recognised that SIMCAT was not the only basis on which the Environment Agency argued for designation but it appeared to have been used by the Environment Agency to answer the criticisms levelled at the results of the land use modelling and the F-tT's decision was expressed only by reference to SIMCAT. If the SIMCAT results could not be relied on then, in the Upper Tribunal's view, the F-tT's decision could not be supported. The designation may have been justifiable on other grounds but that was not how the F-tT approached the matter. For these reasons the Upper Tribunal held that the F-tT had made an error of law in failing to give adequate reasons for its decision. That decision was therefore set aside and the case remitted to a differently constituted tribunal for redetermination.</p>

File No	Name	Description	Issue
(GIA/2146/2010 [2015] UKUT 193 (AAC)	Evans v Information Commissioner (Correspondence with Prince Charles in 2004 and 2005)	Information rights	<p>In the Senior President's report for 2014 we referred to the Upper Tribunal's decision of 18 September 2012 Evans v Information Commissioner Correspondence with Prince Charles in 2004 and 2005) [2012] UKUT 313 (AAC) which allowed Mr Evans' appeals. At that stage the Upper Tribunal deferred its consideration of substituted decision notices in order to enable the parties to make submissions as to the principles governing the redaction of personal data of individuals (other than Prince Charles). In a procedural decision dated 12 October 2012 the Upper Tribunal set out a timetable for a staged process of written submissions in relation to proposed redactions. That process, however, was suspended by an interim order dated 7 November 2012, made in the light of the Attorney General's certificate dated 16 October 2012. The certificate ceased to have effect following the Supreme Court's order dated 26 March 2015. In these circumstances all parties were content that the staged process should resume. Dates for each stage of the process were specified in directions given by the Upper Tribunal.</p>

Tax and Chancery Chamber

President: Mrs Justice (Vivien) Rose

Judiciary

I became President of the Upper Tribunal (Tax and Chancery Chamber) at the beginning of April 2015 at a time when issues relating to the taxation of individuals and corporations are much in the news. I am very grateful to my predecessor Mr Justice Warren not only for handing over such a well-run and harmonious Chamber but also for his guidance in getting to grips with many aspects of the role beyond hearings and judgment writing. The start of my tenure coincides with what is expected to be a period of change in the Chamber's work and in the Tribunal service generally. I am looking forward to working with Judge Colin Bishopp and the other Upper Tribunal judges, and with the new Senior President of Tribunal Lord Justice Ryder over the coming years.

At the start of 2015 there was a successful recruitment exercise to find additional judges to sit in the Upper Tribunal in the tax jurisdiction. I was delighted to attend the swearing in ceremony that took place following the new judges' induction training seminar at the beginning of March and to have an opportunity to meet them during the course of that seminar. Guy Brannan, Jonathan Cannan, Kevin Poole and Swami Raghaven joined the Upper Tribunal as Deputy Judges having already sat with distinction in the First-tier Tribunal (Tax Chamber). Sarah Falk, Ashley Greenbank and Thomas Scott have come to the Upper Tribunal as Deputy Judges without having sat in the First-tier Tribunal (Tax Chamber). They bring with them a great depth of expertise and experience in tax matters – the Chamber is very fortunate to be able to attract a high calibre of candidates willing to make a commitment to this important judicial work.

The Chamber has also welcomed two new Chancery High Court Judges, Mr Justice Richard Snowden and Mr Justice Henry Carr who are assigned to the Chamber.

In March 2015 the First-tier and Upper Tribunal tax judges held a joint training seminar in which a variety of procedural matters and substantive matters were addressed by a combination of lectures and case studies. Topics covered ranged from the exercise of discretion in granting adjournments or making references to the Court of Justice of the European Union to the introduction of follower notices and accelerated payment notices by HMRC as well as updates on direct and indirect taxes. I am very grateful to all those who contributed to the seminars and especially to Judge Sinfield for organising this successful and enjoyable event.

During the course of the year three of our Financial Services members have retired from the Tribunal, Maurice Bates, Christopher Chapman and Keith Palmer. I thank them for their service and wish them well for the future. A number of the financial services members have been assigned to sit additionally as lay members of the General Regulatory Chamber of the First-tier Tribunal to hear disputes in the Claims Management jurisdiction of that Chamber.

Tax Appeals

The bulk of the Chamber's work continues to comprise tax appeals. The appointment of additional First-tier and Upper Tribunal tax judges was in anticipation of a substantial increase in work as a result of new statutory provisions aimed at challenging the benefits for tax payers of joining marketed tax-avoidance schemes. This upturn in caseload is likely to materialise over the coming year. Another aspect of tackling tax avoidance was highlighted this year with the judgments of the Supreme Court in *HMRC v Pendragon plc* [2015] UKSC 37. The Court gave guidance on the correct approach to the EU concept of abuse of right when applying exemptions from VAT to artificial schemes.

The Chamber has also responded to the Government's consultation on the proposed introduction of fees for bringing appeals in this Chamber.

Land Registration

The appellate jurisdiction continues to be exercised by a number of specialist Chancery Circuit judges who have been assigned to the Chamber for the purpose. The more complex appeals may be allocated to a Chancery Division judge. I am grateful to Edward Cousins for agreeing to extend his term of office as a fee paid judge for an additional year. This has ensured the smooth handover of the land registration appellate work between him and Professor Elizabeth Cooke, his successor as Principal Judge of the Land Registration jurisdiction of the First-tier Tribunal Property Chamber. Our experience is that most applications for permission to appeal which are refused on paper proceed to a renewed application at a hearing. So far, only a very small number of appellants have succeeded in obtaining permission to appeal even after a hearing.

Financial services cases

As in previous years, there has been a regular flow of references from the Financial Conduct Authority but much less work from the Pensions Regulator. The Tribunal has for the first time determined the appropriate standards to be applied when considering whether a conflict of interest has been managed fairly, as required by the Financial Conduct Authority's rules. In *Arch Financial Products LLP v The Financial Conduct Authority* [2015] UKUT 0013 (TCC) and *Angela Burns v The Financial Conduct Authority* [2014] UKUT 0509 (TCC) the

Tribunal held that where obvious conflicts of interest had been created by experienced investment professionals they acted without integrity when they failed to ensure that those conflicts were managed fairly. The Treasury issued a consultation document on the implementation of the recently adopted EU Payment Accounts Directive in June. The draft regulations which accompanied the consultation impose new duties on banks to make basic bank accounts generally available to consumers and for regulating the operation of those accounts. The FCA is the authority given power to enforce these obligations and the decision-making process with regard to enforcement decisions mirrors that within FSMA with a warning and decision notice procedure with a right to refer a decision notice to the Tribunal. As a consequence, by virtue of section 133 FSMA, the Tax and Chancery Chamber will have jurisdiction over those cases. It is expected that the regulations will be made by the end of the year but they do not come into force generally until September 2016 but this is not expected to generate a significant number of cases.

Charity cases

Cases in the Charity jurisdiction remain few and far between. In July 2015 the Upper Tribunal handed down judgment in *Trustees of the Recreation Ground, Bath v The Charity Commission* [2015] UKUT 0420 (TCC) where Warren J and Judge McKenna allowed an appeal against the First-tier Tribunal's amendment of the Charity Commission's Scheme, finding that the trustees were not required to preserve the original trust land for use in specie.

Consumer Credit

Regulatory matters are now the concern of the Financial Conduct Authority. Decisions of the FCA in this field are subject to the same sort of review as its decisions in the financial services field with a similar right for an affected person to refer a decision to the tribunal.

Administration

The move of the administration staff from Bedford Square to the Rolls Building took place in November 2014. The efficiency and hard work of the staff enabled them to start operating by late afternoon of the first day in the new premises.

The other main change this year has been the development and implementation of a new database for case management. Previously the UT TCC had been using spreadsheets to record details of casework without a proper database. In light of the expected increase in work in the tax jurisdiction, funding was made available for a new database named GLiMR (Generalised Listings in Management and Registration). Ongoing meetings between the Tribunal staff and the production team, UAT (User Acceptance Training) and added help

of training videos prior to the “go live” has ensured, we hope, that the database is properly tailored for the needs of the Chamber and can easily be used by all members of the team. The new system was rolled out to staff in June 2015 and they were able to migrate all their existing files onto GLiMR. GLiMR has already proved to be a valuable tool for staff and Judges and because of its ease of configuration, staff are able to adapt the database to their needs. The judiciary are able to view the database to look at workflows and follow tasks already logged. The system also enables Upper Tribunal staff to view the First-tier Tribunal tax chamber database.

At the end of the year covered by this report, Sharon Sober was appointed to be Delivery Manager for the Tax and Chancery Chamber.

Immigration & Asylum Chamber

President: Mr Justice (Bernard) McCloskey

The jurisdictional landscape

The jurisdiction of the Upper Tribunal, Immigration and Asylum Chamber (“*UTIAC*”) remains unchanged. We continue to deal with all error of law appeals from the First-tier Tribunal (“*FtT*”) in asylum and immigration cases, together with almost 95% of all immigration and asylum judicial reviews. In this Chamber we also deal with all so-called “age assessment” judicial reviews. Further, some of our Judges are members of the panel in cases heard by the Special Immigration Appeals Commission (“*SIAC*”).

The number of statutory appeals submitted to *UTIAC* was expected to reduce in accordance with the reduction in work profiles for the First-tier Tribunal (“*FtT*”). This reduction, however, did not materialise and receipts have remained higher than originally profiled.

The Chamber continues to receive applications for permission to appeal to *UTIAC*, where the *FtT* has not granted leave to appeal, in substantial numbers. A large percentage of these applications are refused.

Permission to appeal applications from this Chamber to the Court of Appeal represents another category of judicial work. Grants of permission to appeal are made in a small percentage of cases only, by either this Chamber or, following refusal, the Court of Appeal.

As regards judicial review cases in immigration and asylum matters, this Chamber's jurisdiction dates from 01 November 2013 when the transfer from the Administrative Court ("AC") took effect. This was described in greater detail in last year's report. Applications continue to be submitted in substantial numbers, presenting a constant challenge.

I am pleased to report that since January 2015, the output of the Chamber in judicial review cases outstripped input for the first time since the historic transfer in November 2013. This is attributable in substantial measure to the professionalism and industry of our Judges, bearing in mind that while the assumption of the new judicial review jurisdiction roughly doubled the overall workload of this Chamber, there has been no increase in salaried judicial resource, albeit a slight increase in fee paid judicial resource was achieved during a limited period. The advance in judicial review output required the internal diversion of judicial resources, with a detrimental impact on the statutory appeal stream, particularly permission to appeal applications. I must also compliment administration, who have been responsive to the constant need for more efficient and better streamlined processes and arrangements. This remains a work in progress, with judiciary and administration operating in partnership. Our senior administrator, Michael Nuna and his team qualify for due thanks and recognition in this respect.

Judicial Personnel

We had two notable retirements during the past year. One of our longest serving, most respected and most popular Judges, Jim Latter, retired during the summer. There was no question of easing off before he did so. Quite the contrary: during the last 16 months of his judicial career, Jim volunteered for, and occupied, the demanding post of Principal Resident Judge of UTIAC Headquarters at Field House, London. Needless to say, Jim discharged the duties of this post with his customary professionalism, courtesy and commitment. We wish him well in his retirement and I am delighted to add that he will continue to offer occasional judicial services to the Chamber on a part-time basis.

The second notable retirement was that of Judge Hugo Storey: equally long serving, respected and popular. Hugo is one of the leading lights in the International Association of Refugee Law Judges, in which forum his industry and high quality contributions are universally acknowledged. He is, by some measure, the most sought after UTIAC Judge in the context of external events, both national and international. Hugo has made a seamless transition to the assumption of part-time duties in this Chamber, while continuing to make a notable contribution to our case reporting activities, continuous learning and international relations. I trust, and envisage, that he will remain a valuable member of our organisation for many years.

In the wake of Jim Latter's departure, the PRJ team at Field House underwent a shake

up. It now consists of Judge Bernard Dawson (PRJ) and his two deputies, Judge Judith Gleeson and Judge Mark O'Connor. The contribution of this trio to the Chamber is simply enormous. I watch with a mixture of admiration and awe as their combined skills and seemingly inexhaustible energy consistently strengthen and enhance our organisation. The contributions of all judicial members of the Chamber, assiduously overseen by our Vice-President, in both their basic duties and beyond, are equally invaluable in this continuing era of austerity and constantly challenging workloads. Simultaneously, I commend those in the President's Office, in Administration and in the LRU, together with the UTIAC lawyers, all of whom continue to strive and serve unstintingly.

The headline of the past year was undoubtedly the recruitment of nine salaried (full time) Judges and 20 fee paid (part time) Judges. These appointments took effect during the period April to September 2015. They coincided with necessary exercises in training, induction and mentoring in which many of the Chamber's regulars willingly participated. Our new colleagues are a most welcome addition to this Chamber. They are already beginning to demonstrate what they can contribute both individually and collectively. Without exception, each of our new recruits has joined one of the several flourishing chamber committees and I look forward to the fruits of this. Furthermore, it has been my pleasure to undertake a series of sittings with our new colleagues, a process which is now almost complete.

In a chamber of these dimensions, it is necessary to look forward almost constantly. During the forthcoming year it is anticipated that three or four of our longest serving Judges will follow Jim Latter into retirement. They will do so with our very best wishes and, as in Jim's case, I trust that it will be possible to avail of their unrivalled experience and expertise on a part time basis. Their departure will give rise to a further recruitment exercise and the necessary planning has already begun. Furthermore, the attractions of part-time working continue to be evident. Several Judges of the Chamber have reduced, or will presently reduce, their hours.

Some six months ago we began the process of a part time assignment of six Judges from the Administrative Appeals Chamber. This has not taken place in a vacuum. It has, rather, entailed a not insubstantial investment in training, induction, mentoring and monitoring. It is too soon to evaluate the efficacy and success of this unprecedented exercise. The Chamber continues to receive the welcome services of a High Court Judge and a Judge of the Court of Session (Scotland), normally on weekly or two weekly stints, during approximately nine months of the year. While we would wish to expand this discrete resource, it is a matter of regret that this is simply not possible in the prevailing age of austerity.

I continue to subscribe to the governing principle that the workloads of the Judges of this Chamber should be constantly governed by the standards of quality, expedition and fair and reasonable burden. I consider the first of these standards to be sacrosanct. The issue of

workload is, inevitably, a constant in a chamber which transacts such large volumes of work. It is inextricably linked to the topic of judicial resources.

I am conscious that, unlike certain other chambers, we in this Chamber have no Registrars or Legal Information Officers. We have been discussing for some time the broad subject of maximising support for Judges to enable concentration on the core judicial tasks of adjudication and decision making. The recent inauguration of a new joint Judges and Lawyers Committee is designed to promote the examination of this subject in a more coherent, structured fashion. This committee will assess, in particular, the feasibility of delegating certain judicial functions to lawyers in both statutory appeals and judicial review cases. This exercise will result in the formulation of a set of concrete proposals and an ensuing report from this Chamber to the SPT.

UTIAC Committees

The Chamber has an impressive network of committees. Most of these are manned by Judges. Some of them have a mixed membership of Judges and administrators. The work of these committees is essential to the health and well being of the organisation. Judges continue to give generously of their time and I am only too aware that, in this respect, they exceed the reasonable limits of judicial duty. I applaud them accordingly.

During recent months I undertook a review of the Chamber's committees. This resulted in a number of changes in structure and personnel. One of the main drivers was the advent of so many new colleagues, noted above. I am optimistic that these changes will benefit the organisation as a whole. In addition to the newly established committee mentioned above, we continue to have dedicated committees in the key areas of judicial training, welfare, performance issues, reporting, Country Guidance and executive decision making. Some further changes in the *modus operandi* of some of these committees is foreseeable given the imperatives of expedition, efficiency and collegiality to which all subscribe.

In this context, I also look forward to building a constructive and fruitful relationship with legal representatives via the forum of the recently inaugurated UTIAC Legal Representatives Liaison Committee.

Continuous Learning

This Chamber continues to operate an enviable system of continuous learning. The frequency is weekly and, at certain times, daily. We also have, and continue to have, dedicated training events.

The topic of judicial learning and training is inextricably linked with that of international

organisations which are, predominantly (though not exclusively), the International Association of Refugee Law Judges (“IARLJ”) and the Association of European Administrative Judges (“AEAJ”) in which we have an increasing profile. I trust that our Chamber will be able to aspire to corporate membership of the latter organisation in the very near future. Our profile in the IARLJ is at an all time high, thanks to Judges Hugo Storey, Judith Gleeson, Bernard Dawson and Jeremy Rintoul.

The simple reality is that the daily diet of this Chamber – immigration and asylum cases – has major EU law and international law ingredients. The central advantages of active participation in the organisations mentioned above are dissemination of information and expertise, innovation, learning and education. The involvement of this Chamber in activities of this kind is properly to be viewed through the prism of our constant striving for excellence in adjudication and judicial decision making. We are not a statistically driven conveyer belt. Rather we, the Judges of this Chamber, are serious professionals, constantly alert to the judicial oath of office and the privilege of serving the community in the best possible ways. This Chamber seeks to achieve excellence in all that it does.

Furthermore, the profile of this Chamber on the international plane brings imperceptible benefits to the public which must not be overlooked and, simultaneously, enhances judicial morale. The latter is an indispensable necessity in the promotion of excellence and the attainment of targets in an increasingly figures driven world.

I am delighted to report that this Chamber will be hosting a joint UTIAC/IARLJ/AEAJ seminar in September 2016. This will involve senior Judges from all over Europe and will provide an unprecedented and invaluable learning opportunity. Amongst other things it will enable this Chamber to showcase the range, quality and innovation of its jurisprudence.

The Chamber's Jurisprudence

During the past year the Judges of this Chamber have perpetuated a long established tradition of producing high quality decisions, reflected in our reported cases. The intensive vetting undertaken by our Reporting Committee serves to ensure that only judgments of the highest quality are reported. There have been judgments of this standard in the distinct spheres of immigration law, asylum law, practice/procedure and professional standards. Some of the more salient examples of these are listed below. Our reporting mechanism of “key words” ensures that, at a glance, the reader can appreciate the territory covered by each of the decisions.

Immigration Law

Mehmood (Legitimate Expectation) [2014] UKUT 469 (IAC) – which concerned the

application of the doctrine of substantive legitimate expectations in the context of a statutory appeal against the Secretary of State's refusal to grant the Appellant indefinite leave to remain.

Sultana and Others (Rules: Waiver/ Further Enquiry; Discretion) [2014] UKUT 540 (IAC).

R (Mushtaq) – v – Entry Clearance Officer of Islamabad, Pakistan (ECO-Procedural Fairness) IJR [2015] UKUT 224 (IAC).

R (Waqar) – v – Secretary of State for the Home Department (Statutory Appeals/Paragraph 353) IJR [2015] UKUT 169 (IAC).

JA (Meaning of “Access Rights”) India [2015] UKUT 225 (IAC).

Adjei (Visit Visas – Article 8) [2015] UKUT 261 (IAC).

R (Patel) – v – Secretary of State for the Home Department (Section 3C(4): Simultaneous Application – Withdrawal) IJR [2015] UKUT 273 (IAC).

MAB (Paragraph 399: “Unduly Harsh”) USA [2015] UKUT 435 (IAC).

R (JT) – v – Secretary of State for the Home Department (Section 94B NIAA 2002 Certification) IJR [2015] UKUT 537 (IAC).

R (Chen) – v – Secretary of State for the Home Department (Appendix FM – Chikwamba – temporary separation – proportionality) (IJR) [2015] UKUT 189 (IAC)

In addition, the Chamber has, in a series of decisions, undertaken the challenging task of construing and applying the new provisions of Part 5A of the Nationality, Immigration and Asylum Act 2002. See:

Dube (Sections 117A – 117D) [2015] UKUT 90 (IAC).

Chege (Section 117D – Article 8 – Approach: Kenya) [2015] UKUT 165 (IAC).

AM (Section 117B) Malawi [2015] UKUT 260 (IAC).

Badewa (Sections 117A – D and EEA Regulations) [2015] UKUT 329 (IAC).

SDSD

- Forman (Sections 117A – C Considerations) [2015] UKUT 412 (IAC).

- Bossade (Sections 117A – D: Inter-relationship with Rules) [2015] UKUT 415 (IAC).
- Deelah and Others (Section 117B – Ambit) [2015] UKUT 515 (IAC).
- KMO (Section 117 – Unduly Harsh) Nigeria [2015] UKUT 543 (IAC).

Asylum Law

- MOJ and Others (Returns to Mogadishu) (CG) [2014] UKUT 442 (IAC) – a country guidance decision relating to the safety of removing Somali nationals from the United Kingdom to their country of origin which was subsequently approved by the ECtHR in RH – v – Sweden [App No 4601/14].
- AK and SK (Christians: Risk) Pakistan (CG) [2014] UKUT 569 (IAC).
- LH and IP (Gay Men: Risk) (CG) [2015] UKUT 73 (IAC).
- HA (Article 24 QD) Palestinian Territories [2015] UKUT 465 (IAC).
- BM and Others (returnees – criminal and non-criminal) DRC CG [2015] UKUT 293 (IAC).
- LH and IP (gay men: risk) Sri Lanka CG [2015] UKUT 73 (IAC).

In addition, the Chamber has, in three judicial review decisions, sought to give guidance for the first time on the issue of returns under the Dublin Regulation to Hungary, Italy and Malta respectively. See:

- R (Simaei and Arap) – v – Secretary of State for the Home Department (Dublin Returns – Hungary) IJR [2015] UKUT 83 (IAC).
- R (Weldegaber) – v – Secretary of State for the Home Department (Dublin Returns – Italy) IJR [2015] UKUT 70 (IAC).
- R (Hagos) – v – Secretary of State for the Home Department (Dublin returns – Malta) (IJR) [2015] UKUT 271 (IAC).

Practice and Procedure

- BW (Witness Statements by Advocates) Afghanistan [2014] UKUT 568 (IAC).
- MR (Permission to Appeal: Tribunal's Approach) Brazil [2015] UKUT 29 (IAC).
- R (Naziri and Others) – v – Secretary of State for the Home Department (JR – Scope – Evidence) IJR [2015] UKUT 437 (IAC).
- R (Bilal Ahmed) – v – Secretary of State for the Home Department (EEA / section 10 appeal rights; effect) (IJR) [2015] UKUT 436 (IAC).
- R (Gazi) – v – Secretary of State for the Home Department (ETS – judicial review) (IJR) [2015] UKUT 327 (IAC).
- R (on the application of Patel) – v – Secretary of State for the Home Department (s.3C(4): simultaneous application – withdrawal) (IJR) [2015] UKUT 273 (IAC).
- AA (Upper Tribunal – review power) Uzbekistan [2015] UKUT 330 (IAC).
- R (SN) – v – Secretary of State for the Home Department (striking out – principles) (IJR) [2015] UKUT 227 (IAC)
- Cancino (costs – First-tier Tribunal – new powers) [2015] UKFTT 59 (IAC)
- R (Sultana) – v – Secretary of State for the Home Department (mandatory order – basic principles) (IJR) [2015] UKUT 226 (IAC)
- R (Soreefan and Others) – v – Secretary of State for the Home Department (judicial review – costs – Court of Appeal) (IJR) [2015] UKUT 594 (IAC)

The Chamber's jurisprudence belonging to the discrete category of the EEA Regulations has continued to develop. See in particular:

- Macnikowski (Applicable Policies) [2014] UKUT 567 (IAC).
- Badewa (Sections 117A – D and EEA Regulations) [2015] UKUT 329 (IAC).

- Yusuf (EEA – Ceasing to be a Job Seeker: Effect) [2015] UKUT 433 (IAC).
- Amirteymour and Others (EEA Appeals: Human Rights) [2015] UKUT 466 (IAC)
[note: under appeal]
- MC (Essa Principals Recast) [2015] UKUT 520 (IAC).

The Chamber's jurisprudence relating to section 55 of the Borders, Citizenship and Immigration Act 2009 has also continued to develop. See in particular:

- JO and Others (Section 55 Duty) Nigeria [2014] UKUT 517(IAC).
- MK (Section 55 – Tribunal Options) Sierra Leone [2015] UKUT 223 (IAC).

This Chamber's Interaction with the Legal Profession

It has been a mixed year in this respect. The President has invested time and effort in addressing a series of audiences on issues of particular interest to the profession. These have included matters of practice, procedure and professional standards. In this respect, reference is made to some of the decisions listed above.

The President is optimistic that the inauguration of a new judges/practitioners forum will yield mutual benefits. The forum which this Chamber intends to develop will be multilateral, transparent, professional and constructive. It is the President's wish that the groups and organisations which have been invited to participate in this forum will respond positively and participate actively.

The Forthcoming Year

I consider that a dedicated judicial intranet home page for this large Chamber is an absolute necessity. The home page would contain, at the touch of a button, all of the resources necessary to assist Judges in their daily work loads: access to primary legislation, subordinate legislation, EU legislation, international law instruments, reported cases, judicial papers, academic commentaries, and the most recent developments et alia. The specialised nature of the work of this Chamber and its associated specific needs demand the provision of this facility – which, incidentally, equivalent judicial organisations in many developed countries now take for granted. Furthermore, this will promote the developing policy of increasing digitalisation in courts and tribunals. I am delighted to say that we have the support of the SPT in this matter and, assisted by the several IT expert Judges of this Chamber, I shall be driving this forward.

There will be further appointments of new full time Judges to replace retiring judges, a weekly diet of continuous learning, much internal committee activity and issues of acute interest arising out of the HMCTS Reform Programme. We in this Chamber look forward to meeting the challenges, both foreseeable and less visible at this stage. Who knows, the Presidential wish list of a dedicated judicial intranet home page and an efficacious model of delegation of judicial functions may be realised!

Conclusion

Last, but far from least, we convey our very best wishes to the outgoing SPT, Sir Jeremy Sullivan and his family. It has been a pleasure working with him. I had occasion to describe Sir Jeremy as “Lord Justice Light Touch”: maybe this says it all! Sir Jeremy has provided simply magnificent service to the public throughout his judicial career. What more is to be said?

We in this Chamber repeat our welcome to Sir Ernest Ryder, the new Senior President. Unsurprisingly, we have had a highly constructive and positive initial engagement with the new supremo and we look forward to a fruitful relationship.

Lands Chamber

President: Mr Justice (Keith) Lindblom

The judges and members of the Lands Chamber began the period covered by this report in new surroundings, having relinquished the Georgian town houses of Bloomsbury in favour of the gothic cathedral of the Royal Courts of Justice in the Strand. The demand for prime judicial real estate being acute in this part of London, our administrative staff have had to be accommodated close by in the Rolls Building. With the benefits of modern technology the challenge of staff and judiciary working from separate locations has been faced and overcome with, so far, no major mishap. Judges and staff are now well accommodated and, more importantly, we now have available to us more flexible space for hearings capable of providing an appropriate venue for both the largest and the smallest of our cases. The hearing requirements of a multi-million pound compensation case scheduled to last for many weeks are different from those of a modest service charge or rating appeal presented by litigants in person in a single morning, but the traditional court rooms which we now use have been equipped and adapted to make them suitable for the whole range of our jurisdictions.

The work of the Lands Chamber is not carried on only in London. The past year has amply demonstrated the flexibility of the Chamber in arranging hearings at venues through the length of England from the Tamar to the Tyne with regular sittings in Cardiff, Manchester, Liverpool, Newcastle, Sheffield, Lincoln and elsewhere. In smaller appeals or compensation cases it is simply unrealistic to expect the parties to travel long distances to resolve their disputes, while in larger disputes it is very often the case that those giving evidence will be local to the land in issue. Our intention is therefore to provide as convenient a service for our users, both lay and professional, as we reasonably can.

The workload of the Chamber has remained broadly level in the past 12 months, with one exception: a quite marked increase in the number of applications for the registration of rights of light of which we expect to receive more than 500 this year compared to an average of about 135 in previous years. These applications now represent more than half of our total new receipts, but the spike is largely accounted for by a single complex development site in the City of London and we anticipate a return to former levels in future. Other trends include a modest decline in the number of references for compensation received compared to previous years (30% of all new receipts, excluding rights of light), balanced by a slightly larger number of appeals from the First-tier Tribunal (Property Chamber) (42%) and from the Valuation Tribunals for England and for Wales in rating matters (18%).

There have been a number of individual cases of note in the last twelve months. In a year in which the law of rating has attracted the attention of the Supreme Court (*Mazaars*), the Lands Chamber has considered whether the presence of the “Occupy London” protest camp outside St Paul’s Cathedral justified a temporary reduction in rateable values for properties in the vicinity (*Pavlou*), whether licensed premises in St Helens were a bar or a members’ club (*Harris v Grace*), and whether a retail warehouse in Bedford used for the temporary storage of silage was an agricultural building (*Woolton v Gill*). Of wider significance was our consideration of the appropriate method of valuing purpose built GP surgeries for rating (*Gallagher v Read*), the rateability of air-handling units installed in retail warehouses used for the sale of refrigerated and frozen food (*Berry v Iceland Foods Ltd*), and, largest of all, the rateable value of gas turbine power stations (*Hardman v British Gas Trading*). The diversity of the Chamber’s rating jurisdiction is well illustrated by this selection.

The tail of the blazing comet that was the 2012 London Olympics has continued to glow, at least as far as the Lands Chamber is concerned, in references for compensation brought by the former owners of land acquired to assemble the Olympic Park in Stratford. The limitation period for new claims has now expired but as many such claims were brought long after the last medal had been distributed they have kept the tribunal busy this year, and will continue to do so. The other major infrastructure project commanding the Chamber’s

attention has been *Crossrail*, which has provided an opportunity for consideration of the scope of the power to award costs following changes to our procedural rules introduced in 2013 (*BPP(Farringdon Road) Ltd v Crossrail Ltd*). Claims by 250 home owners in the vicinity of Farnborough Aerodrome for compensation for what they considered to be the adverse effects of its transformation from a military airfield to the busiest business airport in Europe provided the longest compensation case of the year; amongst other points of note it illustrated the dangers of an uncertain limitation period and the importance of claims being commenced promptly (*Johnston v TAG Farnborough Airport Ltd*). The same case saw the first use in multi-party proceedings of the cost capping power conferred on the Lands Chamber by rule 10 of our procedural rules and section 29 of the Tribunals, Courts and Enforcement Act 2007. Very substantial claims which would have been beyond the means of individual householders were enabled to continue by the imposition of a cap limiting the liability of each claimant to a relatively modest figure.

Appeals from the Property Chamber represent more than half of the Chamber's decided cases. This year a number of complex collective enfranchisement claims have been determined. In *Cooper-Dean v Greensleeves Owners Ltd* the esoteric subject of "two-stage enfranchisement" was examined both for its legitimacy in domestic law and its compatibility with the rights of an intermediate landlord under the European Convention on Human Rights. The entitlement of landlords, on enfranchisement, to claim leasehold rights over valuable common parts, featured in *Merie Bin Mahfouz Company (UK) Ltd v Barrie House (Freehold) Ltd*.

The licensing and regulation by local authorities of houses in multiple occupation, and the rights and responsibilities of the owners and occupiers of mobile home parks have also provided a steady flow of appeals highlighting complex issues generated by obscure statutory drafting. The Lands Chamber's jurisdiction in these fields is of relatively recent origin (they were formerly the subject of statutory appeals to the High Court and County Court) but they represent a growing area of our work. Appeals can only be brought from decisions of the Property Chamber with its permission or with the permission of the Lands Chamber. Many of the appeals which come to us are complex and although it is relatively rare for permission to appeal to be granted by the Property Chamber itself, permission is granted by the Lands Chamber in about a third of the applications we receive.

With only one full time judge and three full time members (all of whom are chartered surveyors) the Lands Chamber depends on the invaluable assistance we receive from the circuit judges who sit in the Chamber for 4 or 8 weeks a year and from the senior judiciary of the Property Chamber who are also judges of the Upper Tribunal. We are grateful to them all. This year, following previous retirements, we have been reinforced by the assignment of three additional circuit judges to the Chamber and have benefitted greatly

from the assistance of HHJ John Behrens, HHJ David Hodge QC and HHJ Stuart Bridge, each of whom brings particular expertise in property law.

Looking forward, we hope to continue fruitful engagement with the Lands Chamber's users, including professional associations concerned with our fields of work. Strong contacts with users and their professional advisers is important to enable us to identify problems which may not be apparent from the bench and to better tailor our procedures to the requirements of different types of case. Concern has been expressed this year that the Lands Chamber is less accessible to claimants with small compensation claims than it might be. Similar concerns were considered by the Law Commission in its 2003 report on Land, Valuation and Housing Tribunals which, after consultation, rejected a proposal that all but the heaviest compensation references should begin in what is now the First-tier Tribunal with the Upper Tribunal having a largely appellate function. That debate appears not to be closed, although major structural reform to accommodate a relatively small number of cases is not obviously more attractive now than the Law Commission found it to be in 2003. The Lands Chamber's simplified procedure for smaller claims is, save in exceptional circumstances, a costs free forum as far as the rules of the Chamber are concerned, but it may be that there are statutory disincentives to the pursuit of modest claims which merit reconsideration.

Annex B

The First-tier Tribunal

Social Entitlement Chamber

President: Judge John Aitken

The Social Entitlement Chamber comprises three jurisdictions, namely Asylum Support (AS), Criminal Injuries Compensation (CIC) and Social Security and Child Support (SSCS). The Principal Judge of Asylum Support and Criminal Injuries Compensation is Sehba Storey. SSCS is managed by seven Regional Tribunal Judges led by the Chamber President. The jurisdiction of Asylum Support is UK-wide. SSCS and CIC are Great Britain-wide.

The Jurisdictional Landscape

Social Security And Child Support

In SSCS the most significant feature over the past year or so has been a dramatic downturn in workload. The table below shows the trend over the past few years with the workload reaching a peak of 507,131 in 2012-13 before declining to 401,896 in 2013-14, whilst clearances increased to 545,923, followed by a dramatic fall in 2014-15.

SSCS Appeals Intake and Clearances²

	Intake	Clearances
2008-09	242,825	245,500
2009-10	339,213	279,264
2010-11	418,416	379,856
2011-12	370,800	433,600

² HMCTS Annual Report and Accounts 2014-15, HC9. 10 June 2015 p.9. and Tribunals and Gender Recognition Certificate Statistics Quarterly, January to March 2015, Ministry of Justice Statistics bulletin 11 June 2015.

2012-13	507,131	465,172
2013-14	524,606	543,609
2014-15	108,335	150,928

In the year 2014 the trend continued with a reduction in 2014-15 in workload of 80% following the government's welfare reforms. At the same time, however, this afforded us the opportunity to focus on clearing the outstanding and older cases, so that by the end of December 2014 the outstanding cases were 40,734, an 80% reduction in the number outstanding at June 2013, which was 221,601. This also resulted in a reduction in listing rates to 16 weeks by the end of 2014.

From April to June 2015, we received 38,828 appeals, an increase of 71% on the same period in 2014. The numbers have gradually increased throughout 2014/15 and the profile has changed to reflect the implementation of the changes associated with welfare reform. Personal Independence Payment cases now represent 38% of all SSCS receipts. We expect this trend to continue as PIP replaces Disability Living Allowance. Employment Support Allowance cases accounted for 35% of cases for the period April to June 2015 and increase from 8,703 in the same quarter in 2014 to 13,502 in 2015, a 55% increase. During this period we cleared 43,993 cases, a decrease of 35% compared to April to June 2014. The increase in intake was also matched by a slight increase in average clearance times from 16 weeks in 2014 to 19 weeks from April to June 2015. Of the total 34,983 disposals, 28,984 were cleared at hearing, 83%. At the end of June 2015 there were 53,009 outstanding cases in SSCS, which accounts for 15% of all outstanding HMCTS appeals, and increase from 6% last year.

In terms of the deployment of judicial office holders has been concerned we have sought to mitigate any detrimental effects from the dramatic downturn in intake by encouraging judges in particular to take on work in other jurisdictions by seeking assignments and other deployments. During the last year or so we have deployed our members to Immigration and Asylum, the Court of Protection, and the War Pensions and Armed Forces Compensation Chamber. This has been met with varying levels of success as other chambers and jurisdictions have also suffered from reductions in intake or challenges to processes in the courts. We continue to work across Chambers and jurisdictions to flexibly deploy members in order to fully utilize their talents and develop their careers.

For the future the initial forecasts from the Department for Work and Pensions (DWP) suggest that the outturn for the current year in terms of intake is likely to be around 180-200,000 cases possibly rising to 300,000 next year, as the profile of cases changes to reflect to progress of welfare reform. The current estimation is that numbers will peak around 2017-18 before falling away, although claimant behaviour has remained volatile and it remains unclear how new claimants, those subject to managed migration to new benefits and those subject to the reassessment of existing claims are likely to respond.

We are all aware, of course, that our work takes place in the wider context of government reform and this year we have played our part by successfully re-aligning our boundaries in SSCS to match the wider HMCTS boundaries for England and Wales. We have also looked to the future by engaging with internal and external stakeholders to explore what a transformed SSCS Tribunal might look like in terms of engaging with our appellants and re-aligning processes to the MoJ's own reform agenda. Where necessary taking the lead in advocating new ways of working on new platforms.

Significant cases

The issues arising out of the *Reilly & Wilson* litigation referred to in the last two years' annual reports continue to be litigated. On November 24, 2015 the Court of Appeal heard the appeal against the decision of the Upper Tribunal Three-Judge Panel in *SSWP v TJ (JSA), DB v SSWP (JSA) and SSWP v TG (JSA) (Jeffery)*,³ together with the appeal against the High Court's decision in *R (on the application of Reilly (No. 2) and Hewstone) v Secretary of State for Work and Pensions*.⁴ The main issues in the former were (i) whether the Jobseekers (Back to Work Schemes) Act 2013 is fully retrospective and (ii) the information that the Secretary of State should make available to claimants before referring them to work programmes. In the latter, the High Court had issued a declaration that the Jobseekers (Back to Work Schemes) Act 2013 (which had been introduced to validate retrospectively the Jobseekers Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011) was incompatible with the claimants' rights under Article 6(1) of the European Convention on Human Rights, as given effect by section 1 of the Human Rights Act 1988. The Court of Appeal's judgment was reserved and at the time of writing has not been issued.

Appeals which concern the "right to reside test", which applies to income-related benefits, child benefit and child tax credit, still generate significant decisions, despite the fact that the test was first introduced in May 2004 when the A8 countries joined the EU. Between May 1, 2004 and April 30, 2011 the right of A8 nationals to reside in the UK as workers or jobseekers was modified by requiring most A8 nationals to register with the Home Office in order to work lawfully in the UK during the "accession period". The "accession period" was originally May 1, 2004 to April 30, 2009 but was extended to April 30, 2011. *TG v SSWP (PC)*⁵ holds, among other points, that the two year extension of the worker registration scheme in 2009 was not compatible with EU law because it was not a proportionate exercise of the UK's powers under the Treaty of Accession. The Regulations (the Accession (Immigration and Worker Registration) (Amendment) Regulations 2009 (SI 2009/892)) which had extended the accession period to April 30, 2011 therefore had to be

3 [2015] UKUT 56 (AAC).

4 [2014] EWHC 2182 (Admin) (High Court, 4.7.14).

5 [2015] UKUT 50 (AAC).

disapplied. The consequence of the decision is that the rights of A8 nationals to reside in the UK as workers or jobseekers are no longer subject to restriction from May 1, 2009. This could, in particular, have relevance to the question of whether an A8 national has obtained a permanent right to reside in the UK. The Secretary of State's appeal against this decision is due to be heard by the Court of Appeal (*sub.nom Gubeladze*) on February 7, 2017.

In addition, in a recent judgment (*Mirga v Secretary of State for Work and Pensions and Samin v Westminster City Council*)⁶ the Supreme Court, after rejecting arguments that the denial of a right of residence under domestic legislation infringed Ms Mirga's rights under Article 21.1 of the Treaty on the Functioning of the European Union ("TFEU") and that the refusal of housing assistance to Mr Samin constituted unlawful discrimination in breach of Article 18 of the TFEU, went on to consider the alternative argument that no consideration had been given to the proportionality of refusing each of them social assistance, bearing in mind the circumstances of their respective cases, and in particular that there had been a failure to address the burden it would place on the system if the appellants were to be accorded the social assistance which they sought. The Court held, however, that

"69. ... it would severely undermine the whole thrust and purpose of the 2004 Directive [Directive 2004/38/EC] if proportionality could be invoked to entitle that person to have the right of residence and social assistance in another member state, save in perhaps extreme circumstances. It would also place a substantial burden on a host member state if it had to carry out a proportionality exercise in every case where the right of residence (or indeed the right against discrimination) was invoked."

Last year's report referred to a number of decisions which had so far unsuccessfully challenged the under occupation penalty (colloquially referred to as "the bedroom tax") for the purposes of housing benefit claims in the social rented sector. However, two appeals have recently been allowed by the Court of Appeal (*R (on the application of Rutherford & Ors v Secretary of State for Work and Pensions, heard with R (on the application of A) v Secretary of State for Work and Pensions.*)⁷ *Rutherford* concerned the application of the under occupation penalty where an extra bedroom was required because a severely disabled child needed respite night time care from carers in his own home. A was a victim of serious domestic violence who was living in a house under a Sanctuary Scheme, which had a "safe room" into which she could escape if necessary. The Court of Appeal concluded that the application of the under occupation charge in the circumstances of these two cases constituted unlawful discrimination in breach of ECHR which could not be justified. The Court granted the Secretary of State permission to appeal and these appeals are due to be heard by the

6 [2016] UKSC 1 (Supreme Court, 27.1.16).

7 [2016] EWCA Civ 29 (Court of Appeal, 27.1.16).

Supreme Court, together with the appeal in *R (on the application of MA & Ors) v Secretary of State for Work and Pensions and Equality and Human Rights Commission*⁸ (which was referred to in last year's annual report), on February 29 to March 2, 2016.

The need to avoid possible discrimination between those with mental health problems or learning disabilities and those with physical disabilities in relation to the under occupation charge was raised in *SSWP v IB (CSH)*.⁹ The claimant had severe learning disabilities and autistic traits and her social worker considered that she required a separate living room from her carers; the downstairs bedroom had therefore been converted into a living room. Although the decision of the Three-Judge Panel in *SSWP v Nelson and Fife Council*¹⁰ had made clear that family designation of how rooms should be used was not normally a relevant factor, this left open the possibility of exceptional circumstances where re-designation might be appropriate. If re-designation was limited to physical conversion only (e.g., if a bedroom was converted into a wet room), and was not available to a mentally disabled person when this had been required on professional advice, in the Upper Tribunal Judge's opinion that would amount to discrimination for no rational reason. Permission to appeal has been granted to the Secretary of State.

In relation to the benefit cap, the Supreme Court delivered its judgment in *R (on the application of SG and others (previously JS and others) v Secretary of State for Work and Pensions*¹¹ on March 18, 2015, holding, by a majority of 3:2, that the benefit cap did not unlawfully discriminate against women in breach of Article 14, read with Article 1, Protocol 1, ECHR. However, the failure to exempt (at least) individual family carers caring for adult family members from the benefit cap was held to be in breach of ECHR in *Hurley & Ors v Secretary of State for Work and Pensions*.¹²

Personal independence payment ("PIP"), which was first introduced in April 2013 and is replacing disability living allowance ("DLA") for people of working age, has been the subject of challenge in the courts in two cases this year. In *R (on the application of Sumpter) v Secretary of State for Work and Pensions*¹³ the Court of Appeal confirmed that the Government's consultation on the PIP mobility criteria was neither unfair nor unlawful. The issue in *R (on the application of (1) Ms C (2) Mr W) v Secretary of State for Work and Pensions*¹⁴ was the delay in determining PIP claims. It was held that the delay in relation to Ms C and Mr W was not only unacceptable but also unlawful because there had been a breach of the Secretary of State's duty to act without unreasonable delay. Mrs Justice Patterson, however, declined

8 [2014] EWCA Civ 13 (Court of Appeal, 21.2.14)

9 [2015] UKUT 282 (AAC) (Brown)

10 [2014] UKUT 525 (AAC).

11 [2015] UKSC 16

12 [2015] EWHC 3382 (Admin) (High Court, 26.11.15).

13 [2015] EWCA Civ 1033 (Court of Appeal, 15.10.15).

14 [2015] EWHC 1607 (Admin) (High Court, 5.6.15).

to grant a declaration in wider terms because of the considerable variations in individual circumstances and the fact that the Secretary of State now appeared to be grappling with the matter.

Another case of interest this year is *Mathieson v Secretary of State for Work and Pensions*,¹⁵ in which the Supreme Court held that the rule suspending payability of DLA after a child has been in hospital for more than 84 days was in breach of Article 14, read with Article 1, Protocol 1, ECHR in Cameron Mathieson's case. A survey of families with disabled children had showed that almost all carers provided the same or a greater level of care when their child was in hospital rather than at home, and bore increased costs. State provision for disabled children in hospital was therefore not overlapping to an extent which justified the suspension of DLA after the 84th day.

Asylum Support Jurisdiction

The Jurisdictional Landscape

Appeal Volumes

Last year we reported an expected 1,600 appeal applications. However, this year our appeal intake will in fact have reached 2,300 by the end of October 2015. This dramatic upsurge is largely attributable to increasing numbers of appealable decisions generated by Home Office initiatives to clear backlogs, and in particular to a drive to discontinue support promptly after asylum-related fresh representations have been rejected.

The Tribunal was initially informed that the increase in appealable decisions would be relatively short-lived and likely to end around September 2015. However, at the Tribunal's October 2015 User Group meeting, senior Home Office officials indicated that not only would their new initiatives continue until at least February 2016, but they hoped to be able to increase the number of support discontinuance decisions still further.

It remains the case, that only a minority of appellants opt to have their appeals determined on the papers, although the proportion risen slightly to 17%. Withdrawals by the Home Office remain high at around 21%, mostly occurring 0-2 days prior to hearing.

15 [2015] UKSC 47 (Supreme Court, 8.7.15).

Proposed Changes in the law

At the time of writing, the House of Lords concluded the fourth day of Committee Stage on 3rd February 2016 with a line by line examination of the Immigration Bill 2015. A further day of Committee Stage is scheduled to take place in Grand Committee on 9th February 2016. The Bill proposes significant amendments to the Immigration and Asylum Act 1999 (IAA 1999) and later relevant Acts. Envisaged in the proposed amendments, is a restriction on access to support for non asylum-seeking migrants (presently provided for by Section 4(1) IAA 1999, as amended by Section 49 of the Nationality, Immigration and Asylum Act 2002 (NIAA 2002)). Also under consideration is curtailment of the current automatic entitlement to support for failed asylum seekers who have children (presently set out in Section 94(5) IAA 1999).

The Bill also redefines a claim for asylum and the power to support failed asylum seekers (presently provided by Section 4(2) IAA 1999, as amended by Section 49 NIAA 2002). It is proposed that this power to support will be limited to those who can demonstrate a yet undefined “genuine obstacle to leaving the UK”.

Most significantly, for the Tribunal there are proposed amendments to Section 103 of the Immigration and Asylum Act 1999, restricting the right of appeal. We therefore watch with interest the progress of the Bill and await further clarification when its final form is known and accompanying Regulations are drafted.

Significant cases

This year's emphasis by the Home Office on discontinuing support promptly after asylum-related fresh representations have been rejected has presented judges with some interesting challenges. Due to the speed of the discontinuation and the subsequent statutory appeals process, it is not an infrequent occurrence for judges to find themselves hearing completely unforeseen new arguments and examining three or more of the grounds for entitlement under Regulation 3(2) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 (the Regulations) at one hearing.

Judges grapple daily with the need to manage this fresh evidence in a manner that is just and fair to both parties, balanced against the need for a speedy determination of the matter. They must also regularly evaluate in such cases whether to remit an issue for reconsideration by the primary decision-maker or whether they have sufficient evidence on which to substitute their own decision for that of the Secretary of State for the Home Department (SSHD). Since there is no limit on the number of appeals, provided that a fresh decision to refuse or discontinue support has been made by the SSHD, judges see many appellants who have lodged multiple appeals and must then determine in each case the weight to accord to

the findings of their predecessors.

Despite these complicating factors, the adjournment rate at hearing remains extremely low (less than 2%), partly due to the fact that each appeal is judicially case-managed at day 4, with case-specific directions being issued in order to achieve an effective hearing and enable the full participation of both parties, notwithstanding the short timeframe within which the appeals are heard.

The Tribunal has this year observed a marked increase in the SSHD's powers under Paragraph 12(c) of Schedule 8 to the Immigration and Asylum Act 1999 (as amended by S57 of the Nationality, Immigration and Asylum Act 2002). This provision permits an application for support not to be entertained where the SSHD is not satisfied that the information provided by an applicant for support is complete or accurate or that the applicant is co-operating with relevant enquiries. The power has been in force since 2002, but seems to have been rarely used until now. It tends to be invoked in cases where there are enquiries into assets as part of an assessment of destitution in a claim for support.

It might be thought that its use would not have any impact on the work of the Tribunal, since a refusal to entertain an application for support does not attract a right of appeal under S103 of the Immigration and Asylum Act 1999. However, judges have increasingly found themselves addressing preliminary issues of jurisdiction and, in approximately 50% of such appeals, have found the content of the SSHD's decision letter to be so detailed as to represent a consideration of the substantive issues and thus an appealable refusal of support decision.

Judicial Review

In the period covered by this report, there were two new judicial review challenges to decisions of Asylum Support judges and five disposals. Of the disposals, two claims were settled by consent and remitted to the FTT and the remaining three claims were dismissed.

The focus of these challenges was whether an outstanding Article 8 non-protection based application entitled an applicant to s.4 support under Regulation 3(2)(e). Also raised, was question of whether the judgment of the Court of Appeal in *Birmingham City Council v Clue* [2010] EWCA Civ 460 (*Clue*), had relevance in asylum support appeals.

In AM, the appellant was a single woman aged 50 years and in contrast to *Clue*, she had no children in the UK. She had lived here for 13 years but had spent the majority of her life in Zimbabwe where her children and other members of her family resided. She was appeal rights exhausted since August 2011 but had since that date submitted four applications for leave to remain. At the date of her first FTT hearing, she had one outstanding Article

8 ECHR application before the SSHD. She argued that pending the outcome of that application, the SSHD was under a duty to provide her with S4 support in order to avoid a breach of her Article 8 ECHR rights.

The appeal failed before the first FTT and the appellant applied for judicial review of the decision. The Administrative Court granted permission. However, before the substantive hearing, the matter was settled by way of remittal to the FTT and the SSHD's concession that the term 'Convention Rights' in regulation 3(2)(e), included the right to respect for family and private life under article 8 ECHR, and that S4 support may in any particular case, be necessary to avoid a breach of a person's Article 8 ECHR rights.

At the *de novo* hearing, the appellant again sought to rely on *Clue* and asserted that to require her to pursue her Article 8 claim from outside the UK, or to pursue it whilst in the UK but without Section 4 Support, would infringe her Article 3 and Article 8 ECHR rights. The SSHD argued that the appellant's Article 8 further submissions were not protection based, and as such, they were not a barrier to her removal from the UK. This is an argument frequently advanced by the SSHD in a significant number of appeals, but not one she appears willing to test at a substantive hearing before the Administrative Court.

The FTT acknowledged that *Clue* was a significant judgment for Asylum Support purposes as many of the principles laid down by Dyson LJ for local authorities had equal relevance for the FTT. The tribunal held that judges could not consider the merits of further submissions unless these were obviously hopeless or abusive, or merely rehearsed previously submitted material, which had been rejected. Absent this, the FTT decided that an asylum support judge should treat an outstanding human rights application as establishing eligibility for support under Regulation 3(2)(e) because there is no legal basis for the SSHD's contention that only a protection-based application entitles a failed asylum seeker to Section 4 support under Regulation 3(2)(e). This is not what the regulations state and it is contrary to the SSHD's own policy on s.4 support. The SSHD is not seeking a judicial review of the decision.

People and places

The increased appeal intake has presented the Tribunal with significant challenges of capacity, both in judicial and administrative terms. This is particularly the case because the intake is not uniform, but rather subject to sudden peaks – for example, June 2015 showed an increase in appeal intake of 84% compared to the same month in 2014. In real and recent terms, the intake of appeals in September 2015 was over 100 more than in the same month last year.

Our complement of judges remains stable, but there have been changes of personnel at Team and local Delivery Manager level in the administration and both the judiciary and the administration have been obliged to come up with innovative ways to manage the increase in workload. Three additional fee-paid judges have been trained on interlocutory work and are increasing their speed and confidence in this area with mentoring from our limited number of full-time judges.

We have also relied heavily on the commitment of our fee-paid judges to run additional lists, enabling us to keep pace with demand and we have been able to benefit from our position in a multi-jurisdictional centre to borrow courts and staff from other jurisdictions when needed. We have also extended our use of video-hearings for the most vulnerable, often enabling such appellants to bring a local representative or support worker with them to hearings for the first time. We continue too receive more requests for video-hearings than we can satisfy and are looking to identify more video venues, particularly in areas such as North-East England.

Criminal Injuries Compensation Jurisdiction

Since the coming into force of the Criminal Injuries Compensation Scheme 2012 (the 2012 Scheme), the Criminal Injuries Compensation Authority (CICA) has seen a steady decrease in receipt of applications for compensation. Not surprisingly, there has been a corresponding reduction in the number of appeals received by the First tier Tribunal – Criminal Injuries Compensation jurisdiction (FTT – CIC). During the period covered by this report, receipts fell by 21% against profile. This presented the ideal opportunity to focus on clearing our backlog of cases, particularly the cases that have been outstanding for over eight months. In the last twelve months, we have worked successfully with the CICA to clear 18% of our oldest and often complex cases under the 2001 and 2008 Schemes. In the coming year we hope to target the remainder of our outstanding caseload.

We have continued to reduce the number of outstanding pre-tariff cases. Last year, we reported eight outstanding pre-tariff cases of which five have now been finalised and awards made and accepted. We hope to conclude the remaining three cases in the next twelve months. This number may increase in the event of additional medical re-openings. This year we have received requests to re-open eleven cases of which five were refused, three allowed and the remainder are outstanding. The three successful cases are all pre-tariff but one, namely (Harris – 77/14245/3), is currently the subject a judicial review challenge by the CICA in the Administrative Court. The issue in that case, is the requirement that a case will not be re-opened unless the renewed application can be considered, “without the need for extensive enquiries”. In *Criminal Injuries Compensation Authority v. Criminal*

Injuries Compensation Appeals Panel & Irene Lamb [2010] EWCA Civ 1433. Hooper LJ held [at paragraph 37] that the test is to be applied at the first stage of the process, namely, when determining whether there is sufficient evidence to support a re-opening and not after the decision to re-open has been taken. Thus, the fact that the Authority may need to make further enquiries after the case has been re-opened is not a valid consideration under the relevant re-opening provisions of the Scheme. A decision is currently awaited from the Administrative Court.

Onward Appeal And Judicial Review

There is no right of appeal against decisions of the FTT – CIC, the only remedy being judicial review to the UT – AAC in England and Wales or to the Court of Session in Scotland. In 2014 – 2015, there were forty-six applications for judicial review of FTT – CIC decisions of which twenty-four were granted permission; nine were refused and sixteen remain outstanding. Of those granted permission, three were remitted to the FTT for hearing *de novo*; five were refused; and sixteen are awaiting judgment. There are three pending judicial reviews before the Court of Session of which two applications are awaiting hearing and the third applicant is seeking Legal Aid.

Interesting Cases

Foetal Alcohol Spectrum Disorder (FASD) – Supreme Court

Last year we reported on the case of *CICA V FTT & CP (CRIMINAL Injuries Compensation)* [2013] UKUT 0638 (AAC), in which the CICA applied for Judicial Review to the Upper Tribunal Administrative Appeals Chamber (UTAAC) against the decision of the FTT – CIC. The issue raised in the appeal was whether a child born with FASD, as a direct consequence of her mother's excessive drinking while pregnant, was eligible for an award of compensation from CICA. The FTT –CIC decision to allow the appeal under s23 of the Offences Against the Persons Act 1861 (the 1861 Act), was overturned by the UT and the appellant appealed to the Court of Appeal (CA). Giving the lead judgment for the CA, Treacy LJ held that the essential ingredient for a crime to have been committed was the "infliction of grievous bodily harm on a person". However, as a child *in utero* was not at that stage "a person" there was no link between the administration of the alcohol and the born child for the purposes of s23.

In December 2014, the applicant applied for permission to appeal to the Supreme Court. The grounds of appeal acknowledged that the previous reliance upon s23 to found criminal liability was misconceived and that the applicant now sought to rely on s20 of the 1861 Act. On 31 March 2015, the Supreme Court (Lady Hale, Lord Wilson and Lord Reed) refused permission to appeal the decision of the CA because, "the application does not raise an

arguable point of law". The court order does not provide any other reasons for the refusal of permission and it is unclear whether the Supreme Court considered the new argument advanced before them in relation to s20, notwithstanding that this new ground had not been raised before the FTT – CIC, the UTAAC or the CA. A new appeal raising the s20 argument is scheduled for hearing in December 2015 before a three-judge panel of the FTT.

Multiple minor injuries – Court of Appeal

In *Clifford v. FTT(CIC) and CICA (Interested Party)* [2015] the appellant had previously suffered a stroke, which had rendered him unfit for work. He was subsequently assaulted and suffered blows to the head causing scratches and bruising. The police recorded his injuries but he did not seek medical attention. His application to the CICA failed under Paragraph 25 and Note 1 of the 2008 Scheme. The FTT – CIC struck out his appeal as having no prospect of success since he had not met the criteria for an award for minor multiple injuries, including the mandatory requirement of seeing a medical practitioner twice.

In the course of judicial review proceedings before the UTAAC, the appellant argued (for the first time) that he had suffered brain damage and deterioration in his health, directly attributable to the assault. The UTAAC found that the claimant's assertions as to deterioration should have alerted the FTT – CIC to consider whether he had suffered brain damage attributable to the assault, and its failure to do so amounted to an error of law. The UTAAC further found that the requirement in the Scheme that the injuries must be sufficiently serious to have warranted two medical consultations, was not a pre-requisite for a successful claim for multiple minor injuries. The UTAAC quashed the FTT – CIC decision and remitted the appeal for rehearing.

The CICA appealed to the CA, and emphasised that the UTAAC has no power, on an application for Judicial Review, to undertake its own assessment of the evidence or to make its own findings of fact in substitution for those of the FTT – CIC. The Authority contended that firstly, the UTAAC's interpretation of Note 12 was untenable and contrary to the clear, statutory purpose of requiring at least two attendances to or by a medical practitioner, and secondly, that the UTAAC was wrong to find that the FTT – CIC had erred in law in failing to consider the possibility of a brain injury.

The CA granted permission and in a judgment given by Moore-Bick, Davis and Sharp LJ, held that the UTAAC's interpretation of Note 12 was wrong in law and that the words "necessitated", meant that two actual attendances were required by the Scheme. Furthermore, the CA confirmed that the FTT – CIC had made no legal error in failing to consider brain injury resulting from the assault, as there was no evidence before it of such injury.

Reduction and withholding of awards - UTAAC

In *R (JT) v First-tier Tribunal & Anor (Criminal Injuries Compensation – reduction and withholding of awards)* [2015] UKUT 478 (AAC) the appellant was a victim of serious sexual abuse by her stepfather between 1968 and 1979, when she was living with him as part of his family. The abuse started when she was around five year of age and ended when she was aged sixteen years. In 2012, the appellant was a key witness in her stepfather's trial, which lead to his conviction on eight counts of sexual assault, including rape, against her. He was also convicted of lesser offences against a relative of the appellant's, who was not living with the assailant as a member of his family.

In December 2012, the appellant applied for compensation under the Criminal Injuries Compensation Scheme 2012 (the Scheme). The Criminal Injuries Compensation Authority (CICA) refused her claim under paragraph 19 of the Scheme, which provides that:

“An award will not be made in respect of a criminal injury sustained before 1 October 1979 if, at the time of the incident giving rise to that injury, the applicant and the assailant were living together as members of the same family.”

This provision of the Scheme, and its predecessors, has come to be known as the “same roof rule”.

The appellant appealed to the FTT against the decision, on the grounds that:

1. paragraph 19 is discriminatory [directly and/or indirectly] by reference to age and/or sex;
2. the FTT should exercise a discretion to make an award notwithstanding the clear terms of paragraph 19;
3. paragraph 19 should be disapplied by the FTT as it is contrary to sections 13 and/or 19 of the Equality Act 2010; or
4. there had been a failure to comply with the public sector equality duty under section 149 of the Equality Act 2010.

The FTT found as fact that the appellant and her stepfather were living together as members of the same family but held that paragraph 19 did not discriminate on grounds of age or sex and that the tribunal had no discretion to make an award outside the terms of the Scheme. It dismissed the appellant's appeal without giving consideration of grounds 3 and 4 above. The appellant applied for judicial review and, dismissing the application, the UT judge held that

the failure to consider the arguments in relation to discrimination and the Equality Act was a material error of law that required the decision to be set aside. However, he substituted his own decision for that of the FTT, and found that paragraph 19 was a lawful and legitimate provision, which is not incompatible with the European Convention of Human Rights (ECHR).

Immediate aftermath - UTAAC

In *CICA v. FTT-CIC [LC and MO interested parties] JR/1006/2012* the UTAAC quashed the FTT – CIC decision for error of law. The UTAAC held that the FTT - CIC failed to make adequate and clear findings of fact in relation to the overt immediate consequences of the sexual abuse of the appellant's daughters but had instead focussed on the later consequences of the abuse following its disclosure to her by the victims.

The UT reminded the FTT - CIC of the judgment of Laws LJ in *RS v. CICA* [2013] ECO Civ 1040, that:

“some caution needs to be exercised in drawing assistance from the common law cases in tort immediate aftermath may allow a degree of temporal and spatial flexibility, the focus of the provision is upon the secondary victim's exposure to the overt consequences of the paragraph 8 event, and in the nature of things these are likely to follow the event more or less immediately.”

Unspent convictions – FTT - CIC

There have been a number of challenges to the provisions of paragraph 26 and Annex D paragraph 3 of the 2012 Scheme, which together disbar an applicant with an unspent conviction (that resulted in a sentence of imprisonment or community order), from obtaining a CIC award. In England and Scotland, the FTT – CIC held that the decision to refuse an award was a lawful and ECHR compliant decision. In the English case, the FTT decided that being a person with an unspent conviction that resulted in a sentence of imprisonment or community order was capable of being an “other status” for the purpose of Article 14 in connection with Article 1 Protocol 1 of the ECHR but that the provision was not manifestly without foundation.

People And Places

This year we are saddened to have lost ten highly experienced legal, medical and specialist members including the two former Principal Judges, Roger Goodier and Tony Summers. We are indebted to them all for their contribution to the jurisdiction and wish them well for the future. On a positive note, we have gained fourteen cross-ticketed judges from SSCS and AS

who are now fully trained and sitting. Several of the cross-ticketed judges have also taken on interlocutory work.

In April 2015, Darryl Allen Q.C. and Professor Mark Mildred were appointed the new legal advisors in place of Christine Dodgson, whilst Adrienne de Vos replaced Jane Reynolds in the role of Training Advisor. The appointments are initially for a period of three years. Our thanks go to Christine Dodgson and Jane Reynolds for serving the jurisdiction so well during their term of office.

Operational Innovations

Over the past year, the majority of hearings in London took place at Field House, Breams Buildings and some at Anchorage House, in East London. However, owing to overcrowding at Field House, all hearings in London will now be listed at Anchorage House, East London with effect from October 2015.

The FTT - CIC has been working to improve the quality of its current venues and seeking out new venues with improved IT facilities. Our aim is to ensure that all hearing rooms are equipped with adequate computer and printing facilities and that panel members have access to Wi-Fi. Testing is currently taking place in Wellington House, Glasgow for a new piece of digital audio recording kit. If successful, this will be piloted at Anchorage House.

In addition, we are exploring the possibility of panel members receiving their case papers electronically. This is difficult as case bundles can often include hundreds of pages of documents, the vast majority of which are medical records and reports. A recent three-month pilot using electronic bundles has been successful and early feedback from the two judges conducting the experiment has been encouraging. The next stage of the pilot is scheduled for November 2015 when a full panel will receive their case bundles electronically. Our ultimate goal is to hold paperless hearings but we recognise that this is unlikely to be achieved in the very near future.

SEC number of judges/members

As at 6th November 2015 the Chamber had a complement of 2,172 posts. This comprised:

Judges (salaried)	106
Judges (fee-paid)	767
Medical members (salaried)	9
Medical members (fee-paid)	804
Disability members	451
Victim support members	18
Accountant members	22

Health, Education and Social Care Chamber

President: His Honour Judge Phillip Sycamore

The Jurisdictional Landscape

The Chamber comprises four jurisdictions, mental health which covers the whole of England; special educational needs and disability, which also covers the whole of England; care standards, which covers the whole of England and Wales, and primary health lists which also covers the whole of England and Wales.

Mental Health

Following a number of very significant procedural changes in the mental health jurisdiction in 2013/14 and 2014/15, such as a reduction in the number of pre-hearing examinations and the introduction of paper reviews in certain cases, this has largely been a year of consolidation in which the procedural changes have bedded in and produced substantial savings for the public purse, without having any adverse effect upon the standard of service

for our users, or upon the quality of judicial decision-making.

The Mental Health jurisdiction has seen a significant increase in the number of applications and referrals received. Over the past eight years the number of receipts has increased from 21,849 in 2007/08, to 32,101 in 2014/15 – an increase of just over 52%. In last year's report, I referred to the choices that clinicians and others have to make when deciding whether a patient should be detained for short-term assessment under Section 2 of the Mental Health Act 1983 (MHA), or for treatment under Section 3. Data published by the Health and Social Care Information Centre shows the total number of detentions on admission to hospital rose year on year from 29,557 in 2010/11 to 37,709 in 2014/15. Section 2 cases account for a fair proportion of receipts which may derive from the difficulty in obtaining a bed in hospital informally. The number of available mental health beds has been declining since at least 1987/88, whilst the number of MHA detentions has been rising since at least 2003/04.¹⁶

Since detention under Section 2 gives rise to a disproportionately large number of applications to the tribunal – amounting to nearly 30% of receipts – and since applications are then often repeated just a few weeks later if the patient moves to Section 3, the jurisdiction has been working with the Ministry of Justice and the Department of Health by looking at the criteria for professionals to apply when deciding the basis of a patient's formal admission – especially if the patient is already well-known to mental health services. As a result, the new Mental Health Code of Practice, that was issued earlier this year, makes it clear that Section 2 should only be used if:

- the full extent of the nature and degree of a patient's condition is unclear; or
- there is a need to carry out an initial in-patient assessment in order to formulate a treatment plan, or to reach a judgement about whether the patient will accept treatment on a voluntary basis following admission; or
- there is a need to carry out a new in-patient assessment in order to re-formulate a treatment plan, or to reach a judgement about whether the patient will accept treatment on a voluntary basis.

The new Code of Practice also addresses the difficult interface between proceedings under the MHA and those arising under the Mental Capacity Act 2005 (MCA), and the inconsistencies and delays that can sometimes arise as a result of there being two distinct regimes and supervisory jurisdictions working independently.

The Code makes it clear that decision-makers should not proceed on the basis that one

16 Figures from Dept of Health and Ministry of Justice

regime is generally more (or less) restrictive than the other. Both regimes are based on the need to impose as few restrictions on the liberty and autonomy of patients as possible. Having said that, some recent decisions of the Upper Tribunal have highlighted the difficulties encountered when two regimes, that are operated by different jurisdictions under different legislation, offer different legal safeguards in respect of the same patient.

The mental health jurisdiction has established systems to work effectively with the courts, so that we are able to secure the services of over a hundred authorised Circuit Judges and Recorders to sit with us for several weeks a year in order to deal with restricted patients. A number of District Judges are also available to us, and I have agreed with Social Entitlement Chamber President Judge John Aitken to explore the possibility of cross-ticketing a number of judicial office holders from the Social Entitlement Chamber, to provide further judicial support.

The mental health jurisdiction continues to sit at over 900 different hospital and Trust venues throughout England, taking justice to our users and making access to the tribunal as easy as possible. I am very grateful to the majority of hospitals that have signed up to our standards of safety and amenity – these standards being essential to allow us to do our work effectively, and to keep us all safe.

On 27 April 2015 the Senior President issued a new Practice Statement in relation to the delegation of functions to staff. In the mental health jurisdiction, one change related to the power of staff to accept a withdrawal of an application by a patient. Following a case where the withdrawal of an application was accepted by a staff member after the case had been adjourned part-heard and was nearly concluded, the power for staff to accept withdrawals has been made subject to the case not being part-heard, and there being no other reason for tribunal staff to believe that consent to the withdrawal should be refused, for example it appearing that the withdrawal is merely tactical.

At the same time, another change made related to the delegated staff powers arising after failure by the Responsible Authority's witnesses to provide the tribunal with advance written disclosure of their evidence, in the form of reports, within the time limits laid down by law. Under delegated powers, once the report-writer is in breach of the Chamber rules, authorised staff may issue directions to the defaulting person requiring them to file their report (compliant with the Senior President's Practice Direction on the Contents of Reports in Mental Health) within 7 days. The defaulting witness is warned that failure to comply with the direction may result in referral to the Upper Tribunal for consideration of a penalty. The witness is warned that such penalty may include a fine, with imprisonment in default of payment.¹⁷

17 [CB v Suffolk CC \[2011\] AACR 22](#)

So far, the jurisdiction has not had to refer anyone to the Upper Tribunal, and instances of default are being dealt with informally by accepting apologies and assurances of future compliance. The resulting improvement in compliance is of very real benefit to patients who (with their legal representatives) now have more time to consider the medical, nursing and social circumstances evidence before the hearing takes place.

Although it is too early to collate accurate figures – senior administrators and judiciary believe that we are seeing fewer adjournments arising due to late receipt of reports. This robust use of directions is complimented by the involvement of our salaried liaison judges who provide advice and guidance to hospitals in their liaison areas, and who are taking the lead in following up any instances of non-compliance arising in their liaison areas. A number of salaried liaison judges have also provided free training to Responsible Authorities in their areas, in order to further support a joint effort to improve the timing and content of the written reports that we receive.

These developments build upon a significant improvement in tribunal efficiency achieved over recent years. For example, the adjournment rate has been halved and, despite the pressures caused by the high number of Section 2 applications, the jurisdiction lists 100% of these applications within 7 days of receipt, whilst nearly 80% of such decisions are issued within 3 days of the hearing taking place.

Interesting Cases

In *KD v A Borough Council, the Dept of Health & Others [2015] UKUT 0251 (AAC)* the Upper Tribunal noted that schedules of the MCA refer to and create a linkage with the MHA, and yet those schedules are “notoriously difficult” to construe and apply. This case involved a patient with Korsakov’s Syndrome who was subject to Guardianship under the MHA. He contended that Guardianship was not necessary because an alternative arrangement could be made under the MCA Deprivation of Liberty Safeguards (DoLS). The tribunal could not, itself, authorise deprivation of liberty under DoLS and so the appeal was allowed on the basis that the tribunal should have considered whether or not to adjourn in order to allow other decision-makers to become involved.

The First-tier Tribunal, no doubt mindful of the jurisdiction’s strong guidance to only adjourn if absolutely necessary (given the substantial cost of convening a full panel at a hospital, and the ECHR requirement to conclude mental health matters speedily) had not addressed the question of an adjournment so that others could play their part under the MCA, and so this was criticised by the Upper Tribunal. However, having made that finding, the Upper Tribunal went on to note that the power under Guardianship to return a patient to his or her placement could not be replicated under the MCA, and so (had they considered it) the panel may well have decided not to adjourn.

The case, therefore, illustrates the problem of one jurisdiction being unable to take a coherent overall view and deal with all relevant matters arising on the same occasion, and highlights the financial and other costs, and the obvious inefficiency, of the First-tier Tribunal having to adjourn for another jurisdiction to deal with those aspects of the same case that currently fall outside of our statutory remit.

In *Secretary of State for Justice v KC and C Partnership NHS Foundation Trust* [2015] UKUT 0376 (AAC), the Upper Tribunal heard argument from the Secretary of State that a restricted patient who was eligible to be discharged from hospital on the strict conditions necessary for public protection might not be able to step down from hospital on those conditions because such terms may clash with the different tests applied under the MCA, and a different jurisdiction may refuse to authorise the required care plan.

This case (along with the figures above showing the pressure on mental health beds in hospital) gives strong support for the useful proposition that if a patient does not have capacity to consent to conditions on a Conditional Discharge that amount to a deprivation of liberty, the position can be regularised by a DoLS authorisation (if in a hospital or care home) or otherwise by Court of Protection welfare order.

The difficulty is, however, that this brings two different jurisdictions into play, with little ability for either jurisdiction to deal with everything at the same time. The Upper Tribunal judge therefore raised the question of what to do when concurrent decisions in respect of the same patient fall to be made under different statutory regimes by different judicial or administrative bodies. The Upper Tribunal decided that the MCA jurisdictions and processes are “ill equipped to make, and should not make, decisions on the arrangements and thus the protective conditions required to provide appropriate protection to the public and the patient as and when the patient moves from hospital to the community”.

In the same case, the Upper Tribunal said (obiter) that if the patient does have capacity to consent to conditions amounting to a deprivation of liberty, then the right of the patient to autonomy and to make decisions for themselves should be respected. This means that the First-tier Tribunal should be prepared to consider imposing (on a Conditional Discharge), or allowing the imposition of (on a Community Treatment Order), such conditions on a capacitous patient as are necessary, if the patient agrees.

This approach is likely to be in the interests of capacitous patients wishing and willing to step-down out of hospital, albeit with conditions amounting to an objective deprivation of liberty in (say) a care home or 24 hour supported accommodation. It also:

- takes account of the substantially lowered threshold for deprivation of liberty following the Supreme Court decision in *Cheshire West and Cheshire Council v P* [2014] UKSC 19 (and

this new low threshold would create quite a problem if patients, able and wishing to do so, could not agree to arrangements that might now be caught by the Cheshire West definition);

- places patients with capacity to agree on an equal footing with patients who do not have capacity and for whom DoLS or a welfare order can authorise the deprivation of liberty;
- may help to avoid unnecessary bed-block in psychiatric hospitals and thereby relieve intense pressure on hospital beds;
- allows for the imposition of conditions that may be necessary to protect the public as well as the patient; and
- respects and mirrors the right of patients, with capacity, to weigh-up and agree to other arrangements – including to remain in locked hospitals on an informal basis – something that no-one doubts their ability to agree to, if they so wish.

However, despite all this, the fact remains that if a patient lacks capacity, the First-tier Tribunal in the mental health jurisdiction has no power to deal with all aspects of the case, and cannot offer an efficient or joined-up judicial decision making service for the benefit of such patients – whose particular circumstances mean that, of all our stakeholders, they particularly need and deserve straight-forward and uncomplicated access to justice with consistent judicial decision-making at a single point of contact.

SEND/Care Standards/Primary Health Lists

The implementation of the Children and Families Act 2014 on the 1 September 2014 provided the first major overhaul of the statutory framework underpinning the SEND Tribunal's work since 1993. The transition arrangements which require local authorities to complete the transfer of statements to education, health and care plans by 2018 means that for at least three years, the Tribunal will be required to implement two parallel systems. In practice, however, within twelve months, the number of appeals under the new legislation is equal to the number of appeals running under the old system, and the administration and the judiciary have been required to get abreast of the new arrangements without delay. New judges and members coming into the jurisdiction are receiving training in the new legislative provisions on the basis that very soon, the number of appeals applying that legislation will exceed those under the old.

The Senior President's Second Composition Pilot was implemented and has run its course. The pilot extended the practice of listing appeals before a panel consisting of a judge and

one specialist member across all appeals regardless of type, but retained judicial discretion to request a second specialist member where the appeal was complex. The outcome of the pilot indicated there was no discernible difference in the quality of decisions or the experience of users under the pilot appeals and following the publication of the amended Senior President's Composition Practice Statement in December 2015 two person panels for all SEND hearings is the standard composition, but is subject to judicial discretion to request a second specialist member in complex cases..

The implementation of the new legislation in September 2014 was not the end of the story as far as changes to were concerned. In January 2015, the Department for Education made further amendments to the Code of Practice, effective from the 1 April 2015, extending rights of appeal to the Tribunal for the first time, to children and young people up to the age of 18 in custody. The fact that no appeals have yet been registered by the Tribunal begs the question of whether there is effective training for those supporting children and young people in custody and whether there is sufficient access for them and their families to advice and guidance about their right to special educational provision and appeals. It is well known that there is a disproportionate number of children and young people with special educational needs who find themselves within the criminal justice system and it is therefore of note that no appeals have been made.

Another development on the 1 June 2015 was the start of another pilot, which will run for a minimum of 12 months, whereby the Tribunal's jurisdiction has been extended to include the power to make recommendations about health and social care needs and provision in education health and care plan appeals.

The Recommendations Pilot is part of a broader review required by s79 of the Children and Families Act 2014 whereby the Lord Chancellor and the Secretary of State for Education must lay a report before Parliament before March 2017 addressing the question of how effectively disagreements about the exercise of functions under Part 3 of the Act are being resolved.

Following the publication of new regulations, the Tribunal has power to make non-binding recommendations to health and social care commissioners in designated local authority areas across England, at the request of the parents or young person, the LA or of the Tribunal's own volition.

In order to ensure that panels considering such recommendations have the relevant knowledge and expertise, the Tribunal has cross ticketed members with expertise in health or social care work, from within its own Chamber jurisdictions, to sit as a second specialist member in pilot appeals. Those ticketed to sit have undergone training on the new

legislation and provisions and have delivered training to SEND judicial office holders about the commissioning arrangements and duties of health and social care providers.

There is power to extend the pilot beyond the initial 12 months if that proves necessary in order to improve the quality of the data and to increase the number of local authority areas participating in the pilot.

The transition arrangements for post-16 young people moving to new provision in 2015 required a shorter timeline for appeals, with a registration to hearing time of 7 weeks, so that placements could be identified in advance of the start of the new term. The number of appeals which ran on the shorter timetable was small, but the outcome was that the majority of them were concluded within the anticipated window without a need for extensions to obtain relevant evidence.

The Tribunal has now for five years automatically shortened the timetable for phased transfer appeals, when children move from one phase of education to another eg primary to secondary phase, so that they are heard before the end of the summer term and the decisions issued promptly so that the child is aware of the school placement in advance of the new term. About a third of the Tribunal's work each year falls into that category and in 2015, the Tribunal successfully expedited all those appeals so that they were heard within the shorter timeline.

Later in the year, however, whilst overall, the number of appeals has fallen, it is suggested that more appeals are proceeding to hearing with an increase of about 10% in the number of effective hearings in September as compared to other months. The Tribunal is continuing its practice of cross-ticketing and assigning judges from other jurisdictions into SEND and further exercises will continue to ensure that sufficient judges are available.

Interesting Case

Changes to the funding arrangements by the Department of Education led to four appeals being consolidated and heard together by the Upper Tribunal (AAC) during the summer of 2015. The main issue under consideration was the way in which the Tribunal is to calculate the cost of placements and specifically how it is to deal with place funding in schools for children with special educational needs when applying s9 of the Education Act 1996. The judgment was handed down in *Hammersmith & Fulham v L* [2015]UKUT 0523(AAC). In the linked case *O v Lancashire*, the judge highlighted the importance of cases being listed in appropriate venues to ensure that children can properly participate.

Care Standards

The jurisdiction covers a breadth of regulatory appeals in the care industry, including registration, suspension and cancellation decisions by the Care Quality Commission and Ofsted.

New rights of appeal were introduced into the Care Standards jurisdiction from 1 September 2014, namely a right of appeal will lie to the Tribunal both by Childminder Agencies against Ofsted decisions and against Childminder Agency decisions by individual childminders. So far no new appeals have been received under the new statutory provisions.

New rights of appeal contained within Part 4 of the Education and Skills Act 2008 have been implemented in relation to the management of independent schools and the appeals generated will be heard during 2016.

Primary Health Lists (PHL)

The jurisdiction hears appeals against the decisions of the NHS National

Commissioning Board involving the listing of doctors, dentists and pharmacists as service providers. The transitional changes are now well established as are the consolidated Performers Regulations for Doctors and Pharmacists.

People and Places

Under my guidance two Deputy Chamber Presidents provide day to day leadership for the Chamber.

Deputy Chamber President Judge Meleri Tudur provides day to day leadership for the (currently) 4 dedicated SEND, Care Standards and Primary Health Lists salaried judges and some 200 fee paid judges and specialist members. A JAC competition is being launched shortly to fill a salaried judge vacancy.

The mental health jurisdiction has a judicial leadership structure comprising Deputy Chamber President Judge Mark Hinchliffe and Chief Medical Member Dr Joan Rutherford. As mentioned below, Dr Gabrielle Milner was also recently selected as Deputy Chief Medical member to support Dr Rutherford. There is a cadre of 21 salaried judges based either in London or Manchester who, in addition to their sittings, also have a liaison role for the fee paid judicial office holders within their allocated region of which there are some 1000 nationally.

On the 7 April I was very pleased to welcome Carolyn Fyall as a salaried judge to sit in HESC in the mental health jurisdiction. Carolyn was previously a salaried tribunal judge in the FtT Social Entitlement Chamber. Also in April following an expressions of interest exercise, Dr Gabrielle Milner was successful in her application for the non salaried role as Deputy Chief Medical Member to support the Mental health jurisdiction's salaried Chief Medical Member, Dr Joan Rutherford. The post of Deputy Chief Medical Member is for a year initially by way of a pilot. I know that Gabrielle's contribution and support to Joan so far has been very well received.

Salaried judge Melanie Plimmer, who was the lead judge for Care Standards and Primary Health Lists, moved to the Upper Tribunal Immigration and Asylum Chamber on promotion in July this year and though we were sorry to lose her from the Chamber we were delighted and wish her well on her promotion. In June Jane McConnell took up her first judicial appointment joining the Chamber to sit in SEND, CS and PHL. Jane has also become lead SEND judge. Jane was previously Chief Executive of the Independent Parental Special Educational Advice (IPSEA) and has extensive experience in the work of SEND from previous roles.

Jason Greenwood has been appointed the Delivery Manager at Darlington with day to day responsibility for the administrative team for SEND, Care Standards and Primary Health Lists. Dave Johnson continues as the Operational Manager for SEND/CS/PHL amongst other jurisdictions within his responsibility. The mental health administrative support team based in Leicester continues to work hard on improving the service it provides under Operational Manager Karen Early, and routinely registers applications / references, sends reports to parties, deals with adjournments, and issues decisions within 24 hours of receipt. Kelly Swan is the Cluster Manager whose remit includes all four HESC jurisdictions.

The administration for SEND, Care Standards and Primary Health Lists arranged an open day for users at the new offices in Darlington in March 2015 with the support of the salaried judiciary. The event was very successful and oversubscribed but provided an opportunity for users to understand the way in which the administration undertakes its work and the resource limitations upon its operations. Such was the success of the open day that it is very much hoped that another similar event is to be held during the spring of 2016.

Following the successful addition of Tribunal Registrars to the resources used in SEND in 2011, a further three legal advisers from the Magistrates' Courts in the north east of England have been added to the pool to make a total of seven individuals who are working on a rota in the administrative centre in Darlington. They are dealing effectively with judicial box-work using delegated powers to make interlocutory orders, which can be reviewed by a judge at the request of a party within 14 days of making the order.

In January 2016 the Chamber's salaried judiciary welcomed The Right Hon., the Baroness Hale of Richmond, Deputy President of The Supreme Court, and Sir Ernest Ryder, Senior President of Tribunals to their annual training event.

Looking forward, and as I said in last years report, if new challenges are placed before us then this Chamber can draw upon its long experience of harnessing the necessary expertise of judiciary from a wide range of backgrounds, and already has the necessary administrative and judicial arrangements in place, to offer such accessible, cost-effective, efficient and user-friendly tribunal services, as may be required in the future.

War Pensions and Armed Forces Compensation Chamber

President: Judge Alison McKenna

Temporary President: Judge Nicholas Wikeley

In the last Annual Report, the President, Judge Alison McKenna, noted that it had been a challenging year for the Chamber. The same is true for the year now under review. Judge McKenna took up her office in September 2014, but unfortunately had to go on long-term sick leave in June 2015, when I took over as Temporary Chamber President. My appointment is definitely *temporary*, as we look forward to welcoming Judge McKenna on her return to office in early 2016. If this unfortunate chain of events has demonstrated anything, it suggests a possible need to amend the Tribunals, Courts and Enforcement Act 2007 to accommodate this sort of eventuality – I cannot be Acting Chamber President as that position only exists when there is no Chamber President, which is most assuredly not the case in this Chamber. The Senior President has thus assigned me to the Chamber in the jurisprudentially slightly precarious non-statutory role of Temporary Chamber President

The Chamber's workload comprises hearing appeals relating to claims and awards under the old Service Pensions Order (the SPO, broadly relating to injuries sustained by service personnel before 6 April 2005) and the Armed Forces Compensation Scheme (AFCS) for cases arising after that date. After several years of new appeals running at 2,500–3,000 a year, receipts of new cases hit a low of 1,880 in 2011–12. Since then the number of new appeals (and disposals) has steadily risen again to previous levels: 2012/13 saw 1,868 receipts and 1,810 disposals, with the figures for 2013/14 and 2014/15 being 2,264 (2,166 disposed) and 2,514 (2,360 disposed) respectively. There are a number of probable factors behind the increase in the caseload. These include greater awareness of the AFCS amongst serving

military personnel and the impact of redundancies in the armed forces, which enables those with pre-April 2005 injuries to make a SPO claim on their discharge from service.

A major procedural innovation in the Chamber in the past year has been the introduction of The *Benchbook*, broadly modelled on the guide to procedure used in the Social Entitlement Chamber but adapted by the President for use in this Chamber. The *Benchbook* comes in two volumes; Part I provides guidance on procedural issues that may arise before, in and after hearings, while Part II comprises the (then current) texts of the consolidated Service Pensions Order 2006 and the new Armed Forces Compensation Scheme Order 2011, along with the Tribunal's procedural rules. The *Benchbook* was issued to all panel members in March 2015 and formally launched by the Senior President at a Chamber training day. It has already proved its value, not least as there is (at present) no textbook on the war pensions and AFCS regimes.

The other main procedural change has been the assignment of five judges from the Social Entitlement Chamber, also based at Fox Court, to undertake the routine but important interlocutory "box work" in the Chamber. This system has already proven its worth in terms of contributing to the smooth running of the Chamber's work, and has allowed both myself and Judge Clare Horrocks, the Principal Judge, to focus on the more demanding appeals in our caseload.

The Chamber continues to benefit from a steady flow of decisions from the Upper Tribunal. The decision of the three-judge panel in *JM v Secretary of State for Defence [2015] UKUT 332 (AAC)*, a bullying case, has important ramifications both for the way that Veterans UK assess claims and the Chamber deals with appeals more generally. There is a block of more than 80 "lookalike" cases, which had been stayed pending the outcome of JM, which the Chamber will start working its way through in the coming months.

The Chamber continues to work closely with its companion tribunals in Scotland and Northern Ireland and with stakeholders in the armed forces community, both through the Advisory Steering Group and more informal channels.

Amongst personnel changes, Principal Judge Horrocks moved to salaried part-time working from March 2015, so her invaluable experience and expertise remains available to the Chamber for three days a week. Over the course of the year a number of long-serving judges and members retired; it would be invidious to single out any one individual, but their commitment to the Chamber and its work is much appreciated. This report would also not be complete without recognising the major contribution to the work of the Chamber over more than 13 years by Mrs Deborah Portman, who resigned her position as Delivery Manager in the summer of 2015 to pursue other interests outside the civil service. All the Chamber Presidents, past and present, owe Debbie an immense debt for her unfailingly

cheerful and efficient administrative support. We look forward to working with her successor, Mrs Kami Seehra, in the coming year.

Immigration and Asylum Chamber

President: Judge Michael Clements

I begin by echoing the words of Sir Jeremy Sullivan in the foreword of last year's Annual Report of the Senior President of Tribunals, that "Volatile workloads, creating fluctuating pressures across the various jurisdictions are a particular characteristic of the work of Tribunals". Nowhere within HMCTS is this more the case than in the Immigration and Asylum Chamber. An indication of this can be found in the figures for outstanding caseload, which in June 2015 stood at 52,991 as opposed to 43,643 one year previously and 45,043 one year before that.

Although we were correctly profiled for the work that we expected to receive from the Home Office, nevertheless unacceptable delays in listing arose in the third quarter of 2015 with obvious impacts on our court users. I have worked closely with administration over this aspect and am pleased to say that we have been able to offer further court hearings to reduce the problem.

Workload fluctuations in FtTIAC have brought with them unfortunate "boom and bust" cycles which are unpredictable in length and frequency. This leads to frustrations for both judges and administration with an understandable impact on morale especially amongst the fee-paid judges where lack of sittings leads to de-skilling large numbers of expensively trained judges.

It cannot be denied that these fluctuating cycles are a serious problem which must be acknowledged. It is something about which it can be fairly said in an annual report that the IAC "could do better". To that end, I am working with administrative colleagues and the SPT to do all we can to produce a more even workflow the lack of which affects the efficiency of the Tribunal. I hope to be able to make some concrete announcements about this in the near future.

In the longer term, one very important element in ironing out fluctuations will be an increased facility for cross-ticketing and assignment to enable both fee- paid and salaried judicial officers to be deployed flexibly and at relatively short notice to those locations of the Judicial Family where they are most needed.

To this end I hope and expect that IAC judges will make themselves available, as workloads require, to be trained and to sit in other jurisdictions thereby providing a flexible judicial resource. Those members of FtTIAC who already hold appointments as Recorders or Deputy District Judges are able to lead the way in this respect. For example, a salaried judge at the Hatton Cross hearing centre is currently obtaining family law “ticketing” in order to sit in the West London Family Court, which sits in the same building as FtTIAC. As mentioned last year we have already started to train colleagues from other Chambers to work in the IAC.

Notwithstanding the above problems, I record my thanks to Jason Latham of HMCTS who has assisted greatly during the past year in obtaining financial resources for FtTIAC which would not otherwise have been available and without which the situation would have been significantly worse. In this respect and in many others I again echo what Sir Jeremy Sullivan wrote a year ago that meeting the continuing challenges of FtTIAC has required close partnership working between judges and administrators. I am grateful to both judiciary and administration for the increasing engagement, and the constructive and amicable approach each has developed with the other.

The number of salaried judges in post in the Tribunal has reduced dramatically by retirements and resignations from 152 in 2005 to 94 as of October 2015. This represents the loss of an immense amount of judicial expertise and experience. As I reported last year and mentioned earlier, 197 fee-paid judges of the Social Entitlement Chamber and the Employment Tribunal have been inducted into the IAC and have been trained to conduct immigration appeals. Their assignments were initially for a period of two years but they have been invited to make expressions of interest to continue when required for a further term at the end of that period. So far 156 of these judges have said that they would like to continue to work in the IAC.

As President of FtTIAC I have been greatly assisted by the support, proactive thinking, and, from time to time, constructive criticism, of the Council of Immigration Judges. I work closely with the Council, with which whenever possible I share information and exchange ideas. I pay particular tribute to Designated Judge Russell Campbell, the current outgoing President of the Council, who has held that post for the last two years. Russell has been an invaluable conduit for the varied (and sometimes very emphatic!) views of individual judges. He is now taking on the Chairmanship of the Tribunals Forum, where he will perform the same tasks for Tribunals generally. In that role and as a member of the Judges' Council he will, among other things, be in a position to ensure that the continuing development of assignment and cross-ticketing is carried out in a way which is beneficial both to the judiciary and to the interests of justice. I welcome his successor as President of the CIJ, Judge Christopher Buckwell, who I wish well in his new post.

We are taking an active and constructive interest in the current HMCTS Reform Programme, an important part of which is the rationalisation of the Courts and Tribunals estate. One aspect is that the leases on a many of FtTIAC estates come up for renewal in the Spring of 2017. I am working closely with administration to identify appropriate venues and, in some instances it may require the Tribunal to move. It is planned that we shall be moving from Sheldon Court Birmingham to the CFT in the centre of Birmingham in 2017. Works have commenced at Taylor House, London for the provision of more courts to be used by the Tax Tribunal. FtTIAC is sometimes criticised, I consider unjustly, for low usage of hearing rooms. This arises because almost all decisions have to be reserved and given in writing so that they can be translated to and understood by appellants for whom English is not their first language. Separate chambers are provided for judges to carry out this writing up. Repeated reviews have shown that for every hour in a hearing room, three hours are required for the tasks which fall to be carried out in chambers. Hence hearing room usage is by comparison relatively low. I have long suggested with the support of the CIJ that this problem could be resolved by rationalising the layout of the hearing centres to provide one room in which a judge would carry out all their tasks. Such alterations to the estate would, however, involve capital costs which may not be able to be met in the current financial climate. This is one problem to which at present there seems no prospect of solution

Another limb of the Reform Programme is improvement in the efficiency of working practices. In this respect FtTIAC is currently working on the impact of the judgment of the Court of appeal in *The Lord Chancellor v Detention Action, etc.* [2015]EWCA Civ 840, the effect of which is to render unlawful decisions made under the 2014 “Fast Track” Procedure Rules. The decision is subject to appeal to the Supreme Court, but if it is upheld, new procedures will need to be implemented to deal justly with those appeals. I hope to be able to report back progress in a year’s time.

As to other aspects of working practices, FtTIAC is, to a large extent, limited in the scope of flexibility by the requirement that all its substantive decisions must be given in writing in reserved judgments with full reasons. This leads to a need to set out evidence, submissions and reasons at considerable length to avoid successful onward appeals. It may be that in the longer term, liaison with the Training Judges, the Upper Tribunal and the Court of Appeal could take place with a view to evolving protocols as to the content and form of decisions so as to avoid unnecessarily long, repetitive and time consuming decisions. At the moment, however, any such development has not progressed beyond the stage of informal discussions among the senior judiciary in FtTIAC.

The efficient conduct by judges of the Tribunal’s business is facilitated by the case management powers in Rule 4 of the Tribunal Procedure Rules 2014. These are helpfully augmented by an enlarged power in the new Rule 9 to make wasted costs orders, and to award costs where a person has acted unreasonably in bringing, defending or conducting

proceedings. It is to be hoped that, as in the civil and criminal courts, the existence of such powers, rather than their actual exercise, will encourage fuller and more constructive compliance with procedural requirements and directions, with the result of greater efficiency in the dispatch of business.

The increased use of information technology proposed by the Reform Programme is being embraced by FtTIAC. Decisions of the Tribunal are currently promulgated to the parties electronically, and document bundles are often transmitted to hearing centres by e-mail. There appears to be considerable scope for increased efficiency by making the filing and service of documents by e-mail mandatory, at least where appellants are legally represented. There is significantly more work to be done in this direction, but considerable progress in efficiency is likely to be achievable by increased use of IT.

We still do not, however, routinely have facilities to record all our hearings. This is a serious deficit which I hope will be resolved as part of the Reform Programme. While we do have the benefit of video linking for some hearings, notably bail applications, it has to be said that the technical quality of the equipment often leaves much to be desired. This is a facility ripe for improvement.

The immigration jurisdiction has always made high demands on the judiciary's "judgcraft". New provisions inserted into the Nationality, Immigration and Asylum Act 2002 have substantially reduced the rights of appellants to "in country" appeal hearings. This means that, increasingly, judges are being required to hear appeals where the appellant, having been removed from the UK, is not present in front of them. Further, when an appellant is present, he or she may well be unrepresented. This is of course now a widespread phenomenon throughout Courts and Tribunals, but made more difficult in the IAC by the fact that the vast majority of hearings have to be conducted through interpreters.

Underpinning the efficient work of any Tribunal or Court must be excellence in training. I am happy to say that this requirement is very amply fulfilled in FtTIAC by Designated Training Judges Julian Phillips and John Manuell with the oversight of Resident Judge Deans and backup from a team of Judges and Designated Judges. They have, among other achievements, successfully organised the training, on an unprecedented scale, of the 197 cross-ticketed judges from other jurisdictions referred to above. They also carry out regular, routine training for the entire jurisdiction on new developments in the law. Feedback from attendees at their training has been uniformly and deservedly excellent. Our sincere thanks are due to them for making the lives of all of us easier by providing the knowledge and techniques for the conduct of our daily work.

Judicial leadership at FtTIAC hearing centres has traditionally been the province of the Resident Judges, and of Designated Judges selected not only for their knowledge of

immigration law but also for their qualities of leadership and management skills. Currently, in the absence of any competitions for the Designated Judge post, the needs of hearing centres have been augmented by the appointment of Assistant Resident Judges who were recently welcomed into their roles.

I am sad to report the deaths during the year of the following past and present colleagues: Godfrey Naphthine and William Mark-Bell.

Finally, I acknowledge the retirements during the past year of 33 colleagues, including RJ Nicholas Renton, to whom we all send our best wishes for a long and happy retirement. In the near future we shall be losing RJs Christine Roberts and Francis Pinkerton who have both been stalwarts in exercising leadership and management functions at the Bradford and London (Taylor House) centres respectively. They will be hard acts to follow.

In the past Resident Judges in FtTIAC have been appointed through an expression of interest from the Upper Tribunal. After consultation with the SPT and the JAC, future appointments to the Resident Judge role will be through an open JAC competition. It is hoped that recruitment and appointments will be made during the first half of next year to replace vacancies.

Finally I would wish to welcome Sir Ernest Ryder as our new Senior President. He has a wealth of experience and, from conversations I have had with him, many initiatives which I am sure will bring Courts and Tribunals closer with improved efficiency. I am sure we all wish him well in these endeavours.

Tax Chamber

President: Judge Colin Bishopp

I wrote last year of an antecedent period of calm but of my expectation of change over the ensuing year. Change we have had, but not altogether of the kind I had assumed or hoped for.

The forecast moves in London and Birmingham have taken place. The London judiciary are now based in the Royal Courts of Justice, sharing with the Tax and Chancery Chamber, but will be moving on—not, as originally proposed, in late 2015 but in the summer of 2016—to Taylor House, in Rosebery Avenue, a building currently used by the Immigration and Asylum Chamber with whom we shall share. There will be sufficient courtroom space there

for all of our London hearings; in the meantime we are using the RCJ and Fox Court. In Birmingham the administration teams have moved back to their original home in Hagley Road, while the judges and our hearing rooms are now at Centre City, close to New Street station; they too share with other tribunal jurisdictions. There have been no judicial moves in Manchester or Edinburgh.

It can be seen with the benefit of hindsight that the decision to move all of the Tax Chamber's administration to Birmingham, at the same time disbanding the administration teams in London, Manchester and Edinburgh, was a mistake; the idea was sound but unforeseen problems undermined its success. Not all of the Birmingham staff were willing to move and those who did, together with inexperienced new recruits, were simply unable to cope with the workload. Their difficulties were compounded by the simultaneous introduction of a new case management system (GLiMR—which is also being introduced to other Chambers). The change of system could not be avoided as our old case management program was on the brink of collapse. The result of all the changes was that, for several months, the service we offered to our users was well below the standard at which we aim. I am glad to say that it has improved considerably under the guidance of the Midlands cluster manager, Helen Dickens, who has recently assumed responsibility for the Tax Chamber, but at the time I am writing this report there is still some way to go. Other projects in progress will, I hope, make it possible for me to report in a year's time that we are back on track.

Against that background it is perhaps fortunate that the additional work which was forecast to come our way, generated by the measures introduced by the Finance Act 2014 in order to accelerate the payment of disputed amounts of tax, has only recently started to reach us. Had it arrived, as originally predicted, in January 2015 we would have been hard-pressed to deal with it effectively. In the meantime we proceeded with the recruitment of additional judges, in part to replace those who have retired or are about to retire, and in part to increase our numbers in anticipation of the arrival of the additional work. We did not fill all of the vacancies and, indeed, the number of applicants was disappointingly low. We did, however, succeed in recruiting the four additional salaried judges for whom we were hoping, and Jennifer Dean is now in Manchester while Harriet Morgan, John Brooks and Jonathan Richards are in London. We succeeded in addition in recruiting 20 fee-paid judges, of whom, I am delighted to say, three are non-lawyers, all with experience of the Chamber as they formerly sat as members. I am also pleased to say that, of the total, 12 are male and 12 female. In addition, three new deputy judges were appointed to the Tax and Chancery Chamber, and four First-tier Tribunal judges were promoted to that position. All can and do sit at both levels. Three judges and six members have retired during the year, and rather more will do so over the next 12 months.

Despite the slower than expected start, HMRC continue to forecast a substantial increase in our workload and the signs are that it will come, in rapidly increasing volumes, over the course of 2016 and 2017. I had hoped that the recruitment exercise to which I have referred would provide us with sufficient judges to cope with the increase but if HMRC's projections are correct another exercise will be needed, and we will in any event soon need to recruit more members.

The judgment of the Court of Appeal in *Fonecomp v HMRC* [2015] EWCA Civ 39 has had a significant impact in many of the so-called MTIC appeals currently before the Chamber, and indeed the volume of such appeals awaiting a hearing has diminished substantially. These appeals have been very demanding of our resources, since in almost all cases the hearing occupies at least a week and often much more. One such appeal was concluded during the year after a hearing lasting 63 days.

We still have large numbers of penalty appeals awaiting the outcome of another case before the Court of Appeal, *Donaldson*, in which questions about the imposition by computer, with no human intervention, of tax penalties will be explored. There has also been an interesting disagreement between the *Employment Appeal Tribunal in Orthet Ltd v Vince-Cain* [2004] UKEAT 0801_03_1208 and *Timothy James Consulting v Wilton* [2015] UKEAT 0082 and the Tax Chamber in *Moorthy v HMRC* [2014] UKFTT 834 (TC) about the taxability of a compensation payment. *Moorthy* is about to be heard in the Tax and Chancery Chamber, but that may not be the end of the story.

The observations of Lord Carnwath about the jurisdiction of the Upper Tribunal on appeal from the First-tier Tribunal in *HMRC v Pendragon and others* [2015] UKSC 37 have also had an impact on us, in that we are seeing increasing numbers of applications for permission to appeal in which, albeit an error or supposed error of law is identified, the true focus is the findings of fact. It is becoming clear, even at this relatively early stage, that further guidance on the operation of Lord Carnwath's observations may be helpful.

General Regulatory Chamber

President: Judge Peter Lane

Nick Warren, who had led the GRC since 2011, retired in February 2015. As his successor, I have much to thank him for. Not only did he bequeath to me a Chamber in robust health; he was also generous with his time in introducing me to the multifarious nature of the jurisdictions for which the GRC has responsibility. As the outgoing Senior President has said,

Nick personified tribunal values. We wish him well in what I am sure will be a very active retirement.

Alison McKenna, who besides being President of the War Pensions and Armed Forces Compensation Chamber is also the Principal Judge in the GRC's charity jurisdiction, is currently recovering from serious illness. I am grateful to judicial colleagues who have helped me with this work during her absence. We very much look forward to Alison's return.

2015 has witnessed an important milestone in the Chamber's continued development. In June, responsibility for administering the GRC's transport jurisdiction moved from London to the Chamber's administrative HQ in Leicester. This had a wider significance, in that the ending of the previous system of "mixed" lists of First-tier Tribunal and Upper Tribunal transport cases necessitated the appointment of additional judges to hear First-tier transport appeals.

Since two of my aims as President are to build a clear Chamber identity and maximise the use of its members' skills, I took the opportunity presented by these changes to involve more GRC judges in the transport jurisdiction. An expressions of interest exercise led to the training and "ticketing" of four judges, who, together with the existing judges and members, will decide appeals against decisions of the Registrar of the Driving Standards Agency.

The changes in transport also present the opportunity to bring the appeal regime into line with the GRC's general approach, in terms of notices of appeal and other documentation, as well as the potential to have an appeal decided without the necessity of an oral hearing.

In his last annual report as Chamber President, Nick Warren identified one of the particular challenges in running the GRC; namely, the need to tailor judicial deployment to the anticipated needs of a particular jurisdiction. Particularly where the jurisdiction is, in effect, a new one, this is likely often to involve a large amount of (hopefully) educated guess-work. Over-recruitment can be wasteful of resources and damaging to judicial morale; whilst the problems with the opposite are self-evident.

On the basis of projections made by the Pensions Regulator, the decision was taken to seek expressions of interest from existing judicial members of the Chamber, to decide appeals against fixed and escalating penalty notices issued in respect of alleged failures to comply with the requirements of the Pensions Act 2008 regarding automatic enrolment in pension schemes. Six judges were ticketed and received training in September 2015. The position regarding the possible need for further judicial resources is being kept under review.

In both the transport and pensions exercises, judges have been ticketed for these new

areas of work, who have the capacity and ability to sit more frequently in the GRC than had hitherto been the case. It is anticipated that there will, in due course, be further opportunities to continue this process.

Amongst the newer jurisdictions, appeals under the Localism Act 2011 continue to be made at a steady, if modest, rate. These involve challenges to the listing of buildings and other land as assets of community value. Recent cases have addressed the nature of the land unit identified for listing; the meaning of ancillary use; the nature of the activity which is said to further the social wellbeing or social interests of the local community; and the entitlement to compensation, where land etc is listed.

This year has also seen the first appeals by letting agents and property managers against fixed penalties issued by local authorities in respect of alleged failures to belong to redress schemes for dealing with complaints relating to the work of those agents or managers. The Tribunal has been required to delineate the parameters of the appeal right and consider the effect of an error in the fixed penalty notice.

In the environment jurisdiction, the Tribunal has recently determined an appeal arising out of the system of climate change agreements between industry and the Environment Agency; as well as appeals against environmental stop notices concerning jet skiing and the harvesting of sea kale.

Information rights cases continue to be a major part of the GRC's work. Amongst the most recent case law is the Upper Tribunal's decision in *Fish Legal and others v Information Commissioner and others* [2015] UKUT 0052 (AAC). This provides a guide for determining whether privatised utilities are public authorities for the purposes of the Freedom of Information Act 2000; whilst the effect of certificates issued under section 53 of that Act now falls to be determined in the light of the judgments of the Supreme Court in *R (Evans) and another v Attorney General* [2015] UKSC 21 (the "Prince Charles' letters" case).

Following a consultation exercise, on 27 February 2015 the Senior President issued an amended Composition Practice Statement for the GRC, as a result of which the Chamber President may now determine that a case falling within certain specified categories of information rights appeals can be decided by a single judge (as opposed to a judge and two other members). So far, the power has been exercised in four cases, in each of which the issue is whether the public authority holds the information in question. The amendment to the Practice Statement is an aspect of the Chamber's general obligation to use its resources in ways that are proportionate, having regard both to the individual case itself and to the interests of other actual and potential tribunal users.

In his 2015 report, Nick Warren referred to the new power to suspend immigration advisors

who have been charged with certain offences, including all indictable offences. In its judgment in the first two such applications, arising under paragraph 4B of Schedule 6 to the Immigration and Asylum Act 1999, the Tribunal set out the approach it will take in such cases, drawing on the High Court's approach in analogous professional disciplinary appeals.

New rights of appeal continue to arrive. Amongst the most recent are the following:

- Challenges to decisions regarding the conditions for re-using public sector information now lie to the GRC (they were formerly made to the Office of Public Sector Information).
- A person who is in receipt of an information notice issued by the Independent Police Complaints Commission, requiring the disclosure of information to the Commission, may appeal the notice to the GRC.
- A person may appeal to the GRC against penalties etc imposed under regulations implementing the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity
- A seller for the purposes of the Single Use Carrier Bags Charges (England) Order 2015 may appeal to the GRC against penalty etc notices imposed by an administrator for failures to charge for single use carrier bags or to keep relevant records; or for giving misleading information etc. (The GRC already has an appellate function in respect of a corresponding scheme in Wales).

What of the future? A recent consultation exercise has sought views on the future of the courts and tribunals estate. The time may be ripe for looking at what dispensing justice involves in the twenty first century; in particular, in the light of various technological developments.

In this regard, the GRC's experience may prove useful. The Chamber has no designated hearing centres. Its oral hearings are held in both tribunal and court venues, across the country. The GRC's administration is located in Leicester. It is physically unconnected with any hearing centre and operates to a large extent on a "paperless" basis, so far as concern case files and correspondence.

So far as the Chamber's own initiatives are concerned, it is intended to produce guidance materials that may assist actual or potential appellants in understanding the appeal process in the GRC.

Consideration is also being given to the formulation of a general policy concerning the electronic publication of decisions of the GRC. The present practice derives to a large extent from the previous practice of former tribunals (such as the Information Tribunal), which have been superseded by the GRC. The practice arguably lacks coherence.

In the spring of 2016, the GRC is likely (in the light of past experience) to receive several hundred appeals against the forthcoming round of decision notices of the Environment Agency relating to activities on land located within nitrate vulnerable zones. The last round of such notices was in 2012.

In addition to the specific training events already mentioned, there has continued to be training in information rights, charity and other, smaller jurisdictions. Judiciary from the GRC have attended (and participated in) various training events held by Universities etc, as well as the Judicial College's *The Business of Judging* course. The Chamber is making use of the College's on-line Learning Management System, in the delivery of its training.

Property Chamber

President: Judge Siobhan McGrath

The Property Chamber continues to perform well in its varied and challenging jurisdictions. It is now over two years since the Chamber brought together Tribunals dealing with landlord and tenant, housing, property and agricultural work.

The Chamber deals with about 160 different property, landlord and tenant and housing jurisdictions which are divided between Residential Property, Land Registration and Agricultural Land and Drainage cases. The overall caseload is annually in the region of 11,000 applications and referrals.

Membership

As well as being Chamber President, I am the Principal Judge for the Residential Property division of the Chamber. The Principal Judge for AL& D is Judge Nigel Thomas. In June this year we were delighted to welcome Judge Lizzie Cooke as the Principal Judge for the Land Registration Division. Prior to her appointment Lizzie had been the Law Commissioner responsible for Property, Family and Trust Law and was Professor of Law at Reading University. We wish her well in her new role.

Residential Property has sixteen salaried judges and valuers and Land Registration has four salaried judges. Each of the Residential Property areas has a Regional Judge and one or more Deputies. Otherwise the work of the Chamber is carried out by fee-paid judges and members (about 300 in total). The membership includes those with expertise in valuation, in housing conditions and in agricultural matters. Both the Residential Property and Agricultural Land and Drainage jurisdictions also have a cohort of lay members. Last year we were pleased to welcome Dallas Banfield to join the Southern Panel teams as Deputy Regional Valuer.

In December 2015 the Regional Judge for the Northern area, Judge Martin Davey retired. Martin was appointed as a chairman of Rent Assessment Panels in 1981 and was Vice President of the Greater Manchester and Lancashire Rent Assessment Panel from April 1990. He then became President on 1 April 1994. In 2001, he was appointed to be President of the newly formed Northern Region and has led the area with great skill since that date. Martin will be very much missed. To replace him, Regional Judge Simon Duffy will move to the Northern region, having led the Midland region for 13 years. We are very pleased to welcome David Jackson as the new Regional Judge for the Midland Region. David is a salaried judge for the Social Entitlement Chamber but has also been a judge in Residential Property Jurisdictions since 2004.

Administration

Residential Property cases are administered by case officers who are located in five regional offices: London, Midlands (Birmingham), Eastern (Cambridge), Southern (Chichester) and Northern (Manchester). The Land Registration staff are co-located with RP staff in London. AL&D cases are administered from the RP Northern office. During the past year there has been a significant change for RP staff since line management, which had been organised on a centralised basis for very many years, was devolved to local clusters. This reflects the structure of HMCTS more closely and will allow staff to be more readily involved in local HMCTS initiatives whilst still maintaining the important ethos of the Chamber as a whole. All of the regional offices have moved in the past eighteen months. The Midland office is now co-located with the employment tribunal in Centre City Tower in Birmingham, the Northern office is co-located with the AIT in the Piccadilly Exchange in Manchester; the Southern office has moved into the Chichester Magistrates Court and the Cambridge office has moved to Cambridge County Court. In the Land Registration Division, the post of Delivery Manager has been taken up by Shazan Nazir and he replaces Jenny Lockhart. Thank you to Jenny for her work during this transitional time and we are very pleased that she is remaining with the team. All of the staff in the Property Chamber have worked extremely hard to ensure the smooth administration of the Tribunal during a time of significant change and disruption. I am very grateful to them for their dedication and work.

I am also pleased to welcome Tom Rouse who has been appointed as Chamber Support officer. Tom brings a wealth of experience of dealing with both the corporate and operational aspects of the Chamber.

Cross Chamber initiatives

The three divisions of the Chamber have a great deal in common. The work requires knowledge and skill in property and landlord and tenant law. Furthermore most of the cases of each of the three divisions are *party v party*. We consider that it is important to try and align procedure and approach across the Chamber where appropriate and to share good practice where possible. During the past two years a number of fee paid judges from Land Registration have been ticketed to sit in Residential Property cases and a number of RP judges have been ticketed to sit in Agricultural Land and Drainage cases.

Civil Justice Council Working Party

In June 2015, the Civil Justice Council set up a working party to consider the distribution of jurisdictions in landlord and tenant, property and housing disputes with a particular focus on the work of the Property Chamber and its overlap with the County Court and any associated dispute resolution schemes. The work will involve the consideration proposals for changes in the deployment of judicial resource between the County Court and the Property Chamber in the determination of landlord and tenant, property and housing disputes having regard to access to justice, proportionality and judicial and administrative resource. Work is well under way and a discussion paper will shortly be issued seeking the views of a number of users and interested organisations. At the same time the Chamber will run a limited pilot to test how deployment may work in practice. Reports from both initiatives will be issued in April 2016.

This work fits well with the wider work being carried out in the wider HMCTS and MoJ world where proposals for the reform of working practices and IT are very much on the agenda. It also aligns with the work being carried out by Lord Justice Briggs on proposals for the reform of civil justice.

Training and Appraisal

The Chamber Training Committee is chaired by our Training Director, David Brown. A composite bid for our training budget is made to the Judicial College. The standard of training remains very high and the evaluation of participants is consistently enthusiastic. The residential property CPD course has been acknowledged as being innovative and a model for good practice, bringing together all categories of member to be trained together and

being primarily based on case studies and discussion.

The three appraisal systems for the divisions were brought together into a single system applicable across the Chamber. The new scheme has now been in place since January 2015 and is working well.

Alternative Dispute Resolution

Both Residential Property and Land Registration have established procedures for judicial mediation. There is a real need for ADR in property and landlord and tenant cases. The parties will often have a continuing relationship and finding ways of resolving disputes which fall short of a full Tribunal hearing is sensible and proportionate. In December 2014, the Competition and Markets Authority issued its report on residential property management services. One of its recommendations was that the Tribunal should explore further avenues for alternative dispute resolution including signposting to early neutral evaluation and mediation. We are now working with LEASE (a government funded advice agency for leasehold and park-home issues) to set up an ENE pilot.

Fees

In the summer of 2015 the Ministry of Justice issued its consultation on further fees proposals including revisions to the fees charged in the Property Chamber. The consultation focuses on Residential Property jurisdictions. The Chamber's response acknowledges that in some of its jurisdictions there is a justification for fees being levied. However, it also makes observations which are intended to ensure that fees are both properly targeted and proportionate.

Pro-bono advice and assistance

Over a number of years Residential Property has established relationships with the college of law and BPP law school who have been able to provide advice and some representation to Tribunal users. The Bar Pro Bono Unit has also agreed to accept referrals in suitable cases from Property Chamber tribunals. For leasehold and mobile home cases we are greatly assisted by LEASE who as a government funded organisation is able to provide independent and impartial advice to users.

The Jurisdictions

Residential Property has the highest caseload intake of the three jurisdictions. Its core

work is made up of leasehold cases including service charge disputes, the appointment of managers, lease variation and pre-forfeiture breach determinations as well as enfranchisement valuations. Additionally the division deals with appeals and applications under the Housing Act 2004 and disputes under the Mobile Homes Act 1983 and the Caravan Sites and Control of Development Act 1961. This year the division has also taken on applications for rights of entry in council tax and commercial rating cases and the Housing and Planning Bill includes proposals for extending the Tribunal's jurisdiction to make Rent Repayment Orders and cases relating to proposals for dealing with rogue landlords.

As usual there have been a number of significant cases during the past year. The principles for construing leases were considered by the Supreme Court in *Arnold v Britton* [2015] UKSC 36. The case relates to the enforceability of fixed service charge clauses but the dicta about the interpretation of leases apply more widely. Lord Neuberger gave the leading judgement and in paragraphs 16 to 23, he set out seven factors to be considered. Perhaps the main point that is emphasised is the paramount importance of the language of the provision which is to be construed. Commercial common sense is to take a back seat in the exercise. In particular, Lord Neuberger and the majority of the Court were "unconvinced by the notion that service charge clauses are to be subject to any special rule of interpretation..." In a powerful dissenting judgement Lord Carnwath disagreed. In *Francis v Phillips* [2014] EWCA Civ 1395, which was decided before the Supreme Court in *Arnold v Britton*, the Court of Appeal had also made it clear that there are no special rules of construction for service charge clauses. The application of these principles is illustrated in the Upper Tribunal decision in *Assethold Ltd v Mr NM Watts* [2014] UKUT 0537, where the Deputy President decided that certain legal costs were payable in something of a departure from the principles previously applied following *St Mary's Mansions Ltd v Limegate Investment Co Ltd & Sarruf* [2003].

Francis v Phillips is also an important decision which restates the principle of disaggregation in deciding on whether the consultation limits in section 20 of the Landlord and Tenant Act 1985 have been reached. In *Triplerose Limited v 90 Broomfield Road RTM Co Limited* [2015] EWCA Civ 282, the Court of Appeal decided that the right to manage under the Commonhold and Leasehold Reform Act 2002 Part 2 could not be exercised by a single right to manage company in respect of more than one self-contained building or part of a building. This is a significant decision which may cause problems for the numerous RTM companies which had taken over management of multiple buildings during the 12 years since the Act came into force. Finally in *Royal Borough of Kensington and Chelsea v Lessees of 1-124 Pond House, Pond Place, London SW3* [2015] UKUT 395 (LC), LRX/30/2015, it was decided that framework agreements can be qualifying long term agreements for the purposes of section 20 consultation.

Land Registration work continues apace. It is an area of fascinating law and practice. The work of the division is intellectually challenging and the cases diverse. Although there is a good level of representative in the jurisdiction there are quite a number of unrepresented parties. Its primary jurisdiction is to hear references from Land Registry where there is a dispute between an applicant who wishes to register title or a right, or to note an interest against another's title, and anyone who objects to the application. Accordingly most litigants in this division do not apply directly to the LRD but are referred from Land Registry. However, the division also has a small standalone jurisdiction to rectify documents that will lead or have led to registration.

Agricultural Land and Drainage applications continue to be received in similar numbers to previous years although it is inevitable that the case load will decline over time. Many of the cases relate to succession questions which may involve complex negotiations resulting in some justifiable delay in the cases reaching a conclusion. The division sits for between 30 and 50 hearing days each year. Around 10 of these are full hearings which can last several days. This does not reflect the total case load which is made up of approximately 150-170 succession cases and 30 drainage and good husbandry applications

Caseload

The number of applications received and cases disposed by each jurisdiction in the Property Chamber for the financial year 2013-14 is set out below.

	Cases received	Cases Disposed
RP	10005	9292
LR	959	1141
AL & D	169	169

Conclusion

The work of the Chamber continues to develop. Over the next year we look forward to new challenges and developments. I am grateful to all of the judiciary and the staff who work hard to ensure the Chamber's high standards and achievements.

Annex C

Employment

Employment Appeal Tribunal

President: Mr Justice (Brian) Langstaff

The work of the Employment Appeal Tribunal (“EAT”) is to hear appeals on points of law arising from decisions of Employment Tribunals (“ETs”). Though it may sit in any location in Great Britain, it has two offices – one in Edinburgh and one in London, and there are court rooms in each location served by those offices. There is no dedicated court room in Wales, but there has been no case in which any litigant or legal professional has requested a sitting there. The volume of appeals originating in Wales is now so small that a separate office there would not be viable. Nor does the EAT sit in Northern Ireland though employment law is broadly similar, especially since the increase in jurisdiction to permit claims to be brought in respect of claims of discrimination because of religion and belief. There, appeal lies direct to the NI Court of Appeal, and the volume of appeals is so small that the Lord Chief Justice of Northern Ireland takes the view that no significant burden is placed on the Court of Appeal requiring the input of a specialist appeal court placed between Tribunal and Court of Appeal, and that direct appeal speeds up the process for litigants in achieving a final resolution of their cases.

2015 has seen further reductions in the number of appeals being brought before the Appeal Tribunal. The very substantial drop in applications to ETs has not translated into such a great reduction at the EAT, but nonetheless the London office shows a reduction in the number of applications received over the year to around 45% of the level in the last full year before fees became payable (at the end of July 2013): last year it was around 55%. Scottish appeals have declined more substantially still: receipts of fresh applications to appeal are currently just less than one third of the number received prior to the introduction of fees. The fact that the number of applications declined immediately after fees became payable does not, of course, inevitably lead to the conclusion that they have declined for that reason, and Mr. Bill Dowse of the Ministry of Justice conducted a review of fees charged in employment cases, part of whose terms of reference is to understand the cause or causes for

the drop in receipts of claims. As at the beginning of February 2016 it is understood that the review has been concluded and that a report has been submitted to Ministers.

However, it is difficult to think of any other cause of such a substantial change in the behaviour of litigants: other possible reasons for modified behaviour on the part of litigants, such as legislative change requiring longer service before bringing some claims, reducing the potential award available if some of those claims succeed, and requiring conciliation or at least formalised consideration of the possibility of it, are nothing new in the field of employment. Fees are new; fees have an obvious potential to change the behaviour of litigants; and what appears to be a “cliff-face drop” in the number of applications became apparent so shortly after the introduction of fees as to suggest an actual temporal, and probably causal, connection. Whatever the cause, our statistics show that the rate of success for appellants whose applications were made in the 6 months before the introduction of fee-charging is so similar to the rate of success for those whose applications were made in the 6 months afterwards that there is no measurable statistical difference – and certainly none of statistical significance – between them. Our conclusion at the EAT from these figures is that if the introduction of fees is indeed the cause of the reduction in the number of applications to appeal, to the extent now of just over 50%, then first, for every one successful appeal that is now brought there would have been two had fees not been introduced – “good” appeals are being deterred; and second, there is now some empirical evidence that fees have had no effect in deterring “bad” or “opportunistic” appeals, as had been suggested in some quarters.

During the year, the administration of the premises and office staff in Edinburgh passed to HMCTS (Scotland), and they are no longer directly administered from London. This is not intended to have any effect on the practice adopted for cases, nor in the law applied, nor to cross-border judicial sitting (Lady Stacey or Lady Wise, of the Court of Session, the latter of whom we are delighted to welcome in the coming New Year to the panel of judges assigned to sign at the EAT, will continue to sit in London when on EAT business, as the President will in turn sit in Edinburgh). Whether these arrangements will continue in the longer term is likely to depend upon the precise terms of the Order in Council by which the jurisdiction of the EAT (currently a “reserved” Tribunal) will be transferred under the Scotland Act (as it will be) to the Scottish Parliament. The SNP has already declared an intention to abolish the requirement to pay fees. If this is put into practice, and there is no similar move south of the border, interesting and difficult questions will arise as to the jurisdiction of ETs or the EAT in Scotland to consider cases which may be thought “English” cases (the very definition of which is far from clear, particularly if what is under challenge is an example of a practice adopted UK-wide by an employer with places of business in both jurisdictions.) Much may become clearer during 2016.

Procedurally, the revised rules of the EAT and new Practice Direction both had their second

full chronological year in operation, and continue to work smoothly. A handful of appeals were ruled “totally without merit” at “sift” stage, in accordance with those rules, and there has been no suggestion from any higher court that this has been inappropriate in any one of them. A Practice Statement was issued in June 2015, setting out the need for Notices of Appeal to be much shorter than they have become over the last few years, and skeleton arguments to be no longer than really necessary. The need for this was endorsed by several practitioners, and in particular the user group, before publication. Changing the culture will be a slow process, but very valuable for those who wish to see a focussed resolution of cases, where the points in issue are made clear rather than obscured by only peripherally relevant or repetitive detail. This is of particular importance since one of the most noticeable and significant changes in practice over the past six years has been the reduction in the number of those who are professionally represented. Then, 40% of all parties (counting not just employees, but employers too) were not professionally represented; 60% were. Now the position has almost exactly reversed – 60% are not professionally represented. Litigants in person (party litigants in Scotland), who may well be responding to an appeal, cannot be expected to recognise as easily as represented parties what is likely to matter in an argument, or in a case cited as an authority. Nor can they be expected to know what is likely to work best for them if they are appellants. If they were to copy the example of some legal practitioners they could be forgiven for thinking that the more material placed in writing before a court the better – that quantity rather than quality of argument is what matters – when it would be wrong to do so. To allow a culture to persist where litigants acting in person may be disadvantaged would be contrary to the need for equality of treatment emphasised in the over-riding objective expressed in the EAT Rules, and the EAT is therefore, by issuing the Practice Statement of 13 May 2015, moving towards requiring professional litigants to justify (or shorten) their own presentation of a case where it appears this might disadvantage other parties. Already, some notices of appeal have been returned to representatives for them to shorten the grounds, organise them in accordance with the Practice Statement, and resubmit.

Substantively, cases remain both varied and many of particular importance – for instance the proper approach to discrimination because of something arising in consequence of disability (s. 15 Equality Act 2010) has been explored in two cases (*Swansea University v Williams*; *Basildon & Thurrock NHS Foundation Trust v Weerasinghe*); and a decision of practical importance to the ability of Police forces to regulate the number of officers in their service, has involved the application of difficult concepts of discrimination and its justification where the discrimination alleged is on the grounds of age (*Chief Constable of the West Midlands Police v Harrod* and others). A number of decisions have explored further the territorial reach of UK legislation where nothing is said within the statute itself to limit it to this country, but it seems the approach has increasingly become regarded as well settled.

The lay members form an important body, making a useful contribution to the life of the EAT, though they are called upon to sit less often than was the case a few years ago. The use of lay members as part of the panel to hear appeals has reduced significantly. A case-specific reason is required before a panel of three (or five) is constituted: but in those cases where the statutory discretion has been exercised to permit this, comment has often been made in the ensuing judgment about the particular advantages in those cases of having an input from those with high-level practical experience of the workplace.

The EAT has maintained contact with a wide range of judicial and legal organisations. Discussions, though never privately engaging with the merits of any forthcoming appeal, occur on a regular basis with the Presidents of the ETs in both England (Brian Doyle) and Scotland (Shona Simon); judges of the EAT contribute to the training of Employment Judges (“EJs”), and EJs who are interested to do so attend the EAT on a rota basis to observe proceedings. All EAT judges learn from these contacts, as they do from assisting visiting international judges (most recently from Brazil, the Spanish Supreme Court, the South African judge (Judge Masipe) who had presided over the Pistorius trial with such calm dignity, and Australian judges from the Industrial court of New South Wales (Michael Walton), and from Queensland (David Thomas) as well as students who come to marshal or observe. The EAT has been visited by the Hon. Neil Costa, Minister for Business and Employment in Gibraltar. The Resident Judges are free with their spare time in lecturing and talking to professional groups, or to other judges. The President also attends conferences of the European Association of Labour Court Judges. The conference this year was in Helsinki – where, his friends were amused to discover, his accommodation during the conference was in a prison cell (the gaol had been converted into an hotel!!).

Training of judges and lay members is organised by HHJ Eady QC. This year it involved presentations by distinguished commentators and academics as well as an important session on migrant workers: and in 2016 will include an address by Lord Carnwath JSC, as well as a labour law professor and a further session providing social context to our work.

The free representation schemes (EARS and ELAAS) which have operated so successfully for some years in London have now been echoed by a similar scheme (“SEALAS”) in Scotland, with many thanks (again) to Lady Stacey, Mungo Bovey and Brian Napier QC for organising this. Amongst courts dealing with party and party disputes, the EAT has very considerable – if indeed, not pre-eminent – experience in assisting litigants in person, and those professionals who give their time so freely and reliably to assist them where it is desired deserve praise.

Particular thanks are due to the staff at the EAT, who have had to endure both the difficulties of a growing workload which threatened to become unmanageable within current resource until mid-2013, and then the threats to existing resources posed by the

dangers of too quick a reaction to the drop-off in the number of applications received, for their continued effective and cheerful service. The staff, though fully reflecting all the many different strands of the society they serve, form a cohesive group, to whose patience and hard work the EAT is indebted. It is smaller in size than it was, and financial pressure is evident, but it continues to give a highly effective and reliable service to all litigants. During the year, Pauline Donleavy OBE, who had been the Registrar for several years, took her retirement. The EAT was fortunate to have her deputy, Julia Johnson, to take over the role. She had a flying start: she has been at the EAT for a very long time before becoming Registrar, and has had a broad experience of the work here in most administrative capacities – a good example of how those working in the court system can utilise experience at lower levels to add real value as and when they reach more senior positions. One of the consequences of the current climate of financial stringency is that she has no Deputy to help her as she had assisted Pauline Donleavy: but one of the strengths of her appointment is that the staff and judges at the EAT have hardly noticed this loss to our complement.

Particular thanks are due too to Lady Stacey of the Court of Session, whose front line role as the regular presence of the EA in Scotland over the past three years will recede as Lady Wise assumes that mantle, though she remains available to sit should need arise. In that time she has cemented the affection and respect of all (whether staff or litigant, professional, judicial or presidential) who have had dealings with her. Together with her, those High Court judges from England and Wales authorised to sit at the EAT, temporary judges, the resident Senior Circuit judges (HHJ Clark and Eady), a small cadre of circuit judges with particular experience in employment law, and the President make up what is a collegiate bench, to which lay members contribute valuably when they are needed. Next year the new Senior President of Tribunals has promised to add his own name to those who have been authorised to sit as temporary judges when, as part of his scoping of his new task, he discovers at first hand what it is like to sit at the EAT. Judges' meetings continue to be held, usefully, every month during term-time.

A revamped user group is consulted about possible changes in procedure.

In summary, 2015 has been a year unsettled by further potential change, but in which the EAT has been very active both procedurally and substantively, pro-active in its training and liaison with judges from diverse foreign jurisdictions, has maintained its internal cohesion, continued amicable internal discussion about the best way to continue to serve, and has been careful to preserve what has been the best of its practices from the worst effects of general financial stringency. 2016, under a new President, is likely to be every bit as eventful. Rather than look forward with a sense of foreboding, however, such is the state of the EAT that it can approach the new year in the sense that it will, rather, bring new opportunities.

Employment Tribunal (England and Wales)

President: Judge Brian Doyle

The jurisdictional landscape

This report covers the period that marks the 50th anniversary of the establishment of the Employment Tribunals (as they are now called).

As reported in the Annual Report 2015, a challenge to Employment Tribunal issue and hearing fees had been launched by way of judicial review by the Unison trade union. The earlier hearings in the first application were reported in last year's report and culminated in the second application being dismissed by the High Court on 17 December 2014: *R (on the application of Unison) v Lord Chancellor (No. 2) (EHRC intervening)* [2014] EWHC 4198 (Admin). The Court of Appeal heard an appeal in respect of both the applications on 16-17 June 2015. The appeal was dismissed on 26 August 2015: [2015] EWCA Civ 935. It is understood that Unison is seeking permission to appeal to the Supreme Court.

An early consideration of how the fees scheme works in practice is to be found in the Employment Appeal Tribunal's decision in *Deangate Ltd v Hatley (Secretary of State for Justice intervening)* (EAT 0389/14).

Again, as reported in the Annual Report 2015, the ACAS Early Conciliation scheme was introduced in 2014. The early experience of the scheme has been reported on in Matthew Downer et al, *Evaluation of ACAS Early Conciliation 2015* (ACAS Research Paper 04/15). ACAS publishes statistical information about the Early Conciliation scheme at www.acas.org.uk.

During the year ACAS made two important changes to the online procedure for commencing early conciliation: removing the automatic look-up facility for an employer's address (which had been causing confusion and potential misidentification) and permitting the naming of a representative for the purposes of early conciliation.

Trends

For a more sophisticated understanding of the trends in Employment Tribunal claims reference should be made to the quarterly and annual reports (and the supporting data files) provided online by the Justice Statistics Analytical Services Division of the Ministry of Justice.

Employment Tribunal receipts continued to be much reduced compared with earlier years. In 2014/15 the Tribunal received 16,420 single claims; 44,888 multiple claims; and 61,308 total claims. This compares with 2013/14 when the Tribunal received 34,219 single claims; 71,584 multiple claims; and 105,803 total claims.

Many commentators have inferred that the reduction in the Employment Tribunal caseload coincides with the introduction of fees. Other factors might also be in play – including the advent of early conciliation, the economic recovery and changes to substantive employment law, as well as the recent gentle decline in new claims, which is a natural part of the caseload cycle. A useful overview of the issue is to be found in Doug Pyper and Feargal McGuinness, *Employment Tribunal Fees* (House of Commons Library, Briefing Paper No. 7081, 15 September 2015). See also: Citizens Advice Bureau, *Fairer Fees: Fixing the Employment Tribunal System* (2015).

The Ministry of Justice commenced an internal review of Employment Tribunal fees on 11 June 2015. As at the beginning of February 2016 it is understood that the review has been concluded and that a report has been submitted to Ministers.

The House of Commons Select Committee on Justice launched a general inquiry into court and tribunal fees and charges on 21 July 2015. Employment Tribunal fees are within the scope of that inquiry.

The Employment Tribunal judiciary has submitted written evidence to the internal review and to the Select Committee inquiry. The Senior President of Tribunals gave oral evidence to the Select Committee on 26 January 2016.

Major jurisdictional changes

Further aspects of the Children and Families Act 2014, as it affects the jurisdiction of the Employment Tribunal, came into force on 1 December 2014 and 5 April 2015. The relevant provisions concerned shared parental leave and pay, the rate of statutory adoption pay, the abolition of additional paternity leave and additional statutory paternity pay, and other amendments to substantive employment law on family rights.

The Deregulation Act 2015 removed the power of the Employment Tribunal to make wider recommendations in Equality Act cases in proceedings commenced on or after 1 October 2015.

As prefaced in last year's report, the Small Business, Enterprise and Employment Act 2015 reached the statute book. When in force it will make important changes to the law on equal pay, financial penalties for failure to pay sums ordered by the Tribunal, financial penalties

for underpayment of the national minimum wage, exclusivity in zero hours contracts and public sector exit payments. It also contains a power to limit the circumstances in which an Employment Tribunal may postpone hearings. The Department of Business, Innovation and Skills is consulting about how that power will be expressed in the procedural rules. The consultation closed on 12 March 2015 and further developments are awaited.

The Modern Slavery Act 2015 does not strictly speaking touch directly upon the jurisdiction of the Employment Tribunal, but its provisions on forced or compulsory labour might be influential upon the Tribunal's jurisprudence in the future.

A considerable amount of substantive employment law applied in the Employment Tribunal is derived from secondary legislation. The leading compendium of employment law legislation – *Butterworths Employment Law Handbook* (23rd edition, 2015) – includes no fewer than 43 new statutory instruments adopted in 2014 or 2015. Of particular note are: the Equality Act 2010 (Equal Pay Audits) Regulations 2014; Deductions from Wages (Limitation) Regulations 2014; Employment Rights (Increase of Limits) Order 2015; Employment Tribunals and Employment Appeal Tribunal Fees (Amendment) Order 2015; Protected Disclosures (Extension of Meaning of Worker) Order 2015; National Minimum Wage Regulations 2015; and a host of regulations supporting the new family-oriented employment rights in the Children and Families Act 2014.

ACAS made a small revision to its Code of Practice on Disciplinary and Grievance Procedures so as to clarify the right to be accompanied during such procedures.

Interesting cases

This is a somewhat personal and eclectic selection of interesting cases from 2014/15. They are chosen by reference to whether they have something interesting to say about the Employment Tribunal's jurisdiction or its practice and procedure. The cases were first decided in the Employment Tribunal and then on appeal to the Employment Appeal Tribunal, the Court of Appeal or the Supreme Court, or on a reference to the Court of Justice of the European Union.

The case law on the territorial jurisdiction of the Employment Tribunal continues to be challenging. In *Fuller v United Healthcare Services Inc* the Employment Appeal Tribunal considered whether a United States employee on assignment in London could bring tribunal claims (EAT 0464/13). In *Swania v Standard Chartered Bank* (EAT 0181/14) the appeal tribunal was concerned with whether an Italian banker who lived and worked in Singapore could bring a public interest disclosure claim against a bank whose head office was in London. The Court of Appeal gave important guidance on the territorial jurisdiction test in *Creditsights Ltd v Dhunna* [2014] EWCA Civ 1238. See also *R (on the application of*

Hottak v Secretary of State for Foreign and Commonwealth Affairs) [2015] EWHC 1953 (Admin) (Afghan nationals working abroad could not bring discrimination claims).

The Employment Tribunal adopts special procedures for hearing claims where there are national security considerations. Aspects of those procedures were considered by the Employment Appeal Tribunal in *Kiani v Secretary of State for the Home Department* (EAT 0009/14) and subsequently by the Court of Appeal in the same case: [2015] EWCA Civ 776.

Questions concerning diplomatic immunity and state immunity create as challenging a context for Employment Tribunal proceedings as do territorial jurisdiction and national security issues. The extent to which diplomatic immunity can be pleaded in the Employment Tribunal was considered by the Court of Appeal in *Reyes v Al-Malki (Secretary of State for Foreign and Commonwealth Affairs intervening)* [2015] EWCA Civ 32. The scope of the State Immunity Act 1978 as relevant to the Employment Tribunal was considered by the Court of Appeal in *Benkharbouche v Embassy of the Republic of Sudan* [2015] IRLR 301. Finally, in a case where the United States (US) did not make a timely application for state immunity, the Supreme Court has ruled that the US is in principle subject to a duty to consult about collective redundancies arising from the closure of a US base in England. The scope of that duty on the particular facts of that case has been remitted to the Court of Appeal for further determination: *United States of America v Nolan* [2015] UKSC 63.

One growth area for the Employment Tribunal caseload has been developments in holiday pay. The EAT in *Bear Scotland Ltd v Fulton; Hertel (UK) Ltd v Woods; Amec Group Ltd v Law* (EAT, 4 November 2014) applied and interpreted the Working Time Regulations 1998 and the EU Working Time Directive so as to require the inclusion of non-guaranteed overtime in the calculation of holiday pay, while limiting the scope for retrospective holiday pay claims. See also the Deductions from Wages (Limitation) Regulations 2014, which imposes a two years limitation on most back-dated claims for unpaid wages (including holiday pay) for claims commenced on or after 1 July 2015. Although not binding on Employment Tribunals in England & Wales, the Northern Ireland Court of Appeal's decision that voluntary overtime is also capable of forming part of the calculation of holiday pay is of persuasive authority: *Patterson v Castlereagh Borough Council* [2015] NICA 47. The Employment Appeal Tribunal has also addressed the question of how much annual leave unused because of sickness absence can be carried over and for what period: *Plumb v Duncan Print Group Ltd* (EAT 0071/15).

The Court of Appeal decision in *Halawi v WDFG UK t/a World Duty Free* [2014] EWCA Civ 1387 continues to demonstrate the difficult questions that have to be asked and answered about employment status if a claimant is to be able to put an employment rights claim before an Employment Tribunal. Here a beauty consultant working at an airside

cosmetics concession at an airport failed to persuade the court that she was an employee of the concession operator for the purposes of a claim under the Equality Act 2010. Similarly, in *Smith v Carillion (JM) Ltd* [2015] EWCA Civ 209, a black-listed agency worker was unable to show a contractual relationship with the end-user of his services and thus could not bring a detrimental treatment claim. Again, in *Sharpe v Bishop of Worcester* [2015] EWCA Civ 399, a minister of religion was held to be neither an employee nor a worker for the purpose of establishing entitlement to bring unfair dismissal and whistle-blowing claims. Finally, a GP in a medical practice was not a worker for the purposes of a public interest disclosure claim against a health service provider that was a client or customer of the GP's business: *Suhail v Barking, Havering and Redbridge University Hospitals NHS Trust* (EAT 0536/13).

In *Kaltoft v Municipality of Billund* (Case C-354-13) the Court of Justice of the European Union considered whether obesity could be regarded as a disability for the purposes of the EU Equal Treatment Framework Directive. Its answer in the affirmative attracted much media attention and considerable misreporting of the likely effects of the decision.

It is not uncommon for Employment Tribunal proceedings to be conducted in parallel with related proceedings in the High Court. The Court of Appeal examined one aspect of that where the claim in the High Court involved similar factual assertions to those made in an Employment Tribunal claim that was time-barred: *Nayif v High Commission of Brunei Darussalam* [2014] EWCA Civ 1521.

The duty to make reasonable adjustments in disability discrimination law does not extend to a non-disabled employee who is associated with a disabled person (here the employee sought to argue, unsuccessfully, for reasonable adjustments to allow for the care of a disabled dependant): *Hainsworth v Ministry of Defence* (EHRC intervening) [2014] IRLR 728.

A non-legal member of the Employment Tribunal could not compare himself with a salaried Employment Judge for the purposes of a claim in respect of judicial pension entitlement brought under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000: *McGrath v Ministry of Justice* (EAT 0247/14).

The Court of Justice of the European Union has provided an important ruling on the meaning of "establishment" for the purposes of the collective redundancy consultation provisions in the EU Collective Redundancies Directive and section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992: *USDAW v WW Realisation 1 Ltd* and other cases (Case No. C-80/14 and other cases). Further guidance on the scope of the EU Collective Redundancies was provided by the CJEU in the related reference in *Lyttle v Bluebird UK Bidco 2 Ltd* (Case C-182/13).

Although of historical interest only (following an earlier amendment of section 282 of the Trade Union and Labour Relations (Consolidation) Act 1992), the Supreme Court has ruled that the expiry of fixed-term contracts without renewal engaged the collective redundancies consultation provisions and that such employees counted towards the calculation of the 20 employees threshold for the duty to consult: *University and College Union v University of Stirling* [2015] UKSC 26.

The Employment Appeal Tribunal has provided guidance to Employment Judges as to when the Civil Procedure Rules applicable in the civil courts might or might not be capable of being applied or adapted to procedural questions in the Employment Tribunal, here particularly in relation to the power to strike out a response: *Harris v Academies Enterprise Trust* [2015] ICR 617.

Other developments

In *Griffin v Plymouth Hospital NHS Trust* [2014] EWCA Civ 1240 the Court of Appeal revisited the now dated non-statutory guidance to Employment Tribunals and parties approaching the question of how to compensate an unlawfully dismissed employee for pensions loss. As a result, the Presidents of the Employment Tribunals in both England & Wales and Scotland have established a joint judicial working group to bring forward new guidance on the calculation of pensions loss. It is expected that this work will result in new guidance during 2016.

During the course of the year important contributions were made to the debate about the future direction of Employment Tribunals by the Employment Lawyers Association (*ELA Survey: The Future of Employment Tribunals*, April 2015) and by The Law Society's Employment Law Committee (*Making Employment Tribunals Work for All: Is It Time for a Single Employment Jurisdiction?: A Discussion Document*, September 2015).

Innovations

The Employment Tribunal is particularly keen to find ways of improving performance and achieving timeliness. A number of initiatives were commenced in 2014/15.

The Midlands regions are piloting the use of electronic signatures in order to speed up the process whereby judgments and reasons are drafted, transcribed and approved by the judges. Applying an electronic signature to the document once the judge instructs that this may be done potentially saves time that would otherwise be lost by a process for obtaining "wet signatures". The pilot is also testing the efficiency of promulgating judgments by email where appropriate.

Three regions are also piloting changes to the way in which open track cases are listed. The Tribunal already lists an early case management hearing in such cases and notice of that is given when the claim is served on the respondent. In the pilot the Tribunal is experimenting with also providing a notice of final hearing at the same time. It is intended that this should ensure that open track cases have a booking in the forward list earlier than they might otherwise have done so if final listing had to await the case management hearing – even if subsequently the hearing allocation has to be adjusted or put back.

The Employment Lawyers Association is assisting the Tribunal with a “duty lawyer” pilot at the London Central Employment Tribunal. The presence of a duty lawyer to assist an unrepresented party, short of providing representation at a hearing, may add considerably to litigants in person (both claimants or respondents) being able better to engage with the tribunal process.

The Tribunal is also promoting the concept of timeliness with judges and staff. It is looking to promote the disposal of short track cases within 10 weeks, standard track cases within 20 weeks and open track cases within 30 weeks – so far as is commensurate with the interests of justice. The Tribunal will measure the average time it takes to dispose of cases in each track and what percentage of cases in each track achieves the timeliness aspiration. It is also concerned to ensure that at least 75 per cent of all cases achieve final determination within 26 weeks. These measures apply for now only to single claims and not to multiple claims. As experience of applying timeliness is gained the Tribunal will look to recruit the parties and representatives to the task of promoting timeliness.

The Tribunal's live caseload (how many claims still remain to be closed) gives a misleading impression of the Tribunal's actual workload, its performance and its use of resources. Many claims, especially multiple claims, are quite properly stayed or not progressed because, for example, insolvency procedures are engaged or negotiations are on-going or there are parallel proceedings in other courts or the outcome of an appeal (or reference to Europe) is awaited. During 2014/15 particular emphasis was placed upon “weeding” outstanding cases so as to close files where that could be done or to take action to progress the case to an outcome. As a result, the live caseload headlines now look considerably healthier.

Finally, the Employment Tribunal in England and Wales has extended its judicial mediation scheme so that it might be made available to any case listed for a final hearing of 3 days or more and not simply to such cases where there is a discrimination element.

People and places

The following salaried Employment Judges retired during 2014/15: Nick Garside, John Thomas, Peter Rennie, Ian MacInnes, Peter Russell, Michael Coles, Robert Salter, Valerie

Cook, David Kearsley and Ian Pritchard-Witts.

The Regional Employment Judge for Wales, Judge Stuart Williams, also retired, although exceptionally he will continue as a fee-paid Employment Judge, particularly in respect of cases conducted in Welsh. The Judicial Appointments Commission held an exercise to appoint a new Regional Employment Judge for Wales during 2015. Employment Judge Roger Harper was Acting Regional Employment Judge during the interregnum. Employment Judge Barry Clarke was appointed as the new Regional Employment Judge for Wales with effect from 1 December 2015.

At her request Regional Employment Judge Vivienne Gay reverted to sitting as a salaried Employment Judge.

The President merged the London North and West region with the East Anglia region to form a new South East region. This is part of the continued planning to align the Employment Tribunal regions with the HMCTS regions. Regional Employment Judge Richard Byrne has assumed the leadership judge responsibilities for the newly enlarged region.

The following fee-paid Employment Judges, some of whom are former salaried judges sitting in retirement, ceased sitting in 2014/15: Colin Sara, John Hobson, Donald Cowling, Roger Peters, John Hollow, John Calladine, Robin Balmain, Tania Stevenson, David Hewitt, Tess Gill, Robert Ashton, Michael Griffiths, Robert Miles, John Threlfell, John Caborn, Andrew Cresswell, Martin Howard, David Sneath, Alan McCarry, Elizabeth Adams, John Hoult, Sue Jenkins and Guy Hollebon.

A number of non-legal members, too many to mention here by name, also resigned or retired during the relevant period.

It will be apparent that the Employment Tribunal has lost a large number of judges and members of considerable experience in the last year. In part this reflects the coincidence of judges and members recruited to office at earlier stages of the Tribunal's growth cycle all coming up for retirement at the same time. It also reflects the much fallen caseload and the much reduced budget for allocating fee-paid judges and members to session days.

There was no recruitment of fee-paid or salaried Employment Judges or non-legal members of the Employment Tribunal during the period covered by this report.

As at 1 October 2015 the Employment Tribunal in England & Wales comprised one President, 10 Regional Employment Judges, one Acting Regional Employment Judge, 123 salaried Employment Judges (109.8 full-time equivalent), 208 fee-paid Employment Judges and 1,025 non-legal members.

All Employment Tribunal regions have now completed the centralisation of their administrative support. The process was concluded with the transfer of all casework from Southampton to Bristol and from Reading to Watford during 2015.

The Midlands East region at Nottingham and Leicester completed relocation and restructuring projects during the year. In the North West region, Employment Tribunal hearings at Carlisle have been moved to Kendal. The Newcastle Employment Tribunal moved from Quayside House in central Newcastle to King's Court in North Shields. It has also consolidated its presence in Middlesbrough. It is expected that the Newcastle Employment Tribunal will move back to central Newcastle as part of a longer term estates solution for Civil, Family and Tribunals work in the North East. The relocation of the Bristol Employment Tribunal to the Bristol Civil Justice Centre – expected to take place during 2015 – had been delayed, but took place on 29 January 2016.

During the summer of 2015 HMCTS consulted on a wide-ranging set of proposals for closure or rationalisation of various courts and tribunals buildings. If implemented, those proposals will have some impact upon the Employment Tribunal.

Employment Tribunal (Scotland)

President: Judge Shona Simon

The jurisdictional landscape

Looking to the north and the south at the same time

It is not often that I wish I was more like Cerberus, the three-headed dog of Greek mythology, but at the moment the ability to look in all directions (particularly to the north and the south) at the same time would be a distinct advantage. As things stand, Employment Tribunals (Scotland) remains a “reserved tribunal”, part of the separate employment pillar under the Tribunals, Courts and Enforcement Act 2007, under the leadership of the Senior President of Tribunals. It receives its administrative support and funding through Her Majesty's Courts and Tribunals Service.

In my report last year I explained that, following the Smith Commission agreement, powers in connection with judicial and administrative responsibility for the tribunal would be devolved to Scotland. I went on to identify some of the issues that will need to be addressed if there is to be successful devolution of Employment Tribunals (Scotland). In that regard

much will depend upon the provisions in the relevant Order in Council (O in C), which will be made under what is currently clause 37 of the Scotland Bill, and which will give practical effect to the transfer of powers.

“The [Draft] Scotland Act 1998 (Employment Tribunals) Order 201X (the draft O in C) was published on 15 January 2016, together with a policy and drafting note. The draft Order is stated to be a “working draft” which “has been prepared purely for illustrative purposes and for assisting with discussion during the passage of the Bill”. It is made clear that further discussions will be required between the Scottish Government and UK Government departments before the Order is finalised and that there will “engagement with key stakeholders”. Who those “key stakeholders” will be is not made clear but one assumes it includes the judiciary and ET system users. One also assumes that these assurances, taken together, mean that both Governments will be willing to listen to legitimate concerns about what is proposed and consider making changes to the draft where the case for such is made out. Early indications suggest that there are likely to be a range of significant concerns from a variety of quarters, not least in connection with matters that might be described as constitutional in nature. The opportunity to set out such concerns is provided, at least in part, by the decision of the Scottish Government to consult on the terms of the draft O in C, albeit only four questions are asked in the consultation document, two of which relate to the cases which the tribunal will be able to hear, with the other two being very broad “catch all” questions designed to give an opportunity to raise any other matters.

It is particularly notable that no specific question is asked about one of the key proposals in the draft O in C, that being the proposal to effectively abolish the free standing legal body, Employment Tribunals (Scotland) (which forms part of the separate pillar under the Tribunals, Courts and Enforcement Act 2007, together with Employment Tribunals (England and Wales) and the EAT) and to transfer its functions to the First Tier Tribunal for Scotland (FTT for Scotland). That may be thought to be rather surprising, given the consequences of the proposal and the fact that there was extensive consultation by the UK government with users and the judiciary prior to the decision being taken to create the separate pillar in the first place.

The constitutional and related provisions which apply to the FTT for Scotland are set out in the Tribunals (Scotland) Act 2014. In 2012, when it consulted on the creation of a new tribunal system for Scotland, the Scottish Government appeared to envisage that a separate pillar could be created for the ET and EAT. However, that vision of what the future could hold, which did recognise the very distinctive nature of the employment jurisdiction, appears to have disappeared without explanation.

The draft O in C also sets out what will fall within the definition of a “Scottish case”, that being what clause 37 of the Scotland Bill states that the Scottish tribunal, into which the

“functions” of Employment Tribunals (Scotland) will be transferred, will be able to hear (hereafter the “new Scottish tribunal”). Interestingly, however, the draft also goes on to say that the new Scottish tribunal can, in addition, hear what are described as “concurrent” cases. This is not a word we see anywhere in clause 37 of the Bill but it is suggested in the drafting note which accompanies the draft O in C that the power in clause 37 to make such provision as may be necessary or expedient for the purposes of the transfer is being used to give power to exercise jurisdiction in concurrent cases. In essence, Scottish cases will be those where there is only new Scottish tribunal jurisdiction while concurrent cases will be those where there is a sufficient connection with both England and Wales, on the one hand, and Scotland, on the other, for the claim to be presented in either legal jurisdiction.

Interest in the extent of the legal jurisdiction of the new Scottish tribunal has been heightened north and south of the border in the context of fee charging. In my report last year I commented that the Smith Commission agreement does not, in fact, mention power over fee policy being devolved nor was it specifically mentioned in the UK Government Command Paper 8990 (“Scotland in the United Kingdom: An enduring settlement”), which followed upon the publication of the Smith Commission report. Even if you study clause 37 of the Scotland Bill with a magnifying glass nowhere will you see reference to power over fee charging in tribunals being devolved. However, the draft O in C specifies (Art.9) that powers to regulate tribunal fees in connection with the functions transferred can be exercised by Scottish Ministers. This power is particularly significant because the Scottish Government has now stated on two separate occasions that it will abolish fee charging in the Employment Tribunal once it has the power to do so. The first indication of its intention emerged during a debate in the Scottish Parliament on 11 June 2015 about employee rights and access to justice. During the debate Roseanna Cunningham, the Cabinet Secretary for Fair Work, Skills and Training said “We are committed to the principle of abolishing fees for employment tribunals, but we must be absolutely clear on how the transfer of powers and responsibilities would work before we commit to a timescale for that.”

This was followed on 1 September 2015 by the Scottish Government’s announcement in “A Stronger Scotland – the Government’s Programme for Scotland 2015-16” that: “We will abolish fees for employment tribunals, when we are clear on how the transfer of powers and responsibilities will work. We will consult on the shape of services that can best support people’s access to justice as part of the transfer of the powers for Employment Tribunals to Scotland.” Of course, although this is in a programme for 2015-16, it is not in fact known at this stage what the timescale will be for the transfer of Employment Tribunals (Scotland) into the new Scottish tribunal.

One of the most discussed issues arising from this announcement at the moment, both north and south of the border, is that of “forum shopping”: once employment tribunal fees are

abolished in Scotland might claimants who would otherwise have presented their claims in England or Wales instead present the claim in Scotland? The extent to which such a choice will be available will depend upon the final definition of a “concurrent case”.

While it was overshadowed by the announcement about the abolition of fees, the statement by the Scottish Government that it would also be consulting about “the shape of services that can best support” access to justice in the employment context is worthy of note too. What that means is, as yet, unclear. Last year I mentioned that the Law Society of Scotland, in its report on fee charging in the Employment Tribunal (issued July 2014) and in a document entitled “Scotland’s Constitutional Future 2”, had suggested that consideration might be given to the creation of an Employment and Equality Court in Scotland, with Employment Judges and Employment Tribunal members providing the judicial complement necessary to perform the work. Those who favour this suggestion may hope that it is at least one of the ideas that lies behind the Scottish Government’s statement but that would be pure speculation. Certainly, the creation of such a court in England and Wales remains a topic of considerable interest there, not least in light of the discussion paper issued early in September 2015 by the Law Society of England and Wales entitled “Making Employment Tribunals Work For All” and the civil courts structural review being carried out by Lord Justice Briggs. In his interim report he suggests that there are “a number of factors in favour of” bringing the ET (E and W) and the EAT into the civil court structure. Interestingly, in a document setting out its priorities in the context of the Scottish Parliament elections 2016, the Law Society of Scotland suggests that there should be “A full review of the judicial and procedural aspects of the overlap between sheriff courts and tribunals in the hearing of employment disputes.”

From a Scottish perspective devolution does bring an opportunity to do some blue sky thinking about how access to justice in the employment context is delivered: how sensible is it, for example, to have a system where those who claim breach of their employment contract can only go to the new Scottish tribunal dealing with employment claims if the contract has come to an end and the sum claimed is no more than £25,000? If the claim is worth more than £25,000 or, irrespective of value, if the employment contract subsists the claim must be made in the Sheriff Court. What can be the rationale for that, particularly in circumstances where Employment Judges regularly deal with cases worth far more than £25,000 and are routinely making decisions that require a high degree of knowledge of contract law? That having been said it is far from clear that on devolution the Scottish Government would be able to remedy this problem even if it wished to do so: that would require power to amend the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 to be devolved and there is nothing in the current plans to indicate that this is envisaged.

While the timescale for devolution is not yet known, it is now clear that it is highly likely

that Employment Tribunals (Scotland) will be the first of the reserved tribunals to devolve, not least because the Scottish Government has made it clear that it wishes to take steps to deal with what it considers to be the access to justice issues arising consequent upon the introduction of Employment Tribunal fees. Being first in situations like this always brings risks and opportunities – by the time I write my next report it should be clear how successful those who will make the decisions in connection with the transfer of the functions have been in minimising those risks and maximising the opportunities. In the meantime we continue to look south in operational terms, particularly in connection with the extent to which the HMCTS reform programme may impact upon how Employment Tribunals deliver their service in Scotland prior to devolution.

Engagement with system users in a time of change

At a time of such significant change for the Employment Tribunal system in Scotland it is of critical importance that users of the system are not only kept up to date with changes that are to be made but actually have, and take, the opportunity to make their views known about proposed changes before decisions are made. They also need to have the opportunity to express their views about how the system for judicial determination of employment law disputes should work in Scotland in the future. While there are various specialist employment law practitioner groups who could, and I hope will, engage in such discussions, the ET National User Group (Scotland) is a very well attended, interactive forum. Regular attendees represent both claimant and respondent perspectives. I intend to do what I can to invite those north and south of the border who will be involved in undertaking the detailed work which will be necessary to ensure successful administrative and judicial devolution of Employment Tribunals (Scotland) to future National User Group meetings so that they can engage directly with as wide a range of tribunal users as possible.

Caseload trends in Employment Tribunals (Scotland)

The number of single claims presented in Scotland has declined significantly since the introduction of fee charging at the end of July 2013. There is now a reasonably long period post fee charging over which we can begin to see emerging trends. The figures are as follows by calendar year:

Year	Number of claims
2012	4572
2013	3537
2014	1702
2015	1043 (to end of August)

Thus it can be seen that when one compares 2012 (no fee charge) with 2014 (fee charging) there was a decline of about 63% in single claims.

It is of particular interest to note, in a Scottish context, that a **statistical analysis undertaken by the Equality and Human Rights Commission in Scotland** suggests that the reduction in discrimination claims following the introduction of fees is greater in Scotland than it is in England and Wales.

The extent of the reduction in claims varies between types of discrimination claim. One of the most dramatic declines is in relation to sex discrimination claims. It is worth bearing in mind that the majority of such claims in Scotland, before the introduction of fees, were based on alleged pregnancy and maternity related discrimination. In a recent report jointly produced by the Department for Business, Innovation and Skills and the Equality and Human Rights Commission entitled “Pregnancy and Maternity Related Discrimination and Disadvantage” (published 24 July 2015) it is suggested that there is still a high level of pregnancy and maternity related workplace discrimination in Great Britain. The report indicates that if the results of its survey were scaled up to encompass the workforce as a whole this would suggest that around 54,000 women per year are dismissed (including constructive dismissal) for pregnancy/maternity related reasons. Against that backdrop the fall in sex discrimination claims presented in Scotland is particularly noteworthy. The figures (calendar year) are as follows:

Year	No. of claims
2012	1321
2013	485
2014	202
2015	70 (to end of August)

Comparing 2012 (no fees) with 2014 (fee charging) there has been around an 85% reduction in sex discrimination cases.

There has been a similarly large reduction in age discrimination claims:

Year	No. of claims
2012	224
2013	242
2014	51
2015	34 (to end of August)

(77% reduction comparing 2012 with 2014.)

By comparison, disability discrimination claim numbers have held up rather better:

Year	No. of claims
2012	485
2013	439
2014	268
2015	180 (to end of August)

(45% reduction comparing 2012 with 2014.)

Race discrimination claims are somewhere in the middle in percentage reduction terms:

Year	No of claims
2012	170
2013	106
2014	70
2015	41 (to end of August)

(59% reduction comparing 2012 with 2014.)

The position is completely different when one analyses the number of multiple claims (claims made as part of a group, against the same respondent(s)) presented in Scotland. The number of multiple claims presented can vary dramatically from one year to the next and it should be borne in mind that more often than not these group claims are backed by trade unions, which will usually pay the fees due on presentation of the claims. The relevant figures for Scotland are as follows:

Year	Claims (lodged as part of multiples)
2012	15,922
2013	4,077
2014	17,238
2015	10,377(to end of August)

The very high number of claims made as part of multiples in 2014 and 2015 can be explained almost entirely by a deluge of claims which all raise the same issue – what payments should be included within the definition of a week's pay when it comes to calculating holiday pay due? Currently Employment Tribunals (Scotland) are managing over 20,000 claims which raise this issue. They are all held centrally in the Glasgow Office of

Employment Tribunals, being managed by a team of three salaried Employment Judges based at that office. While the issue raised may appear at first blush to be a straightforward one it should be borne in mind that, as I reported last year, it has had to be considered by the Court of Justice of the European Union (see *Williams and Ors v British Airways plc* [2012] ICR 847 and *Lock v British Gas Trading* [2014] ICR 813), the Supreme Court (*Williams*) and, more recently by the EAT (see *Bear Scotland Ltd v Fulton* [2015] ICR 221). Furthermore at least two new appeals from first instance decisions are underway. In these circumstances it is likely that this large group of claims will remain in the system for quite some time, pending appeal decisions on various points.

Ongoing scrutiny of fee charging in Employment Tribunals

There is, of course, an on-going debate about the extent to which fee charging provides the explanation for the significant reduction in the number of single claims presented to the Employment Tribunals both north and south of the border. It is to be hoped that the internal review by MOJ into the extent to which fee charging has achieved its original objectives will cast light on this issue. Similarly the UK Justice Committee Parliamentary Inquiry into the impact of court and tribunal fees and charges, to which Employment Judges in Scotland tendered submissions, may prove helpful when it comes to analysing the extent to which fee charging in the Employment Tribunal has curtailed access to justice.

Still on the subject of fees, but on a brighter note, the changes made on 28 October 2015 by MOJ/HMCTS to what used to be called the fee remission scheme, now called the “Help with Fees” scheme (even that simple but important change may help unrepresented parties to understand that the fee can be waived or reduced if their financial circumstances warrant it), are timely and worthy of note. The application form and associated guidance, together with the mechanics of the assessment process, have been streamlined and appear to be much improved. It is upon this scheme that MOJ relies when it asserts that there is a mechanism in place to maintain access to justice in Employment Tribunals so the improvements made to it are warmly welcomed by the judiciary.

Acas Early Conciliation

Of course, just under a year after fees started to be charged in the Employment Tribunals Acas Early Conciliation (EC) was introduced. In July 2015 Acas reported that of the EC notifications received by them in the period from April to December 2014 (the outcome of these cases largely being known by July 2015) 15% had resulted in an Acas brokered settlement agreement (COT3), 22% progressed to an Employment Tribunal claim and 63% did not progress to a tribunal even though the case had not been settled by Acas through the COT 3 process. It is likely that some of the claimants who decided to do nothing further

may have come to realise that their claim was a weak one and that some of the disputes may have been resolved directly between the parties without a COT 3 being necessary. However, it is clear that the most frequently cited reason for not presenting a claim where early conciliation had failed was that ET fees were off-putting (Acas Research Paper 4/15 “Evaluation of Early Conciliation”).

Judicial mediation

We continue to offer judicial mediation as an option for parties to consider in suitable cases which are scheduled to last for three days or more at hearing. In the period from January to September 2015 the success rate was 72% with an estimated 98.5 hearing days saved (comparing hearing time estimates with time spent mediating.)

Innovations

Two salaried Employment Judges in Scotland, who have volunteered for the task, have been trained so that they can undertake work as an Immigration Judge in Scotland for up to 30 days per annum. While the case load of Employment Tribunals (at least so far as single claims are concerned) has fallen, the number of outstanding appeals before the Immigration and Asylum Chamber (IAC) in Scotland has risen at the same time as resource constraints are impacting on funds available for fee paid judge sittings. In these circumstances, motivated by the best traditions of acting in the public interest, the salaried Employment Judges concerned will provide some judicial support to their colleagues in the IAC.

In a similar vein, salaried Employment Judges north and south of the border were recently given the opportunity to take part in an expressions of interest exercise, the purpose of which was to secure the services of 30-35 of them to sit in the County Court in England on a part time basis (up to 30 days per judge). This is a pilot exercise, utilising the cross court-tribunal deployment provisions in the Crime and Courts Act 2013 (see in particular Schedule 14 of that Act). One Scottish Employment Judge applied and he has been selected.

People and Places

As I reported last year the salaried Employment Judges in Scotland are now travelling from their base office locations to other ET offices on a very regular basis. Routinely judges based in Aberdeen, for example, are sitting on cases in Glasgow. They continue to bear the additional burdens this entails with equanimity for which I am extremely grateful. That said, one of the longest serving of the salaried Employment Judges (EJ Christie) based in Aberdeen retired at the end of 2015 – he assured me this has nothing to do with the amount of time which he spent travelling! His expertise, particularly on issues of territorial jurisdiction, as they affect employees working in the North Sea oil industry, was second

to none. He was, for example, the judge whose original decision in *Ravat v Halliburton Manufacturing Services Ltd (Scotland)* [2012] UKSC 1, having been overturned by the EAT, was held to be correct by the Supreme Court. He had great expertise too in the health and safety related claims that come within the jurisdiction of the Employment Tribunal, a fair number of which arise in the context of the North Sea. He will be very sorely by his colleagues and all those who appear before the Employment Tribunal in Aberdeen.

The number of fee paid Employment Judges in Scotland remains at its lowest level in living memory. Budgetary restrictions are such that the funds available for them to sit are very limited but steps are being taken to ensure that they continue to sit as often as possible to maintain their judicial skills. Like the salaried judges, fee paid Employment Judges are often sitting in offices very far from their home location. They too undertake such duties willingly in the interests of providing the best service possible to users of the Employment Tribunal system. Similarly tribunal members, many of whom only have very limited opportunities to sit due to the reduction in discrimination claims and budgetary constraints, have proved willing to travel if need be to offices other than their base, when required. For this, and their continued engagement with the system, despite the low level of sittings available, they are to be commended.

2015 has seen significant changes to the Employment Tribunal Office in Glasgow. Previously there were 9 Employment Tribunal hearing rooms there, based over floors 1 and 2, with 4 waiting rooms (2 on each floor) for the use of parties and witnesses. As a result of the reduction in the caseload floor 2 has been closed to the public and the number of hearing rooms has been reduced to 6, with two waiting rooms. If additional hearing rooms are required then these are normally available for use within the accommodation occupied by the IAC in Scotland which is in the same building.

It is appreciated that the reduction in waiting room accommodation has, on occasion, resulted in the remaining rooms becoming very busy. It also makes it more difficult for representatives to speak privately to their clients. In order to alleviate this problem a consulting room for the use of parties and representatives has now been provided, opposite the waiting rooms. I have also been assured by the administration that in the event of waiting rooms becoming crowded arrangements will be made to provide additional space.

Still on the issue of estates, it came as a considerable surprise to the judiciary and system users to learn in January 2016 that on-going negotiations to secure a lease extension on the ET premises in Aberdeen had come to an end at the behest of the landlord. Strenuous efforts are now being made by HMCTS to secure alternative accommodation in Aberdeen, given the current lease expires in May 2016.

Conclusion

It is difficult to predict what the future holds for Employment Tribunals (Scotland). As those who have been involved in managing change will know often the most difficult thing to cope with is the uncertainty which accompanies it. It is to be hoped that as soon as possible clarification will be provided on crucial issues such as the timescale for devolution, the provisions which will be put in place to effect the successful transfer of judges, members and staff, without detriment to them or the ET system, and the arrangements which are to be made to ensure that service provision to users remains unaffected, whatever the future holds.

Annex D

Cross Border Issues

Northern Ireland

Dr Kenneth Mullan (Chief Social Security Commissioner)

There have been no further developments with tribunal reform in Northern Ireland. The Department of Justice continues to report that due to increased pressure on the Department's legislative programme, married with other unforeseen essential business, there has been a re-prioritisation of schemes which might be delivered during the current mandate of the Northern Ireland Assembly. This has resulted in what has been described as a 'staged' progression in tribunal reform.

The first stage is to build on the policy of transfer of statutory responsibility for the administration of tribunals to the Department of Justice from other individual Departments with the aim of creating a unified tribunal administration. The second is to introduce legislation to effect tribunal reform during the next Northern Ireland Assembly mandate. Two caveats should be noted, however. The first is that while the next Northern Ireland Assembly mandate will commence in 2016 the present indication is that the legislative timetable is for the reform programme to take place in the second half of that mandate i.e. in 2018/1019. The second is that the progression of the reform programme is stated to be subject to 'legislative and resource constraints.'

The Northern Ireland dimension for those First-tier and Upper Tribunal jurisdictions which extend to Northern Ireland has been described in the other relevant sections of the Senior President's Report.

Scotland

Shona Simon (President, ET (Scotland))

Devolution related developments

Last year I referred to the fact that the Smith Commission, when considering additional powers that could be devolved to Scotland, had recommended that 'all powers over the management and operation of all reserved tribunals (which includes administrative, judicial and legislative powers) will be devolved to the Scottish Parliament...'. At the same time it was made clear that the law providing for the underlying reserved substantive rights and duties would remain reserved. The primary legislative powers, which are said by the United Kingdom Government to deliver the devolution recommended by the Smith Commission, are to be found in clause 37 of the Scotland Bill. The Bill was considered by a Committee of the Whole House on various dates in June and early July 2015, the final day (6 July) including consideration of clause 37 (at that time clause 33). For those so inclined, the debate recorded in Hansard makes interesting reading. It was suggested by Alistair Carmichael M.P., Secretary of State for Scotland at the time the Smith Commission undertook its work, that the topic of 'the administration of tribunals in Scotland' gave rise to 'some of the most difficult and challenging work for both the Smith Commission and the Government'.

Clause 37, as amended following its passage through the House of Commons, is now easier to understand than the original draft clause although it is still somewhat convoluted in its drafting, working as it does by creating an exception to powers that are reserved to Westminster under the provisions of Schedule 5 of the Scotland Act 1998. This, in turn, may have contributed to the view that has been expressed by various bodies, such as the Law Society of Scotland and Citizens Advice (Scotland), that it does not fully implement the Smith Commission agreement. This is not a matter upon which it would be appropriate to make judicial comment but it is to be hoped, given the importance of the matters dealt with and the public interest in ensuring legislative clarity, that in its final form the drafting of clause may be further improved.

Of course, whatever amendments might be made to it, it will remain the position that the primary legislative power will be broad in nature, with the detail being left to be set out for each tribunal which is to be devolved in an Order in Council. Thus, for example, there will be an Order in Council which will relate to the devolution of Employment Tribunals (Scotland) with a separate Order being made for each of the other reserved tribunals which will devolve. As was noted last year the terms of each Order in Council will be highly

significant since it is here that one will find the detail about the 'precise nature of the matters that will be able to be heard, the specific tribunal within the devolved system that will be responsible for hearing those matters and also any limits, constraints and requirements upon the exercise of the powers transferred that are necessary to ensure the continuing effective delivery of the overarching national policy.' (Para 6.3.4 of Command Paper 8990 – Scotland in the United Kingdom: An enduring settlement).

Given that each Order in Council can "make any provision which Her Majesty considers necessary or expedient for the purposes of or in consequence of the transfer" of functions to the relevant Scottish tribunal, and the exercise of those functions, it is not difficult to understand why the attention of those interested in the topic of reserved tribunal devolution will need to be focussed on the Orders in Council once they emerge in draft form. (The draft Order in connection with Employment Tribunals is, in fact now in the public domain – further information about it can be found in the Employment Tribunals (Scotland) contribution to this report).

Interest can only be heightened by the fact that each order, crucially, will set out the definition of what will amount to a "Scottish case" in each tribunal. The specific examples given in clause 37 of what may be included in each Order in Council serve only to emphasise that, as I suggested last year, the devil is going to be in the detail. An order pertaining to a particular tribunal could modify the function which is transferred, could impose limits so not all Scottish cases are included in the transfer of functions and could impose any type of "condition or restriction" in connection with the transfer of functions. This could include conditions, for example, about the composition or rules of procedure of the Scottish tribunal which will take on any particular functions.

There is still a great deal to be worked through both legislatively and practically in order to ensure that the devolution of reserved tribunals takes place as smoothly and efficiently as possible. For example, the order in which tribunals might transfer, the timing of transfers and arrangements to be made in relation to affected staff and judicial office holders are not yet clear. That in itself has the potential to cause difficulties as all those involved in the management of change will recognise: the impact which a climate of work related uncertainty can have on individuals is well known. Hopefully, steps will be taken to deal with concerns of this type as quickly as possible. That having been said, while the judiciary and the administration may be paddling furiously under the surface to effect a successful transfer of each affected tribunal, the principal aim must undoubtedly be to ensure that users of the tribunals affected experience no disruption or deterioration in service.

Scottish tribunal related legislative developments

Over the course of the last year there has been further progress on both the legislative and administrative front so far as the Scottish Tribunal system is concerned (i.e. the system which currently encompasses devolved tribunals). Section 130 of the Courts Reform (Scotland) Act 2014 was commenced on 1 April 2015, thereby bringing into being the Scottish Courts and Tribunals Service (SCTS) which is required under the legislation to provide administrative support to Scottish Tribunals. On the same day the Tribunals (Scotland) Act 2014 (Commencement No. 2) Order 2015 came into force. The Order appoints 1 April 2015 as the appointed day for the coming into force of virtually all of the provisions of the Tribunals (Scotland) Act 2014 which were not already in force. One of the difficulties that may arise in connection with the transfer of the reserved tribunals is that the Tribunals (Scotland) Act 2014 appears to have been drafted to accommodate the needs of the currently devolved tribunals. Whether the Act is able to accommodate all of the needs of the currently reserved tribunals will undoubtedly be a subject of discussion both North and South of the border in the coming months.

The prospect of successful devolution is certainly enhanced by the continuation of the links that have been established in recent years between the reserved and devolved tribunals' judiciary in Scotland through the Scottish Tribunals Forum which is chaired by the Scottish President of Tribunals. Senior judiciary from both reserved and devolved tribunals attend that group together with senior civil servants from both the Scottish and UK governments. Details about the work of the group to date were provided in last year's report but much of its attention in the coming year may require to be focussed upon practical matters connected to devolution.

Devolved-reserved tribunal judicial cooperation is also evident through the work of the recently formed Scottish Tribunals' Judicial Working group. While the purpose of the group is to allow the devolved tribunal judicial heads to develop a range of judicial policies which will apply in the new First Tier Tribunal for Scotland a reserved tribunal judicial leader also sits on the group, at the invitation of the Scottish President of Tribunals, to provide information about judicial policies which apply in the reserved tribunals and share experience about the introduction and practical application of such policies.

It is helpful too that training links continue to be developed between the tribunals operating in Scotland and the Judicial Institute for Scotland (the equivalent of the Judicial College in England and Wales). In that regard, there has been cross fertilisation of ideas between reserved tribunal and court judiciary on the topic of case management in the past year.

Tribunal connection into the Scottish judicial system is also promoted by the continuing representation of the devolved and reserved tribunals on the Judicial Council for Scotland

(similar in nature to the Judges Council in England and Wales) where attention turns with increasing frequency to the issue of whether judicial policies and guidance under development in Scotland will be capable of application in tribunals as well as in Scottish courts.

The next few years will be a time of very great change for the reserved tribunals. Change always brings risks and opportunities. It has been made clear by the United Kingdom Government that the judiciary will be closely consulted in connection with the devolution plan. That process is scheduled to start in March 2016: assuming the consultation is conducted with open minds on the part of all concerned one would like to hope that will minimise the risks and maximise the opportunities arising.

Wales

Judge Libby Arfon-Jones

It has been another significant year for the devolved tribunals in Wales with continued challenges alongside meaningful progress.

It is encouraging to note that the Welsh Government (WG) continues to focus on the needs of devolved tribunals in Wales. The Review undertaken by Andrew Felton published its Report which was distributed to stakeholders for consultation, and the WG is now considering responses from, inter alia the LCJ, the then SPT, Sir Jeremy Sullivan and the Welsh Tribunals Contact Group (WTCG).

The Justice Policy team, established in the WG, led by Andrew Felton, covers, amongst other areas, administrative justice policy. Margaret McCabe will continue to have responsibility for the operational aspects of devolved tribunals. She and her team will continue to be responsible for a “Welsh Tribunals Service”.

Issues around the appointment processes were addressed during the recruitment of the President of the new Welsh Language Tribunal (WLT). Chaired by HHJ Milwyn Jarman, Professor Noel Lloyd, a Judicial Appointments Commissioner and I were the other panel members. I am happy to say that Keith Bush QC was appointed. Keith, Noel and I then interviewed candidates for the legal and non-legal members of the Tribunal, whose appointments have been endorsed by the First Minister. The Tribunal is yet to sit!

Although the AJTC and its Welsh Committee were abolished, a new Committee for

Administrative Justice and Tribunals, Wales has been set up to advise on administrative justice and the tribunal reform agenda. Its membership is the same as its predecessor and remains under the chairmanship of Professor Sir Adrian Webb.

Whilst many areas such as complaints handling, training and appointment processes remain areas of concern, the WG is opening up discussions with relevant teams in each of the arm's length judicial bodies to tap in to their resources and expertise and ensure the same standards are applied across England and Wales in the devolved and non-devolved tribunals.

Since 2010, the WTU has led a programme of reform designed to strengthen the independence of the Tribunals and to improve their operation, through greater consistency of procedures, more independent appointments processes, and improving services to tribunal users. This programme of reform has been informed by two key reports:

The AJTC Review of Tribunals Operating in Wales and the *Review of Devolved Tribunals Operating in Wales* (Felton report). These two reports set out a comprehensive programme of work, with many recommendations completed and others continuing to be delivered

Of particular note is the arrangement under section 83 of the Government of Wales Act (GOWA) to use the JAC in recruitment and selection of tribunal members for the devolved Welsh tribunals. Discussions have opened up between Welsh Government and the Judicial College to explore the options for quality training and implementation of appraisal arrangements which are cohesive, proportionate and cost effective, whilst which taking account of Welsh factors such as the increasing divergence between Welsh law and English law.

The work already in progress has continued with several achievements.

Annex E

The Judicial College

General Background and Statistics

The College provides training in 34 separate jurisdictions across the United Kingdom.

In the financial year 2014–15, the College delivered 292 courses (both residential and non-residential) to 11,259 judicial office holders in tribunals. The vast majority of training provided for tribunal judges and members is delivered within individual jurisdictions, in line with the requirements of Chamber Presidents. Training for judicial office holders in tribunals is generally arranged through an invitation to attend courses, with the exception of some training provided in the Mental Health Tribunal and Special Educational Needs, Care Standards and Primary Health Lists where the majority of training is booked via a prospectus.

Tribunals' Committee of the Judicial College

The Committee with formal oversight of the training of all tribunal judicial office holders is the Tribunals' Committee. The Committee oversees tribunals' judicial training for those tribunals for which the Senior President has statutory responsibility, and where appropriate takes account of the interests of devolved tribunals and those tribunals transferring into HMCTS. The tribunals where training is provided by the Judicial College are: Employment (England and Wales), Employment (Scotland), Employment Appeal Tribunal (EAT), Tax First Tier and Upper Tribunal, Lands Chamber, Administrative Appeals Chamber (AAC), General Regulatory Chamber (GRC), Mental Health, Care Standards, Special Educational Needs and Disability (SEND), Primary Health Lists, Social Security and Child Support (SSCS), Asylum Support (AST), Criminal Injuries Compensation (CIC), Adjudicator to the Land Registry, War Pensions and Armed Forces Compensation (WP & AFC), Immigration and Asylum (IAC) and Property Chamber. Membership of the Committee has been reviewed this year. For First tier jurisdictions, Judge Sehba Storey has been appointed to cover the interests of the AST and CIC jurisdictions in the SEC. Judge Melanie Lewis will carry out a similar role for the smaller jurisdictions in HESC; for the Upper Tribunal – Judge Paula Gray will cover the Administrative Appeals of the Upper Chamber. HHJ Jenny Eady QC will

represent Employment Appeals Tribunal. In addition Judge Greg Sinfield will now also cover the interests of the Upper Tribunal Tax and Chancery Chamber and Mr David Brown will liaise with the Upper Tribunal Lands.

Secretariat support for the Tribunals' Committee and administrative and secretariat support for training in the Mental Health, Immigration and Asylum, Social Security and Child Support and the Property Chamber are provided by College staff in London, Glasgow and Loughborough. Administrative support for the remaining tribunals is provided by staff in HMCTS.

Most Tribunal jurisdictions also have their own training groups or committees that meet at regular intervals to plan their jurisdictional training programmes.

Evaluation of Tribunal Training Programmes

In almost all jurisdictions, Feedback forms are completed at the end of training courses on line via the College's Learning Management System (LMS). Those judges and members who are responsible for designing and delivering training have easy access to feedback and evaluation data via the LMS and there are also summary reports provided by staff in the College, based on an analysis of the quantitative and qualitative data provided by respondents. These assist the trainers in the design of future courses. Contrary to earlier predictions, the on line feedback system is proving to be a success with completion rates in some jurisdictions close to 100%!

The Learning Management System (LMS)

Registrations of judicial office holders (JOHs) on the College's web based Learning Management System (LMS) have increased dramatically in the last year and the majority of judicial office holders (JOHs) are now registered. This underpins and facilitates the College wide move away from producing course materials in paper form: by the end of March 2016 the College aims to be paperless in this regard, with only a few exceptions. The Mental Health jurisdiction was the first tribunal jurisdiction to publish its prospectus on-line via the LMS, in February 2015. The on-line prospectus has been a great success and the College hopes that other tribunal jurisdictions will follow suit in the coming year, having realised the obvious advantages of the use of on-line booking arrangements.

Developing e-learning Programmes

The college continues to use e-learning as an effective learning tool ensuring that interactivity is embedded into each programme to enhance the user experience. This includes filmed interviews, filmed introduction, narration, music, and quizzes.

Additionally the 'e-Diversity' group provides a developing suite of on line learning activities designed to enhance each JOH's communication skills when dealing with individuals who may deem themselves at a disadvantage within the tribunal arena. Subjects covered range from individuals who are deaf, deafened or hard of hearing to individuals with physical disabilities and those with dementia.

E-learning orientation Programme for new judges

This interactive programme was launched in April 2015 and is available via the LMS. Its particular target group is newly appointed judges, but all judicial office holders are able to access the course should they be so interested. The programme covers information and interactive activity across a wide range of topics including judicial independence, the influence of European legislation, how the Judicial College operates, communications and security.

Joint Programme with Australian, Canadian and Scottish Training Institutions

The Judicial College is participating in an exciting on-line learning project involving sister judicial training organisations in Canada, Australia, and Scotland. We nominated to the project 10 judges from England and Wales (5 from tribunals, 5 from courts) to join the project. The commitment of the nominated judges was to spend c. 2 hours a week on line between 14th September and 16th October, participating with fellow judges across the world, in the training programme. This has proved to be not only a useful and stimulating experience for the participants (the quality of the trainers and training materials was exceptional), it also provided the participating judges with an opportunity to share their own experiences of working with self-representing litigants, to the benefit of all involved

The course's primary objective was to develop the participants' understanding of the foundations, scope and practical implications of their duty to assist self-represented litigants and accused (SRLAs). Through various problems and case studies dealing with both civil and criminal matters, participants were invited to reflect on how recurring issues (such as how to draw the line between acceptable assistance and illegitimate advice, how far should judges go in explaining applicable rules and how to respond to situations involving a vulnerable SRLA) might be addressed in a principled and coherent manner. The international dimension of the course allowed participants to understand the extent to which local circumstances may affect both the nature of the challenges raised by the increasing number of SRLAs and the proper responses to those challenges.

The College Leadership and Management Development Programme

The College's cross-jurisdictional Leadership and Management Development (LMD) programme has now run on 4 separate occasions. The programme was designed in collaboration with a wide range of senior judges across all jurisdictions to meet the needs of newly appointed leadership and management judges (LMJs). Each programme has included three Workshops, which are delivered by a range of senior judges and subject experts, plus a series of workplace activities. The programme has been very well received by participants from all jurisdictions.

One Year On: Feedback from the LMD participants led to the development of a 'One year on' Workshop. This workshop is designed to bring together each year's cohorts for an additional day in which participants will have the opportunity to share their experiences of applying their leadership learning, as well benefiting from further training. The first 'One year on' Workshop was held in December 2015.

Master-classes: The success of the programme has also led to the development of a series of Leadership Master-classes. These are designed for all judges with leadership and management responsibilities and they focus on the important areas of Leading Change, Effective Conversations and Managing Stress, Developing Resilience and Mindfulness. The classes were launched in October 2015.

Appraisal

This year the College delivered the first cross jurisdictional Appraisals Skills course to support the launch of the new Skills and Abilities Framework which has been endorsed by the SPT. Approximately 80 tribunal judges have had their skills refreshed and those new to appraisals were able to work with experienced appraisers to build their confidence. Each participant had opportunity to use the new framework, to formulate strategies for having difficult conversations and worked at recording and feeding back the performance observed during an appraisal.

This is a highly interactive course and the feedback report for the course held in April showed that the aim and learning outcomes average was 97% 'fully/substantially met'. The course was 'very/substantially useful' for all respondents and there was an excellent feedback form response rate of 88%. The course was repeated in September 2015, with equally positive feedback.

The College has also delivered the first cross jurisdictional mentoring skills course which was met with equal enthusiasm by the participants.

New Training in Response to New Legislation and upon Assignment to new Chambers

The need to train large numbers of judicial office holders in the substance and consequences of new legislation is one of the most challenging aspects of College work. During the 2014/2015 training year the Immigration and Asylum Chamber trained all of their judges on the Immigration Act 2014 part 1 in winter 2014 and part 2 in spring 2015. Similarly, the mental health jurisdiction trained all their judicial office holders on the Care Act. The SEND tribunal trained all their judicial office holders on the Children and Families Act 2014.

Another challenging aspect of judicial training is to provide rapid, high quality bespoke training to newly assigned judges. 187 judges from Social Entitlement Chamber and Employment Tribunal were assigned to the Immigration and Asylum Chamber and underwent induction training in October 2014 and February 2015 (see below). Other tribunals/chambers have followed a similar pattern as the numbers of judges seeking further tickets continues to grow. Over and above these requirements the College also provides new judicial office holders appointed within both the Social Security and Child Support jurisdiction and the Tax Chamber with induction training. These judicial office holders had been appointed to support the anticipated increase in workloads within both these jurisdictions.

The Justices of the Supreme Court

The Justices of the Supreme Court continue to express an interest in developing closer links with the Judicial College and several invitations to Supreme Court Justices are in the pipeline, with a view to including them in some forthcoming tribunal training events as speakers and participants.

The College Academic Programme

The College's second series of lectures under Academic Programme commenced in February 2015, under the general theme of 'Judges and Society'. Alan Rusbridger (former Editor of the Guardian) talked about judges and the media at Leeds University in February, and Lord Justice Laws delivered a very impressive lecture on the topic 'Do judges make law?' at the University of Law in London in March 2015. Baroness Hale from the Supreme Court delivered at Bristol University on 29th October 2015. The theme of the talk was 'Judicial diversity'. Consideration is now being given to the publication of all the lectures from the series as a single volume.