JUDICIAL COLLEGE

TRIBUNALS
TRIBUNALS
EDITION 1 — 2019
TRIBUNALS

Editorial 2019 Edition 1

EDITORIAL

By Christa Christensen

Welcome to this spring edition of the Tribunals Journal and the first of 2019. I hope I can tempt you to be interested in the collection of articles that the Editorial Board has selected for publication.

We start with a fascinating account of the work of a non-HMCTS adjudicative body, the Police Misconduct Hearing Panel, written by Douglas Readings who sits as a Legally Qualified Chair of Police Misconduct Hearings. This is a body that has been previously explored by the Journal as the Editorial Board are always keen to publish articles that explore the work of the widest range of judicial and quasi-judicial bodies so that cross fertilisation of ideas and practice can occur. If you are a reader that sits on or is involved in such a body and are interested in writing about the work of that body, please get in touch.

The next article describes the work of a Judicial Mentoring Scheme that is administered by the Judicial Office. Tribunal Judge Rozanna Head-Rapson describes her experience, as a Fee Paid Judge, of being a mentee in a scheme that was the initiative of the Judicial Diversity Committee. This seeks to encourage women, BAME lawyers and those from low socio-economic backgrounds to apply for their first judicial appointment and to support those from the same background who already hold a judicial appointment and wish to progress to higher office. Rozanna describes the importance of learning not to hide one's light under a bushel and to put self-consciousness aside when building a portfolio of judicial competencies and has now progressed to a Salaried Judge in the Health, Education and Social Care First Tier Tribunal.

...the Editorial Board are always keen to publish articles that explore the work of the widest range of judicial and quasi-judicial bodies so that cross fertilisation of ideas and practice can occur.

We move from there to an article that focuses on the birthing and maturing process of The Tribunals Service. This uses the opportunity of looking back, and forward, at the point of the tenth anniversary of the creation of HM Tribunals Service in November 2008. Professor Martin Partington takes us back to the Leggatt Review published in 2001 which had, as its central theme, that tribunals which had been created in a 'willy-nilly' way over the previous 50 years should be brought together under one single service. Martin focuses on the key unifying theme for tribunals, namely that they should be a place that the ordinary citizen could represent themselves without the need for legal aid and the importance of focusing on user need. That is a theme that now resonates across the whole of HM Courts and Tribunals Service and feeds into a number of modernisation and reform programmes.

Mrs Justice Gwynneth Knowles's and Mr Justice Peter Lane's article picks up a number of themes on career development and cross-deployment opportunities

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that are created for judges with the creation of the combined Courts and Tribunals Service. They provide personal accounts of their paths to the High Court. Gwynneth describes her entry into the judiciary as a Fee Paid Judge of the Mental Health Review Tribunal and her progress from there to a salaried appointment in the Upper Tribunal and then to the High Court. Peter describes his entry to a judicial role as a Fee Paid Immigration Adjudicator, then to a salaried position in the Immigration Appeals Tribunal, as President of the First Tier General Regulatory Chamber and then to the High Court. They each give their own very personal account of a fascinating judicial career progression which may encourage readers to aspire to something similar.

It gives me very great pleasure to publish a piece authored by Upper Tribunal Judge Paula Gray which gives a one-year round-up of the work done to promote the new version of the Equal Treatment Bench Book, published in February 2018. This includes the unceasing work done by the Equal Treatment Bench Book Editorial Panel, chaired by Employment Judge Tamara Lewis. The Panel ensures that the ETBB is kept up to date at periodic intervals and oversees a system of six-weekly eAlerts direct to all judges. This has been a fundamental part of the strategy to keep the ETBB alive as a working tool for judges. Other strategies include a draft Training Guide for Judicial College Tutors to ensure that the ETBB finds its way into training material, where appropriate. The chocolate cake looks quite stunning and thanks are due to Regional Tribunal Judge Hugh Howard who clearly has advanced baking skills.

Given that the UK abolished slavery in 1833 why, might you ask, is the Tribunals Journal publishing not one, but two articles on this topic? In her articles on this topic Employment Judge Juliette Nash explains the significance of this issue in our modern age, the vulnerabilities it creates and how it might manifest itself in the tribunal room and why it is important for Judicial Office Holders to know something about Human Trafficking and Modern Slavery. In this first article Juliette explains what modern slavery and human trafficking is, the scale of the problem and what protection procedures are in place for victims in the UK. Her second article which will appear in the next edition of the Tribunals Journal will explore how trafficking and its victims are having an impact on the work done in a number of HMCTS tribunals.

We also have our regular column from the Senior President of Tribunals, the Equal Treatment Bench Book Corner and the Recent Publications feature which lists recent publications of interest to readers of the Tribunals Journal.

Christa Christensen is Chair of the Editorial Board Back to contents

Police misconduct hearings

THE WIDER WORLD OF TRIBUNALS By Douglas Readings

The current arrangements for hearing allegations of misconduct against police officers have emerged out of a process of investigation and review over the last twenty years, including the inquiry chaired by Sir William Morris for the Metropolitan Police Service (December 2004), the Taylor Review of Police Disciplinary Arrangements (March 2005), and recommendations of the Police Advisory Board for England and Wales and of the Commission for Racial Equality.

The result is that in England and Wales most of the more serious allegations of misconduct against rank and file police officers are now heard at a Police Misconduct Hearing. The Policing and Crime Act 2017 extends the police discipline system to former officers and special constables. This includes those who resign or retire after a complaint is made, or when a complaint is received within 12 months of an officer resigning or retiring.

The Police Misconduct Hearing is unique. It combines features of a number of judicial and quasi-judicial bodies. It is both inquisitorial and adversarial. It is not part of HMCTS.

Until 2008 cases of alleged serious misconduct were heard by the Chief Constable, or on his behalf by another senior police officer. From 2008, a panel of three, comprising a senior police officer and another officer senior in rank to the accused officer, and a lay person, heard such cases. Since 2012 the panel for each case has comprised a legally qualified chair, a senior police officer (usually a Superintendent or Chief Superintendent) and a lay person. Since 2014 police misconduct cases have been heard in public, except where there are special reasons for all or part of a hearing to be in private.

The Police Misconduct Hearing is unique. It is both inquisitorial and adversarial.

I was recruited as a lay member in 2008 by the local Police Authority, and sat from time to time in cases heard locally by several Assistant Chief Constables. I found this useful experience when the time came to become a Legally Qualified Chair (generally called an LQC). I have also found it useful to revert to my role as a lay member sometimes and sit with another LQC.

Hearings are not strictly adversarial. Misconduct allegations against police staff are investigated by the Professional Standards Department (PSD) of the relevant constabulary, in accordance with Home Office Guidance, and subject to intervention by the Independent Office for Police Conduct (formerly the Independent Police Complaints Commission). The PSD interview complainants and witnesses and the accused officer, and compile statements in a report which is put before a senior police officer of the constabulary, known as the Appropriate Authority (AA). The AA then assesses whether there is sufficient evidence to take the case forward as an allegation of "misconduct" or "gross misconduct". If the decision is to proceed, then the hearing takes place at which the report is presented to the panel. The AA appears, usually by counsel, to present the case against the police officer in question, and the officer appears to defend the allegation. The officer is usually accompanied by an official of the Police Federation, who will often also instruct counsel. The AA frequently does not call any witnesses, because the report from the PSD constitutes the evidence which the accused officer has to answer. However, it is open to the LQC to give directions in advance of the hearing for witnesses to attend, and this will usually be done where there is a relevant fact in dispute which needs to be resolved by questioning a witness. Witnesses do not take an oath.

First the panel decides … whether the facts found proved amount to "misconduct" or to "gross misconduct".

Hearings are conducted in two parts. First the panel decides, by a majority if necessary, which of the disputed facts are found proved, on the civil standard of proof, and also decides whether the facts found proved amount to 'misconduct' or to 'gross misconduct'. Misconduct is defined in the Police (Conduct) Regulations 2012 as: 'a breach of the Standards of Professional Behaviour', and gross misconduct is defined as: 'a breach of the Standards of Professional Behaviour so serious that dismissal would be justified'.

The Standards of Professional Behaviour appear in Schedule 2 to the 2012 Regulations, and are statements of principle, which are brief enough to quote here.

Standards of professional behaviour

Honesty and integrity

Police officers are honest, act with integrity and do not compromise or abuse their position.

Authority, respect and courtesy

Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

Police officers do not abuse their powers or authority and respect the rights of all individuals.

Equality and diversity

Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.

Use of force

Police officers only use force to the extent that it is necessary, proportionate and reasonable in all the circumstances.

Orders and instructions

Police officers only give and carry out lawful orders and instructions.

Police officers abide by police regulations, force policies and lawful orders.

Duties and responsibilities

Police officers are diligent in the exercise of their duties and responsibilities.

Confidentiality

Police officers treat information with respect and access or disclose it only in the proper course of police duties.

Fitness for duty

Police officers when on duty or presenting themselves for duty are fit to carry out their responsibilities.

Discreditable conduct

Police officers behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty.

Police officers report any action taken against them for a criminal offence, any conditions imposed on them by a court or the receipt of any penalty notice.

Challenging and reporting improper conduct

Police officers report, challenge or take action against the conduct of colleagues which has fallen below the Standards of Professional Behaviour.

In making their decisions the panel may have regard to a Code of Ethics published by the College of Policing as well as Home Office Guidance. When the decision has been made and announced at the first stage, unless it is found that there is no misconduct, the panel then proceeds to the second stage. It listens to submissions, and decides what sanction, if any, it is fair and proportionate to impose, in order:

- to protect the public,
- to maintain public confidence in the police service, and
- to uphold high standards in policing and deter misconduct.

If gross misconduct has been found proved, the panel can dismiss the officer, impose a final written warning or an ordinary written warning, direct that the officer must receive management advice, or take no further action. If only misconduct is proved, there is no power of dismissal, unless the officer is in breach of an earlier final written warning. In deciding upon sanctions, panels are assisted by *Guidance on Outcomes in Police Misconduct Proceedings* (2017) published by the College of Policing. Appeal on a point of law only lies to the Police Tribunal.

With a legal chair and two wing members, one professional and the other lay, police misconduct hearings are recognisable as a tribunal system with jurisdiction covering the whole of England and Wales. Since there are many separate constabularies, they have pooled their resources to work together in several regions, and recruited pools of LQCs and lay members who sit in several police areas. However, in the absence of an overall national system, there would be a risk of LQCs developing a diversity of practice, and perhaps making inconsistent legal decisions. The College of Policing has been aware of this risk, and has helped to organise some joint training for LQCs. A voluntary Association of LQCs has also been formed recently, to encourage communication and the sharing of good practice.

From a lawyer's point of view, the police misconduct hearing is unique and interesting. It is both inquisitorial and adversarial. It combines an employer's disciplinary function with professional "fitness to practise" regulation in the public interest. It has to comply with detailed and precise procedural requirements, and at the same time to judge a police officer's conduct by reference to broad statements of principle.

Douglas Readings – Chair, Police Misconduct Hearings Back to contents

Judicial Mentoring Scheme

CAREER DEVELOPMENT By Rozanna Head-Rapson

"The greatest good you can do for another is not just to share your riches but to reveal to him his own."
Benjamin Disraeli

Ultimately, we are all responsible for our own career development. However, it is helpful to have someone with whom you can share your experiences and from whom you can learn. Whilst in practice, I developed a mentoring scheme and paired junior lawyers with more experienced lawyers. Within a short time, I discovered that it worked well, as it served to incentivise and motivate people to progress and attain their goals within a supportive environment.

...developed to focus on addressing under-representation ... and encourage greater socio-economic diversity.

To work effectively, a mentoring scheme should be a two-way process. The mentor can provide insight into the role and the mentee can identify in what areas they need support. The acceptance of constructive feedback is a necessary part of this process.

The Judicial Mentoring Scheme

Shortly after I was appointed Fee-Paid Judge of the First-tier Tribunal, an invitation for applications to join a Judicial Mentor Scheme on the Judicial Intranet caught my eye. A new Judicial Mentoring Scheme had been developed to focus on addressing

under-representation of Women, Black, Asian & Minority Ethnic (BAME) lawyers and encourage greater socio-economic diversity.

The scheme was an initiative of the Judicial Diversity Committee, chaired by the then Lord Chief Justice and co-chaired by Lady Justice Heather Hallett to support the committee's vision to encourage greater diversity at all levels of the judiciary. The scheme is administered by the Judicial Office.

Eligibility

The scheme is open to judges (within the above under-represented target groups only) wishing to progress to higher office and seeking appointment in the next two years (or at the next available opportunity). It is also open to barristers, solicitors, chartered legal executives and professionally qualified legal academics who have participated in the Judicial Work Shadowing Scheme within the same period.

Objectives

This scheme's aim is to encourage and support Women, BAME lawyers, and lawyers from low socio-economic backgrounds, intending to apply for their first judicial appointment. Similarly, the scheme will also support judges from the same background (both fee-paid and salaried) who wish to progress to higher office. The scheme defined 'low socio-economic backgrounds' as lawyers who attended a (non-fee paying) state school or were the first generation in their family to attend university.

The purpose of the scheme was to provide a safe environment for lawyers to:

- share issues inhibiting their application to judicial office (e.g. concerns of work/life balance, self-confidence, self-perception) and receive confidential advice, support and guidance from a mentor judge,
- learn from someone with greater understanding of the judiciary,
- establish what skills and experiences are needed to support their application to judicial office,
- identify areas where further development and experience is required and consider how these may be acquired,
- decide whether taking up judicial office is an option they want to pursue.

...for the scheme to be effective it had to work flexibly for us both.

Pairing

I completed an application form and, a few months later, I received a response informing me that I had been paired with HHJ Lynch, a Circuit Judge of the Family Court. We arranged to meet and agreed that we would discuss our objectives and how we would implement the scheme. We had both read through the Guidance to the Judicial Mentoring Scheme prior to meeting and we decided jointly that for the scheme to be effective it had to work flexibly for us both.

This article is published with the kind agreement of HHJ Lynch.

A good working relationship

Ensuring the success of this relationship will depend on several factors; clarity about roles and responsibilities, clear communication, a shared and agreed understanding of forms of support available and the purposes and limitations of that support, commitment in practice to the principles and values of the mentoring scheme and ensuring that the relationship continues to be beneficial.

To ensure the mentoring relationship is a success, mentees are expected to assess their own progress, identify areas in which specific help or guidance is required, discuss their career development and progression towards a judicial appointment, and keep to all agreed appointments with their mentor.

Preparation

Ahead of our first meeting, I mapped out my career goals and considered how a mentor could help me achieve them. I also spent some time evaluating my knowledge and skills gaps. The initial meeting is critical to the success of the relationship you have with your mentor because it sets the tone and parameters of the subsequent meetings and exchanges.

First meeting

During our first meeting we decided on the logistics of our relationship and agreed the following:

- Confidentiality.
- Mentoring period.
- Frequency and duration of meetings.
- Venue for meeting.
- Method and suitable times for contacting each other between meetings.
- Cancelling meetings.
- Any records to be made.

A clear understanding of an agreement on the level of confidentiality is required within the mentoring relationship. Mentors and mentees should discuss confidentiality boundaries and decide how one party will let the other party know when they think it is time to bring the mentoring relationship to an end. It is important that the mentor and mentee discuss from the beginning how and in what circumstances either party may bring the relationship to an end. There can be a variety of reasons for ending the relationship:

- The relationship has fulfilled its purpose, because the mentee has achieved their goal.
- One or both parties do not feel that they are developing a valuable relationship.
- Either party has a change of priorities, location or other commitments which make continuing the relationship difficult.
- Concerns have arisen which result in one or both parties feeling unable to continue in the mentor/mentee relationship.

In addition, you might have a termination meeting to discuss what went well, what was helpful and what you might do differently another time. This affords the opportunity to comment constructively on each other's handing of the role.

During this meeting, I observed the morning hearing – a child care case – and we discussed matters at lunchtime. I skim read through the bundle ahead of the morning hearing, whilst HHJ Lynch undertook box work and answered phone calls and queries from her clerk. We then went into court, where I sat alongside her on the bench. Although my background was in family law, and I had done some child care law early on in my career, I dealt exclusively with private financial cases and private children's proceedings for the previous 20 years. It gradually came flooding back and even if it hadn't, the generic judgecraft skills made me appreciate how transferable they are. Shortly after our meeting, I attended the Business of Judging course, a cross-jurisdiction course run by the Judicial College and again this brought home to me how similar the court and tribunal judicial roles are. In the Immigration and Asylum Chamber (IAC) one sits as a judge alone and yet in the Social Entitlement Chamber (SEC) one sits as part of a panel. However, essentially the judicial skills sets are very similar.

Having a mentor judge provided a valuable direction, by helping me to work out what I needed to do ... and by creating a culture of support.

Over a quick sandwich in HHJ Lynch's chambers, we discussed the morning's proceedings and then went on to discuss and record our objectives. I explained that I intended to apply for a salaried role within the next few years. HHJ Lynch advised me to start keeping a note of any examples which met the Judicial Appointments Committee (JAC) criteria. We agreed that we would meet again in around four months' time.

Second meeting

At the second meeting we recorded goals and supporting actions. I explained to HHJ Lynch that I was looking to apply for a forthcoming salaried role and had been considering what examples to use for my application form to demonstrate that I had met each of the competencies. We discussed how important it is to use the very best examples and, being ex-solicitors, we recognised that we were perhaps not as well equipped as barristers in the role play and interview sections of the application. However, we agreed that to flourish in the JAC competitions, one cannot hide one's light under a bushel. So, setting self-consciousness aside, I later embarked on recording examples which met each of the judicial competencies.

After the meeting, I recorded our actions and progress, which helped me to plan what I would like to cover at the next meeting and I shared this with HHJ Lynch.

Final meeting

Having a mentor judge provided a valuable direction, by helping me to work out what I needed to do to fill in gaps in my knowledge and skills and by creating a culture of support. The most valuable qualities that mentor judges contribute are as informed listeners, providing a perspective determined by experience. These very qualities have helped the mentor judges themselves to apply successfully for a judicial appointment and become effective judges.

Our final meeting came sometime after the second owing to various factors. However, in the intervening period, I had achieved my objective and been appointed as a Salaried Judge of the First-tier Tribunal.

Rozanna Head-Rapson is a District Tribunal Judge (Social Entitlement Chamber) Back to contents

Tribunals Reform: achievements, disappointments and prospects

A PERSONAL VIEW By Martin Partington

Introduction

The Tribunals Service was formally launched in November 2008. This article offers a personal view, reflecting not just on what has happened over the past ten years but also on how the system has developed since the report of the Leggatt Review of tribunals, which kicked the whole reform programme off and was published in 2001.

Background: The Leggatt Review[1]

In May 2000, Sir Andrew Leggatt – a retired Court of Appeal judge – was asked by the then Lord Chancellor, Lord Irvine, 'to review the delivery of justice through tribunals…'. From the Terms of Reference, the Lord Chancellor wanted ideas for:

- 'an effective framework…[and] a coherent structure…';
- 'adequate arrangements for improving people's knowledge and understanding of their rights and responsibilities…';
- 'funding and management of tribunals… [which was] efficient, effective and economical…';
- establishing performance standards that were 'consistent and public' with 'effective measures for monitoring and enforcing those standards…'.

After just 10 months, the Leggatt Review – *Tribunals for Users: One System, One Service* – was published. It contained 361 detailed recommendations. The two headline issues were:

- Tribunals had been created willy-nilly over the previous 50 years, all working in different ways. While individual tribunals might work satisfactorily, there was no overall structure.
- The majority of tribunals were run by the same departments whose decisions were being appealed. In Leggatt's memorable phrase, from the appellant's point of view 'every game was an away game'.

The majority of tribunals were run by the same departments whose decisions were being appealed. In Leggatt's memorable phrase, from the appellant's point of view 'every game was an away game'.

The Review's central recommendation was that tribunals should be brought together into a single service, run by the (then) Department for Constitutional Affairs (now the Ministry of Justice).

1 I was a consultant to the Leggatt Review. It goes without saying that this article is entirely personal and does not necessarily reflect the views of either Sir Andrew Leggatt or the other consultants to the review.

1. Achievements

Creation of the Tribunals Service

The decision to implement this central recommendation was far from straightforward. Three years of painstaking negotiation between departments were needed before the Government announced that it would create the Tribunals Service.

The White Paper *Transforming Public Services: Complaints, Redress and Tribunals*, published in April 2004, announced the decision to establish a new Tribunals service, embracing both administrative tribunals and employment tribunals.

The new service did not start with a big bang. Rather it emerged from a sequence of administrative and legislative steps. Initially, Government used Transfer of Powers Regulations – which did not require new legislation – to start bringing key tribunals under the Ministry of Justice.

The *Tribunals, Courts and Enforcement Act (TCE Act) 2007* built on these initial steps by creating the basic structure we have today, namely the First-tier Tribunal and the Upper Tribunal, both divided into chambers. The Act also gave the Lord Chancellor statutory power to transfer the jurisdiction of existing tribunals to the new tribunals.

Merger of the Tribunal Service with the Court Service

The Review was quite insistent that the new Tribunals Service should be distinct from the Court Service. It also recommended that there should be a separate training budget for tribunals, separate from that for training the court judiciary. These views reflected the thinking of the review that:

- the ways in which tribunals operated were different from those of the courts,
- that separation of tribunals from courts would help to support the idea of the 'enabling role' of tribunals; and
- that tribunals should be a place where the ordinary citizen could represent him- or herself without the need for legal aid.

When the Tribunal Service was merged with HM Court Service in April 2011 to become HM Courts and Tribunals Service, some might have seen this as a weakening of the original vision. While it is important that tribunals continue as far as possible to be a user-friendly forum, I think that the benefits of merger outweigh any losses. In particular:

- the creation of the Judicial College with a single training budget for all judiciary has enabled cross-jurisdictional training to be developed to the advantage of both tribunals and courts, e.g. modules on 'The Business of Judging' and 'The Judge as Communicator';
- the merger made the flexible deployment of judiciary across both courts and tribunals much easier – a development taken forward by provisions in the *Crime and Courts Act 2013*. This has happened with the deployment of some employment tribunal judges and some property tribunal judges to the county court. This has greatly assisted the promotion of the idea of a judicial career;
- it provided opportunities for courts to learn from tribunals, particularly in relation to the handling of litigants in person.

In short, the merger has enhanced, not detracted from, the Leggatt vision.

In short, the merger has enhanced, not detracted from, the Leggatt vision.

Other developments

Other developments flowed from this key decision.

Senior President of Tribunals (SPT)

It was always envisaged that the new service would be judicially led by a Senior President. The first, (now) Lord Carnwath, was initially appointed on a non-statutory basis. The TCE Act formally created the office of Senior President of Tribunals. Following the merger of the Tribunals and Court Services in 2011, the Lord Chief Justice became formal Head of the Judiciary, but the SPT retains the responsibility and independence to oversee tribunals.

Tribunal Procedure Committee

The variety of procedural rules was one of the most unsatisfactory aspects of the unreformed 'system'. The Review recommended a uniform set of procedural rules. The TCE Act provided the legislative authority their creation. This function was devolved to the Tribunal Procedure Committee, which began its work in May 2008.

Granting of Judicial Review power to the Upper Tribunal

Possibly less noticed at the time, but subsequently of great practical importance, the Review recommended that powers of Judicial Review should in defined circumstances be given to the Upper Tribunal. This recommendation was also brought into effect by the TCE Act 2007. At first, moves in this direction were somewhat tentative. But reflecting concern at the huge burden Judicial Review cases – in particular those involving immigration and asylum – were placing on the Administrative Court, the *Crime and Courts Act 2013* extended the Leggatt principle, with the result that the vast bulk of these cases now go to the Upper Tribunal.

Use of IT

The Leggatt Review – which had Richard Susskind as one of its consultants – unsurprisingly recommended much greater use of IT for the Tribunal Service. This recommendation did not lead to much change initially. But the current programme of reform of Courts and Tribunals puts IT at the heart of the programme. Belatedly, then, the Leggatt review's recommendations on this issue have begun to take off.

A particular challenge, which has never been adequately addressed, is how tribunals should interact with other dispute resolvers [...] and Complaints Procedures.

2. Disappointments

Notwithstanding the achievements of the tribunals reform programme, there are issues which the Leggatt review thought were important but which have not yet worked out.

Oversight

Officials had long wanted to wind up the old Council on Tribunals. The then Chair of the Council, the late Lord Newton, mounted an extremely effective campaign to prevent this. So persuasive was he that Sir Andrew Leggatt – who was initially sympathetic to the Council's abolition – changed his mind.

Under the chairmanship of Richard Thomas, the Administrative Justice and Tribunals Council (AJTC) undertook really important work keeping key policy issues considered in the Leggatt review on the policy agenda. These included, for example:

- work on the role of tribunal user groups;
- ensuring the system was user-focused;
- encouraging Departments to reduce appeals by getting their decisions right first time and improving decision-making by learning lessons from the outcomes of appeals.

Disappointingly the AJTC was wound up in 2013. Replaced initially by the Administrative Justice Forum, now the Administrative Justice Council, the question is whether the new body will have the resources needed to keep policy makers' eyes on some of the broader issues relating to the operation of tribunals which Leggatt thought were important and which remain important for the future development of the Tribunal Service. A particular challenge, which has never been adequately addressed, is how tribunals should interact with other dispute resolvers, e.g. Ombudsmen and Complaints Procedures.

Funding

The Review offered rather radical suggestions for funding the Tribunals Service – basically that the Department, against whom an appeal was brought, should be charged the cost of dealing with the appeal. This idea was also taken up by the AJTC. The case for this 'polluter pays' approach was that it would incentivise Departments to get more initial decisions right, and improve their internal review procedures, thereby reducing numbers of appeals.

At present the policy focus is on fees which appellants should pay to access a tribunal – an issue not considered by Leggatt. This is a policy which, notably in the case of Employment Tribunal fees, has led to severe criticism in the courts. (*R (on the application of UNISON) (Appellant) v Lord Chancellor (Respondent)* [2017] UKSC 51). More consideration needs to be given to the balance between different potential funding sources.

Public information

The Review did not consider in detail how 'adequate arrangements for improving people's knowledge of their rights and responsibilities in relation to…disputes...' could be put in place. The IT investment programme could change this but a lot more work still needs to be done to give full effect to these ideas. These will include using IT to make it easier to access tribunals, and using portals to structure the evidence given to tribunals.

Performance standards

Leggatt's original Terms of Reference called for the development of 'Performance standards' which could be monitored *and* (my emphasis) enforced. The review set out a number of suggestions for the monitoring of tribunal performance. The review thought this important because, while tribunals are, for the most part, open to the public, in practice the public does not attend.

Appraisal of judicial performance is controversial. Judges are rightly concerned that their independence should not be compromised. These days there is some appraisal of tribunal judges, undertaken by other judges, but this has not to date become universal practice.

It is not clear to me whether other performance standards, such as overall times taken to reach decisions, have been set and enforced.

The user perspective remains, in my view, the key concept against which tribunals reform should be judged. [...] The modernised system should improve access to justice. "

3. Prospects

The Leggatt Review triggered significant institutional change to the Tribunals Service. However, the process of change is far from over. The current Courts and Tribunals Transformation programme – with its emphasis on the digitisation of practice and procedure – will lead to significant further change. Indeed, as I was finishing this piece, the Senior President of Tribunals published his report *The Modernisation of Tribunals* which outlines enormous changes that are still to come.

His report, like this article, looks back at the Leggatt vision. The SPT identifies two important principles for the modernisation programme: (1) that it should not be 'one size fits all' -different chambers will need different approaches; (2) that it will be judge-led. It is clear that the prospects for the future development of the Tribunals Service are exciting and challenging.

I will, however, conclude with one personal point. It is worth remembering that the report was entitled '*Tribunals for Users*' (emphasis added). The user perspective remains, in my view, the key concept against which tribunals reform should be judged. Simply digitising existing procedures would be a missed opportunity. The modernised system should improve access to justice. It should enable adequate guidance and assistance to users to bring appeals without the need for lawyers (save in the most complex cases). And it should be incentivising decision-makers to get their decisions right first time.

Martin Partington – Chair, The Dispute Service Back to contents

Tribunal Judge to the High Court Bench

SOME PERSONAL REFLECTIONS By Gwynneth Knowles and Peter Lane

"Do not go where the path may lead but
go instead where there is no path and leave a trail"

Ralph Waldo Emerson

Mrs Justice Gwynneth Knowles

The above quotation sums up my career path - a series of twists and turns. If there is a theme, the impartial observer might say "she likes a challenge and hates to be bored".

So, I started life as a children and families/mental health social worker before concluding that I could do just as well as the lawyers (mostly men) presenting my cases in the family courts. I hadn't done a law degree and so had to do a conversion course before going to Bar School. I continued to work part-time as a social worker until I started pupillage. Next twist: it was cheaper to get a legal qualification as a barrister than to train as a solicitor so that's what I did - I never thought I might become a barrister myself. But I was taken on - aged 32 - by a common law set at 4 Brick Court where I spent seven happy years before moving to Liverpool for love. Atlantic Chambers in Liverpool became my main

professional home until 2014 when I was appointed to the Upper Tribunal, Administrative Appeals Chamber. I took silk in 2011.

My judicial career began as a fee paid judge of the Mental Health Review Tribunal in 2007. I applied for the role because I thought my social work experience might render me a little more user-friendly for patients. I loved the role and began to think about expanding my judicial portfolio by becoming a recorder. I failed the exam so that was the end of that. In 2013 and searching for a challenge to add to the role of a silk at the family bar, I decided to apply to become an Upper Tribunal Judge, hoping I might get a fee paid role and being astonished to be offered a salaried role instead. I thought long and hard about whether to take it but the lure of the legal challenges arising in many different jurisdictions was just too great. Surprisingly, I had few regrets about leaving the family bar.

Being an Upper Tribunal Judge opened my eyes to the importance of the work tribunals do and to the opportunity for a working life of constant interest and challenge. I volunteered to sit in the Upper Tribunal, Immigration and Asylum Chamber to assist with judicial review applications and was then persuaded to apply to become a Deputy High Court Judge in the 2016 section 9(1) competition. It took a long time before I was able to sit as a deputy in the Family Division because I had no judicial background in the County Court as a fee paid judge. Before I could sit, I was told that I had to attend the relevant Judicial College public and private law training courses for family judges, which meant waiting many months for a place. However, when I finally began to sit, that experience awoke once more the siren call of family law and, with the encouragement of my then Chamber President, Mr Justice Charles, I applied for the full-time role and was successful. So, a series of twists and turns and, despite being a family silk, a somewhat unconventional path to the High Court Bench.

I was asked at my interview what would be the most difficult aspect about being a High Court Judge and I said, candidly, the loss of control over my working life. I was not wrong. As an Upper Tribunal Judge I was responsible for managing my own work and professional diary notwithstanding the constant and increasing numbers of applications assigned to me each week. It's very different in my present role where the Clerk of the Rules holds sway over my diary and where, as I write, every day till 14 November 2019 is accounted for. The pace of the work, with almost every day in court, is relentless and I found the first year a brutal ordeal. Now, I'm used to the workload and am better at managing to keep up with judgment writing and all the other things High Court Judges get asked to do in their spare time.

I found the skill set I had developed as an Upper Tribunal Judge transferred readily to my new role.

I found the skill set I had developed as an Upper Tribunal Judge transferred readily to my new role. The ability to manage litigants in person effectively whilst motoring through a busy applications list was invaluable. In the Family Division I am one of three judges who case-manage (and often determine) the appellate work from the County Court, so that is similar to the role I performed in the Upper Tribunal. However, by far the biggest advantage has been the perspective acquired from dealing with many different jurisdictions, so I question more and am less inclined to accept the way things have always been done in the Family Division. Furthermore, the ability to identify the key issues in a case, whatever the jurisdiction, has been invaluable in my present role.

What those who appear in front of me think is anyone's guess though I suspect they might say that I interrupt counsel's submissions too readily with questions and suggestions. That's a style honed by the inquisitorial function of tribunals which I'm not sure I'm prepared to surrender readily. So, after fifteen months, which is a very truncated perspective on my present role, I can honestly say that I love my job - there is never a day when I go to work wishing that I was somewhere else.

So, if I had words of advice for those aspiring to move up the judicial ladder, it would be these. First, apply for roles which interest you - that way you will give of your best and enjoy them whatever happens to your career aspirations. Second, take on new challenges - push yourself because that will build knowledge and skills. Finally, be brave and bold and apply for new roles. If you don't, how will anyone recognise your talent?

To conclude, I loved and am very proud of my time as a Tribunal Judge. The tribunal judiciary is so talented and has been so overlooked in senior appointments for far too long. Aim high - you never know where you might end up….

Mr Justice Peter Lane

My route has been quite a lot different from Gwynneth's, apart from the last stretch in the Upper Tribunal.

Almost as soon as I had begun to practise at the planning bar, that work dwindled to almost nothing, as a result of the introduction of some fairly stiff taxes on the development of land. I therefore did the sort of miscellaneous work that, in retrospect, one might say has been "good for the soul", such as possession actions and prosecuting a man who had allegedly invented a system of winning at roulette but who, when convicted, asked for time to pay as he was on benefits.

Teaching law at Queen Mary London also helped to pay the bills (and, much more importantly, led to me meeting my wife) before I became a drafter of Government Bills in Whitehall and, later, a Parliamentary Agent and Solicitor, working in the main on infrastructure projects.

My entry into the judiciary came when I was appointed as a fee-paid immigration adjudicator and then a "special" adjudicator, which meant I was authorised to hear asylum appeals which, in the late 1990's, were starting to grow in number and significance.

In 2001, I decided to make the change from private practice to the ranks of the salaried adjudicators before being promoted to the Immigration Appeal Tribunal, which was then headed by Mr Justice Ouseley.

My base since 2003 has been at Field House, off Chancery Lane. Over the intervening years, I have been a Vice President of the IAT, a senior immigration judge in the Asylum and Immigration Tribunal and a Judge of the Upper Tribunal. I did not apply for any of those last three positions. They resulted from the various changes that Parliament decided to make in the field of immigration in particular and, more generally, in reforming the Tribunal system.

I did, however, apply in 2014 to the Judicial Appointments Commission for the post of President of the General Regulatory Chamber. That required me to run over 60 appellate jurisdictions, from animal welfare to transport, by way of information rights, environment and pensions, to name but a few.

In 2017, I was, like Gwynneth, appointed to the High Court, having also been a Deputy High Court Judge.

Immigration, however, continues to exert its hold. I am currently in my second year as President of the Immigration and Asylum Chamber of the Upper Tribunal and therefore have the enormous pleasure of working with colleagues I have known for many years. There is also a sizeable amount of immigration work in the Administrative Court, where I spend part of my time, along with the more general case load of the Queen's Bench Division.

The link between UTIAC and the High Court is a strong one. In most weeks, there is (besides me) at least one other High Court judge doing a two week "circuit" at Field House. We also frequently welcome judges of the Court of Session.

One of the highlights of working in the Administrative Court has been to find myself doing planning cases, thereby making the link across time to the very beginning of my legal career. I would like to say that this was part of some grand plan; but of course, it isn't. Like that of most people, my career owes a lot to fate and to the example, support and encouragement of others.

I am sure that the Upper Tribunal will soon be seen in the same light as the Circuit Bench, as a regular provider of candidates for the High Court.

It is a great privilege to have the opportunity to do what I am currently doing. Like Gwynneth, I am sure that the Upper Tribunal will soon be seen in the same light as the Circuit Bench, as a regular provider of candidates for the High Court.

But, quite apart from that, the status of the Upper Tribunal itself is, I believe, beginning now to be properly recognised, both inside the judicial community and beyond. As my fellow Presidents will tell you, there is important and interesting work being done in each of the Upper Tribunal's Chambers (and in the Employment Appeal Tribunal). Tribunals generally have, in my view, benefited greatly from the reforms introduced by the T*ribunals, Courts and Enforcement Act 2007*.

So long as I am able, I intend to do what I can to help spread that word.

Mrs Justice Gwynneth Knowles is a High Court Judge, Family Division and authorised to sit in the Administrative Court

Mr Justice Peter Lane is a High Court Judge, Queen's Bench Division and President of the Immigration and Asylum Chamber of the Upper Tribunal

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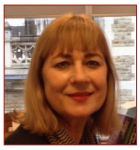
Equal Treatment Bench Book: a one-year round-up

FIRST ANNIVERSARY

By Paula Gray



As trailed in an earlier edition of this Journal (see *Edition 1 of 2018*), in February 2018 the latest version of the Equal Treatment Bench Book (ETBB) was launched, following a complete rewrite and technical update which has made it, for those able to access it through the Judicial Intranet, wholly interactive. The same publication has been placed on the Internet so that it is available to those with wider interests in the legal process but (as yet) without the 'clickability' through which, using its chapter and topic headings, it is easily navigable, and as such an invaluable tool in a busy court or tribunal.

Happy Birthday!

If you missed the launch this is your opportunity to discover the ETBB, and even wish it a Happy First Birthday, as the Committee did at a recent meeting. Along with eating the birthday cake that one of the contributing authors provided we discussed a few amendments and revisions, some in response to comments made by readers, and it is this approach of regular appraisal and update that we hope will continue to keep the publication current, relevant, and responsive. In the second ETBB Corner in this Journal I refer to some of those revisions. Here I want to explain where we have taken the new ETBB in its first year, and give you an idea of what a useful resource it is and will continue to be.

Publicity

Following its launch on 28 February 2018 there were introductory articles in Benchmark; Tribunals Journal; Magistrates Association eLetter; Association of Women Judges' E-letter; Family eLetter and the Magistrates Association Magazine. The ETBB has been referenced in the Judicial Equality and Diversity Statement September 2018. (The Statement includes a direct link to the Equal Treatment Bench Book.) and has been commended as a 'fantastic source' in the most recent JUSTICE Report *Understanding Courts*. References to guidance in the ETBB were incorporated in feature articles on disability in the respected IDS Brief which is read by all employment lawyers.

Continuous Appraisal

Part of the original review group has continued as an 'Equal Treatment Bench Book Editorial Panel' chaired by Tamara Lewis and comprising myself (Paula Gray), Tan Ikram, Hugh Howard and Helen Pustam. We meet about three times a year and liaise by email. We are responsive to constructive comments which are sent in, and broadly every six months a number of amendments and improvements are made to the text. For example, we recently discussed the use of the phrase "committing suicide", after a correspondent had indicated that those with close experience of this might find the phrase "taking one's own life" more acceptable. We have made great efforts to incorporate awareness and usage of the ETBB including one click access from the home page of the Judicial Intranet. Our six-weekly eAlerts have been a fundamental part of the strategy to keep the ETBB alive in judges' minds.

Our six-weekly eAlerts have been a fundamental part of the strategy to keep the ETBB alive in judges' minds.

Training initiatives and Presentations

We have written a Guide for Trainers, giving ideas on how to incorporate the ETBB into mainstream training. A draft of the Guide has already been circulated to training leads, and the final version will be on the Judicial College LMS, together with the eDiversity modules (and a set of practical intercultural eLearning modules that is to follow) which link to the ETBB as part of 'essential' training. Several training leads have already designed exercises based on the draft Guide, particularly the Immigration Appeal Tribunal, which incorporated a presentation and exercises on their national training.

Presentations and training have been delivered by the Panel members (or enabled by bespoke supply of materials) to Employment Judges in four regions, and to non-legal members of the Employment Tribunal; the Association of Women Judges; the Upper Tribunal (Administrative Appeals Chamber); the Asylum Support Tribunal; the War Pensions Tribunal; at two Civil Justice conferences for Circuit Judges, District Judges and Deputy District Judges; to all District Judges and Deputy District Judges (Magistrates Courts); to bench chairs and lay magistrates; in a joint training project on litigants in person in the Family Court together with 'cascade' training materials for magistrates and legal advisers.

An ETBB exercise is now incorporated into the cross-jurisdictional 'Judge as Communicator' course, and reading the ETBB has been embedded into past and planned First-tier Tribunal Cross Jurisdictional Induction Training and the large-scale salaried Employment Judges' Induction training in 2019.

Internationally

A presentation on the ETBB was made to the United Kingdom and Ireland Judicial Studies Council annual meeting for 2018. This is a high-level gathering of those responsible for organising judicial training in England & Wales, Northern Ireland, Scotland and the Republic of Ireland, and, on this occasion, was also attended by representatives from Australia and Canada.

A presentation was given to the Commonwealth Judicial Education Institute and the Judicial Education Institute of Trinidad and Tobago in November 2018.

In a speech to the European Judicial Training Network (EJTN) Human and Fundamental Human Rights Project and Max Planck Institute for Social Anthropology, (Wiesbaden, 12 November 2018) on 'Diversity and Judgecraft', Sir Ernest Ryder referred to the ETBB as '*our primary source of guidance in England and Wales*'.

A chapter was contributed to an international book for judges and judicial trainers to share experiences of social context training around the world, compiled by Leonel González, training director for the (JSCA) Justice Studies Centre of the Americas, based in Chile. A meeting has been arranged in May 2019 with a visiting judge from Japan who asked to be briefed on the ETBB in relation to reasonable adjustments for disability, and other such requests will be looked upon with interest.

Thank you…

The ETBB project continues to receive outstanding support from: the Directors of Training for Tribunals and Courts, Christa Christensen and Andrew Hatton respectively; Dame Anne Rafferty; Sir Ernest Ryder, the Senior President of Tribunals; and other senior judges.

Paula Gray is an Upper Tribunal Judge (Administrative Appeals) Back to contents

Human trafficking and modern slavery

PART ONE By Juliette Nash

Your first thought about an article on Human Trafficking and Modern Slavery in the Tribunals journal might be – why?

The UK abolished slavery in 1833. So how can it be relevant to the work of UK Tribunals in 2019? The reality is that slavery may no longer be legally and socially acceptable, but this does not mean that it has gone away. It has changed.

> "People are being exploited on an hourly and daily basis…in every medium-to-large town and every city in the UK, we have found evidence of vulnerable people being exploited … As you go about your normal daily life there is a growing and a good chance that you will come across a victim who has been exploited."
> *National Crime Agency, August 2017*[1]

> "It is all around us. It is walking our streets, supplying shops and supermarkets, working in fields, factories or nail bars, trapped in brothels or cowering behind the curtains in an ordinary street: slavery. Something most of us thought consigned to history books, belonging to a different century, is a shameful and shocking presence in modern Britain…. This is the great human rights issue of our time".
> *Theresa May*[2]

The Home Office has estimated there are 10,000 to 13,000 victims in the UK ... this may be, "the tip of the iceberg" .

The Home Office has estimated there are 10,000 to 13,000 victims in the UK.

1 *http://www.bbc.co.uk/news/uk-40885353*

2 *https://www.gov.uk/government/speeches/defeating-modern-slavery-theresa-may-article*

In August 2017 the National Crime Agency (NCA) said this may be, "the tip of the iceberg".[3] The Independent Anti-Slavery Commissioner agreed.[4]

There is no typical victim of slavery. Victims can be men, women and children of all ages and cut across the population, but it is normally more prevalent amongst the most vulnerable, minority or socially excluded groups.[5]

Victims of trafficking are coming increasingly frequently before Tribunals. Different jurisdictions are having to learn how to adapt to this. Some jurisdictions have received training, but not all.

This first article seeks to provide an overview of trafficking in the UK and our system of victim assistance. The second article covers how victims are coming before Tribunals and some issues that are arising.

> "What's driving it is the demand for cheap goods, cheap labour, cheap sex and there's an insatiable demand that causes questions for society as a whole. On the other side, there's an endless supply of vulnerable people."[6]
> *Unseen, Anti Trafficking NGO*

Definitions

What is modern slavery?

Modern slavery is a criminal offence in section 1 *Modern Slavery Act 2015*.[7] It is a domestic concept that refers to Article 4 of the *European Convention on Human Rights*:

'Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.'

Victims are controlled by force, threats, coercion, abduction, fraud and deception. Any form of 'consent' given by a victim in these circumstances is irrelevant. The government has published detailed guidance on modern slavery.[8]

The Modern Slavery Act 2015 is primarily concerned with criminal remedies and provides few rights to victims themselves. However, it has been influential on the development of the civil law.

The *Modern Slavery Act 2015* is primarily concerned with criminal remedies and provides few rights to victims themselves. However, it has been influential on the development of the civil law.[9]

What is human trafficking?

Human trafficking (a criminal offence in section 2 of the Modern Slavery Act) is a concept well established in international law.[10]

It consists of three basic parts:

- An action - the recruitment, transportation, transfer, harbouring or receipt of a person.
- A means - the threat or use of force or other form of coercion, abduction, fraud, deception, abuse of power, a position of vulnerability, the giving or receiving of payments or benefits to control a person for the purpose of exploitation.
- Exploitation - which can include slavery, forced labour or services, servitude, forced criminality, sexual exploitation or the removal of organs.

Once initial control is secured victims are often moved to a place where there is a market for their services. This is often a location where they lack the language skills or other basic knowledge that would allow them to seek help. There may be one or more traffickers. Victims may also be passed or sold to different traffickers. Some traffickers do not move their victims; it is enough to in effect 'use' a victim of trafficking to be a trafficker.[11]

3 http://www.bbc.co.uk/news/uk-40885353

4 https://www.theguardian.com/global-development/2017/oct/17/true-scale-of-uk-slavery-tens-of-thousands-of-victims-kevin-hyland

5 https://www.unseenuk.org/modern-slavery/facts-and-figures

6 https://www.theguardian.com/law/2016/jul/10/modern-slavery-on-rise-in-uk

7 http://www.legislation.gov.uk/ukpga/2015/30/contents

8 https://www.gov.uk/government/publications/victims-of-human-trafficking

9 See the majority and minority judgments in https://www.supremecourt.uk/cases/docs/uksc-2012-0188-judgment.pdf

10 https://www.ohchr.org/EN/Issues/Trafficking/TiP/Pages/Index.aspx

11 http://www.gla.gov.uk/who-we-are/modern-slavery/who-we-are-modern-slavery-human-trafficking-forced-labour-

The scale of the problem

According to an August 2017 NCA report,

> 'The more we look for modern slavery the more we find evidence of the widespread abuse of the vulnerable. The growing body of evidence we are collecting points to the scale being far larger than anyone had previously thought.'

According to the NCA, "This is a crime which affects all types of communities across every part of the United Kingdom. It is difficult to spot because often victims don't even know they are being exploited."

> 'There will be people living and working where victims come into contact with everyone else's so-called normal lives.' [12]

'There will be people living and working where victims come into contact with everyone else's so-called normal lives.' NCA

The main forms of human trafficking

Sexual exploitation

Sexual exploitation involves any non-consensual or abusive sexual acts performed without a victim's permission. This includes prostitution, escort work and pornography. Women, men and children of both sexes can be victims.

Labour exploitation

This covers work in any sector of the economy, for instance, building, farming, fishing, factories, nail bars, car washes. This example was raised in Parliament: -

> 'Ten Hungarian men … were trafficked to the UK. They were told that they would earn £250 a week with good accommodation and food, but they received only £10 a week and two packets of cigarettes. They were told nothing more until they had paid back the £400-worth of flight costs incurred in coming here. It was the equivalent of 40 weeks' work just to pay that back. They worked first in a slaughterhouse, then a bed factory and then a tile factory.
>
> Only one trafficker was arrested, because the others got away too quickly, and by the time that trafficker had been charged, all the assets had been transferred back to Hungary.'[13]

Domestic servitude or exploitation

This is a specific sub-set of labour exploitation.

Most victims of trafficking into domestic work are from abroad. Migrant domestic workers are predominantly women; many enter on an Overseas Domestic Worker visa with a named employer to work in that private household. The hidden and often informal nature of this work, where the worker is dependent on their employers for housing and (usually) immigration, means that workers can be seriously exploited and abused.

Child trafficking

Chiltdren are recognised as especially vulnerable to trafficking. Children are disproportionately trafficked, it is generally understood, for involvement in forced criminality and sexual exploitation.

Organised crime groups target children for trafficking as they can be easily recruited and controlled by the traffickers.[14]

In the UK there has been a particular concern over Vietnamese children working in cannabis houses.

Forced criminal activity

According to Europol, other forms of trafficking for enforced criminal activity identified in the EU are forced begging, forced criminality and forced sham marriage.

Why is human trafficking difficult to discover and eliminate?

There has historically been a low level of public understanding and awareness.

Victims may be unwilling to come forward to law enforcement or public agencies, not seeing themselves as victims,

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and-debt-bondage/

12 *http://www.nationalcrimeagency.gov.uk/news/1171-law-enforcement-steps-up-response-to-modern-slavery*

13 *https://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm140708/debtext/140708-0003.htm*

14 *https://www.europol.europa.eu/newsroom/news/fighting-child-trafficking-main-priority-for-eu-law-enforcement*

or fearing reprisals from their abusers. Victims may also not always be recognised as such by those who come into contact with them.

There is a Modern Slavery Helpline for anyone - including members of the public - to ring to report concerns or seek advice: 080000 121 700.

Protection of victims in the UK

The National Referral Mechanism

Many victims who come before Tribunals may be in the National Referral Mechanism (NRM) - the UK's victim identification and support process.

There is government guidance on the workings of the NRM.[15]

However, a good number of adult victims do not enter the NRM - some out of choice, others because they are not yet identified or informed.

The NRM has four stages:

- Referral by a first responder.
- Completion of NRM form.
- Reasonable grounds decision.
- Conclusive grounds decision.

There is a Modern Slavery Helpline for anyone - including members of the public - to ring to report concerns or seek advice: 080000 121 700.

Referral

Only nominated First Responders may refer. Victims (except children) must consent. First Responders include specialist NGOs, the police, the Home Office, UK Border Force and all local authorities.

The Salvation Army operates as the generic First Responder. They operate a 24-hour Referral Helpline on 0300 3038151 seven days a week.[16]

The First Responder completes an NRM Referral Form[17] to enable the decision-maker to decide if the person is a victim of trafficking.

Reasonable grounds decision

Currently, if a victim is an EEA national (including British) the decision is made by the NCA. Otherwise, the Home Office makes the decision.

Decisions should be made within five days on the basis that I believe but cannot prove that the individual is a victim.

If the decision is affirmative, then the victim will be:

- offered a place within a safe house, run under a contract with the Salvation Army, with support and financial subsistence; and
- granted a reflection and recovery period of 45 days.

Conclusive grounds decision

The decision maker should gather further information and make a conclusive decision within 45 days. In practice, many victims wait months or years for a conclusive decision.

In practice, many victims wait months or years for a conclusive decision.

The standard of proof is that on the balance of probability it is more likely than not that the individual is a victim.

15 https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales

16 https://www.salvationarmy.org.uk/human-trafficking

17 https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms

What happens next?

After a positive conclusive grounds decision most victims quickly lose their accommodation and support - because the 45-day support period has already expired.

Information on what happens next to victims is scant, according to the Human Trafficking Foundation report[18], *Life Beyond the Safe House* 'No one knows for certain'. The concern is that victims exiting safe houses are being drawn back into exploitative situations.

Some victims may be granted discretionary leave to remain in the UK for a limited period dependent on personal circumstances.

The NRM in practice

Concerns about the operation of the NRM and the quality of decision-making are widespread, including in government.[19]

Concerns about the operation of the NRM and the quality of decision-making are widespread, including in government.

On 18 October 2017 (Anti-Slavery Day) the government announced reforms including a single decision-maker for all victims irrespective of nationality and longer support after the conclusive grounds decision.[20] This is being progressively implemented from 21 January 2019.

The Duty to notify

Specified public authorities - including the police and local authorities - are required to notify the Home Office about any potential victims of modern slavery they encounter in England and Wales.

This does not include the courts or tribunals.

Statistics on UK trafficking

NRM statistics are widely accepted as the tip of the iceberg. In 2017[21] the key points were:

- 5145 potential victims were referred - a 35% increase on 2016;
- 116 different countries of origin with Albanian, UK and Vietnamese nationals the most common;
- labour exploitation was the most common;
- child referrals in the UK increased 66% to 2118 in 2017.

Indicators of trafficking

Home Office frontline guidance provides helpful information on identifying victims.[22] Both government guidance and the case law[23] rely on the International Labour Organisation (ILO) Indicators of Trafficking[24].

Conclusion

It is hoped that this first article provides a useful overview of the problem of trafficking in the UK and how the UK seeks to identify and support victims.

The second article (see future edition) will explore how the issue of trafficking arises in tribunals in practice.

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18 https://static1.squarespace.com/static/599abfb4e6f2e19ff048494f/t/599eeb28914e6b9ddcceace2/1503587117886/Web_Life+Beyond+the+Safe+House.pdf

19 http://www.unseenuk.org/uploads/20160609115454807.pdf

20 https://www.gov.uk/government/publications/national-referral-mechanism-reform/national-referral-mechanism-reform

21 http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/2017-nrm-statistics/884-nrm-annual-report-2017

22 http://www.antislaverycommissioner.co.uk/media/1057/victims-of-modern-slavery-frontline-staff-guidance-v3.pdf

23 https://www.supremecourt.uk/cases/uksc-2012-0188.html

24 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf

Juliette Nash is a Fee-paid Employment Judge, a Fee-paid Judge of the First Tier Tribunal (Immigration and Asylum Chamber) and a solicitor in the Anti Trafficking and Labour Exploitation Unit

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Equal Treatment Bench Book corner

NEWS By Paula Gray

In the first ETBB Corner I mentioned one of the eAlerts which dealt with a decision of Upper Tribunal Judge Wikeley in *CH v SSWP (JSA) (No.2) [2018] UKUT 320 (AAC)* who explained why, having consulted the Equal Treatment Bench Book prior to the hearing, he allowed a number of adjustments, including the tape recording of proceedings by an Appellant with cognitive difficulties, in particular dyslexia, despite there being an official recording of the proceedings.

This time I am posting a link to another decision by the same judge, which, the appellant being from the Travelling Community, concerned a cultural issue, *VMcC v Secretary of State for Work and Pensions [2018] UKUT 63 (AAC)* which concerned entitlement to a means tested benefit. The legal point before the First-tier Tribunal (FTT) was as to the ownership of funds in two bank accounts; if the funds had been the appellant's she would not have been entitled to the benefit. She argued that the money had been given to her over a number of years for the purpose of her education, but when she became pregnant out of wedlock bringing shame on her community, they had requested return of funds. The FTT found that the money was not subject to a purpose trust, but was hers.

Having analysed a number of authorities including cases in the Supreme Court, Court of Appeal and the Upper Tribunal, and whilst accepting that the assessment of evidence and the weight to be attached to it are matters for the FTT, Judge Wikeley, in allowing the appeal, expressed "a lingering concern" that the tribunal had approached the question of the appellant's credibility by reference to an objective criterion of reasonableness rather than having taken into account what might be customary within the particular community.

These cases are important because they have precedential authority, the Upper Tribunal being a superior court of record equivalent to the High Court, (section 3 TCEA 2007) with all the High Court's powers (section 25 ibid).

The ETBB is in the process of being updated to include specific information about the Roma, Gypsies and Travellers. We hope to be able to insert this before a planned revision in August this year.

I hope that these practical matters encourage you to interrogate or just browse the ETBB.

eAlerts précis

Pronouncing unfamiliar names: Do you get embarrassed if you can't pronounce the unfamiliar name of a party, witness or representative?

People are sensitive about their names. In a Guardian-commissioned survey of 1,000 people from minority ethnic backgrounds in December 2018, as many as 60% had experienced someone making fun of their name.

The Equal Treatment Bench Book provides an introduction to naming systems around the world and the importance of getting names right.

In March, the Judicial College will launch some e-learning modules which discuss what to do (and not do) when you cannot pronounce a name.

Antisemitism: According to *Hidden Hate*, a report by the Community Security Trust, 170,000 Google searches with antisemitic content are made each year in the UK.

And searches looking for information on the Holocaust being a hoax rise about 30% every year on Holocaust Memorial Day in the UK (27 January).

The UK ranks third in the world (behind Israel and Lebanon) for searches about 'zionism', usually asking what it means.

The Equal Treatment Bench Book has a *section on antisemitism* and what it means. It also discusses the use of 'zionism' as an offensive term.

Paula Gray is an Upper Tribunal Judge (Administrative Appeals)

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Judicial Ways of Working

SPT UPDATE By Ernest Ryder

After a year packed with consultation and new ideas, I am delighted to be in 2019, which I hope will be a year of innovation and implementation for the Tribunals. There is plenty in the pipeline when it comes to reform and we are starting to see the fruits of our discussions around judicial ways of working (JWoW). Our plans to bring those discussions into action (many of which are well underway), can be seen in more detail in my recent annual report but I hope here to give you an overview of what's being done behind the scenes to bring about what I hope will be a really positive season for Tribunals. The end of February brought an unexpected taste of spring (if not summer in some parts) and I want to catch the mood before winter re-appears!

As those of you who were kind enough to participate know, I undertook a tour of England and Wales in mid-2018, followed by two of my regular visits to Scotland. I was recently able to visit Belfast and will return to Glasgow and Edinburgh soon. The aim was to hear your views and to use them to influence what we do. Reform of an institution as large and complex as Tribunals is a mammoth task and it wouldn't be possible without the input of those who contribute to its functioning. With this in mind, it was vital to hear the views of all judicial office holders and I would like to take the opportunity to thank everyone who came to our meetings and who filled in the surveys. The responses we collated were carefully considered by your representatives in the Change Network, whose advice we regularly seek, and were formulated into a response and it has greatly informed where our resources are now being concentrated. It was clear to me that there are many areas which we as a judiciary are passionate about, and although concerns were highlighted, the attitude towards change was welcoming and enthusiastic.

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Diving down into the main takeaways from that tour, it is fundamental that we safeguard access to justice and that modernisation does not become an impediment to it, but improves it for all our users, most particularly those who may be or feel excluded by their vulnerabilities or circumstances. We must uphold the rule of law and ensure fair procedures in new processes. I acknowledge that when considering the digital world in which we now live, the new tools and technologies that are available will enable us to significantly widen our reach but that our fundamental protections must not be discarded. For example, work is being done now to find the best method of making video hearings available for public viewing, ensuring we strike the balance between making justice accessible whilst also protecting the privacy of the individual. Likewise, we are designing and piloting asynchronous conversations to help SSCS panels make decisions (continuous online resolution). This will require careful evaluation of the language used and the benefit that might arise out of the use of that technology. In asylum we have designed a new end to end process which is faster, issue driven and designed to ensure that we front load the work that representatives and our new case officers can do to make the judge's job more effective.

Of course, a move towards further digitisation requires support and training. Funding has now been negotiated for digital training, meaning whether you are provided with the necessary tech for work or you use your own, IT support will be made readily available for all. I'm pleased to say that this includes fee-paid and non-legal members, to whom we have paid particular attention and wish to engage more fully to offer the support they need. The commitment to funding and provision of training will be rolled-out over this next year but the intention is that before any new technology is used in any tribunal training opportunities it will be provided to all judges and members in that tribunal.

In the same way that we don't want the judiciary to be hindered by new tools, work has also commenced on a new initiative called Assisted Digital. This service focuses on enabling the public to use digital services to complete tasks such as lodging a claim if they wish to do so digitally but need help. The bottom line is that a user can still use paper if they prefer and there is a parallel project to make forms simpler, more accessible and compatible with digital working. The ideal is for these various projects to engage together so that the user has signposted help from specialist agencies and interest groups, help from case officers who are undertaking case supervision for judges and help from the Assisted Digital Service to use digital tools if they wish to do so. In this way, we are trying to ensure that everyone is being supported at an appropriate level.

Having written the strategy of what we are doing based upon our JWoW discussions which I published in my report on the *modernisation of tribunals*, we are now engaged in detailed planning. The most immediate priority is to plan

and describe the work that is to be undertaken by May 2020 – a date that is known as 'interim stage 3' (IS3). This period of the programme will be very busy. Several pilots are set to launch into private or public trials over the coming months including those for video hearings and evidence sharing platforms, core case data (the electronic file), the judicial user interface, continuous online resolution, the extension of the CE-file for appellate work, the new asylum process and the use of electronic presentation equipment. Work will start to move to the new Service Centres in Stoke and Birmingham. The new Loughborough site should be fully operational by the end of IS3. I shall publish a detailed plan for this period of the programme after Easter.

It is clear that a great deal of dedicated hard work has been undertaken by colleagues across the Tribunals to get us to where we are. I am proud to have such an engaged judiciary helping to shape these projects. I intend to continue providing opportunities for judicial office holders to discuss their feedback on these changes, and to maintain the collaborative relationship we've built together. There's plenty to come and I am looking forward to seeing some of the fruits of our labours over the next year.

Sir Ernest Ryder is the Senior President of Tribunals

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Recent publications

EXTERNAL LINKS

By Adrian Stokes

This section lists recent publications of interest to readers of the Tribunals journal with a very short description of each (where this is not obvious from the title) and a link to the actual document. It is not intended to be a comprehensive list but is intended to bring to the attention of readers some publications of interest but which they might have missed. It also gives a number of useful links.

Gresham Lectures

Joshua Rozenberg QC(Hon) has recently given the third of three lectures in a series entitled "Justice Online". The following are links to all three lectures (including a video of the lecture and a link to the transcript):

- *Justice Online: Just as good*
- *Justice Online: Getting better*
- *Justice Online: are we there yet?*

JUSTICE report

A group chaired by Sir Nicholas Blake has recently published a report *Understanding Courts*. This proposes that, in the current reform programme, meaningful access to justice should be achieved through effective participation by putting lay people at the heart of court processes as they have been for a significant time in tribunals.

Useful links

UKAJI administrative justice research database A public database of research related to administrative justice in the United Kingdom.

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

The Advocate's Gateway "provides free access to practical, evidence-based guidance on vulnerable witnesses and defendants".

https://implicit.harvard.edu/implicit/ web site regarding unconscious bias including various tests.

Tribunal Decisions

Tribunals Journal All copies of Tribunals Journal from Spring 2006 to date.

Rightsnet

Child Poverty Action Group

The Public Law Project – public law and administrative justice web site including relevant research.

Tribunals In The United Kingdom – a Wikipedia article giving an overview of the UK Tribunal System (including changes in Scotland, Wales and Northern Ireland).

List of tribunals in the United Kingdom – another Wikipedia article giving a comprehensive list of Tribunals in the UK (both within and outside the Tribunals Service), including some which have never sat.

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

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Aims and scope of *Tribunals* journal

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

Tribunals is published three times a year by the Judicial College, although the views expressed are not necessarily those of the College. Queries should be emailed to jcpublications@judiciary.uk