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TRIBUNALS

Editorial 2020 Edition 2

EDITORIAL

By Christa Christensen

Welcome to this second edition of *Tribunals* journal for 2020.

I take this opportunity of welcoming and introducing three new board members: Rebecca Howard is an Employment Judge; Julius Komorowski is a Tribunal Judge who sits in the Immigration and Asylum Chamber; and Ruth Wills is a Non-Legal Member in the Employment Tribunal and a Disability Qualified Member in the Social Entitlement Chamber. I am confident that they will bring added strengths and interests to the Editorial Board.

It is with great sadness that I inform readers of the recent death of one of our board members, Adrian Stokes, a Disability Qualified Member. I can do no better than refer readers to the encomium for Adrian drafted by Tim Paviour, *Tribunals* journal assistant to the Editorial Board.

This edition arrives in your in-boxes four months or so after the start of the Covid-19 pandemic and lockdown. Throughout this period, we have all been learning how to adjust our personal and work lives to accommodate the pandemic. I am therefore pleased that several of the articles in this edition address the matter of Covid-19 to assist in sharing experiences across tribunals.

In his last article for the journal, the outgoing Senior President of Tribunals recognises the huge efforts that have been made to ensure that tribunals' justice has remained open for business during lockdown. Sir Ernest sets out a number of initiatives, including the four Practice Directions he issued as the crisis unfolded.

Board member, Deputy Chamber President Meleri Tudur describes how the First-tier Special Educational Needs and Disability/Care Standards and Primary Health Lists jurisdictions made a smooth and swift transition to digital working and fully-video hearings as the pandemic and lockdown developed. Meleri outlines the importance of good teamwork between the judiciary and HMCTS.

Daniel Flury, Deputy Director (Tribunals), HMCTS, sets out in his article some arguments in favour of ensuring that all tribunal proceedings are routinely recorded. He describes the Digital Audio Recording Transcription and Storage system (DARTS) which is in routine use in the Crown, County and Family Courts. Daniel writes of how a number of HMCTS Reform initiatives and the tribunals' response to the Covid-19 pandemic are impacting on moves to bring full recording facilities to all tribunal hearings.

The Equal Treatment Bench Book Corner is provided by new board member, Employment Judge Rebecca Howard. Rebecca reminds readers of the Interim Guidance issued by the ETBB for conducting hearings during the pandemic. The Guidance sets out a number of new considerations that judges should be aware of to conduct fair hearings during these difficult times.

Board member, Jo Keatley shares a fascinating insight into her work as Private Secretary to the Senior President of Tribunals. Jo reveals a unique view into the

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working of the SPT's Support Office and how it adapted to the unfolding of the Covid-19 pandemic.

As Head of Communications at the Judicial Office, Asif Siddiquee, presents the work of his team and some of what they do to support the tribunals' judiciary. Asif outlines how his team have developed the use of social media for informing younger audiences about the work of the judiciary. The article also describes the critical role played by the Communications Team during the Covid-19 pandemic.

The journal's Recent publications page is curated by board member, Tribunal Judge Bronwyn McKenna. Bronwyn provides a number of very helpful Covid-19 related links.

The Chamber President of the Health and Education Chamber of the First-tier Tribunal for Scotland, May Dunsmuir, contributes the second of her two articles on the work of the Additional Support Needs jurisdiction. In this second article May sets out how the sensory hearing facilities in Scotland are working. She encourages a flexible and fearless approach to testing new things in practice.

Regional Tribunal Judge Michael Tildesley has written an article setting out the inspiring and exciting progress that is being made at the multi-jurisdictional Havant Justice Centre. Michael sets out how a collaborative approach to cross-working between tribunals judiciary and HMCTS has led to a number of valuable innovations.

Tribunal Judge Tim Jewell sits as a fee-paid judge in the Social Entitlement Chamber. Tim is also a Senior Civil Servant and lawyer in the Government Legal Department. From those two perspectives, Tim reflects on the contrasts between the making of laws on one side of his professional life and, on the other side, putting these into practice and their impact on individuals.

In closing this, my last Editorial, I take the opportunity to say goodbye. My secondment as Director of Training for Tribunals and my position as Chair of the Editorial Board of *Tribunals* journal will cease on 31 August 2020. I have had the privilege of working with a fantastic and enthusiastic Editorial Board and I thank each member, past and present, for all they have done over the last four years. I am also hugely indebted to the Publications Team of the Judicial College who have so capably supported *Tribunals* journal. I hand over to my very able successor, Employment Judge Phillip Rostant, who will take over from me as Director of Training on 1 September 2020.

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Christa Christensen is Chair of the Editorial Board

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Communicating on behalf of the judiciary

JUDICIAL OFFICE COMMUNICATIONS TEAM

By Asif Siddiquee

Introduction

I joined the Judicial Office in February 2019 as the Head of the Communications Team, which was a newly created post. As someone who has worked in communications for over ten years, I was excited to bring my skills and insight to a new area yet slightly daunted by the task that lay in front of me.

One of my first objectives was to try and meet as many judges as possible to assess what their needs may be of a Communications Team but to also understand what their roles entailed. I have been fortunate enough to spend time with the SPT to understand his areas of concerns and to visit Taylor House to observe a number of hearings.

One of the first things that struck me was that not everyone is aware of the Judicial Office or the existence of the Communications Team.

Judicial Office

The Judicial Office was created in 2006 when many responsibilities held by the Lord Chancellor transferred to the Lord Chief Justice. Although we are Ministry of Justice (MoJ) employees and civil servants, we have a unique role in supporting the independent judiciary, including tribunal judges and magistrates. We are independent from the MoJ and HM Courts and Tribunals Service (HMCTS), and we support all judges regardless of the jurisdiction.

...not everyone is aware of the Judicial Office or the existence of the Communications Team.

The Communications Team encompasses Judicial Communications, the Press Office, and Reform Communications. My team works on a diverse range of projects, from handling press enquiries on behalf of judges to finding opportunities to promote diversity, organise Reform events, and to draft and disseminate messages on behalf of the SPT and LCJ.

The Press Team are the key contact for any press enquiries you receive or if you wish to undertake any interviews or media-related activity. The Judicial Communications Team is responsible for the Judicial Intranet, external website, email bulletins and direct emails you may receive from the senior judiciary. The Reform Communications Team work with HMCTS to help keep the judiciary informed about the Reform Programme and organise events across the country.

Development in communications

Since I joined the Communications Team, I have been able to expand the team to 14 members and bring in new skills and best practice from across both the public and private sectors. The team had been hampered by a lack of resources for a number of years, but we are now in a position where we are able to better serve Tribunal judges.

My team has led on a number of new initiatives including:

- launching new social media channels on Facebook and Instagram to inform younger audiences about the judiciary;
- launching an online course with King's College about the judiciary which was completed by over 3,500 people;
- revamping the Judicial Intranet and the Reform section to make it more accessible and easier for judges to find relevant information;
- promoting events such as Question Time with judges for young people and the celebration of 100 years of women in the law;
- supporting the launch of a new campaign to recruit magistrates;
- organising media training for select judges.

I presented the new structure of the Communications Team and the changes I have implemented at the Change Network Event in Manchester in November 2019, the Midlands Regional Conference for Tribunal Judiciary and to the Tribunals Judiciary Executive Board (TJEB) in December 2019. These face-to-face events gave me the opportunity to discuss some of the communication challenges we face with our audiences, particularly young people, and how we can collaborate together to help try and overcome these.

The importance of good communications has been particularly highlighted during the COVID-19 pandemic.

COVID-19

The importance of good communications has been particularly highlighted during the COVID-19 pandemic. The Communications Team was relied upon heavily by judges to communicate to the broader judiciary and the initial response was focused on urgently disseminating key information and new guidance to judges about specific jurisdictions. In addition, reassuring messages were sent on behalf of the senior judiciary, which focused on court and tribunal closures and openings, jury trials and how justice would continue to be delivered during these unprecedented times.

Due to the influx of new guidance my team created a page on the Judicial Intranet and external website to host COVID-19 related material and guidance. Over 60 pieces of practical guidance and another 120 jurisdictional pieces of guidance were eventually posted.

Social Media

One of the things that I am most proud of is being able to launch new social media channels, with the backing of

the senior judiciary. When I joined the Judicial Office the Communications Team predominantly used Twitter to communicate to legal audiences and journalists. I presented to the Joint Executive Boardt on new social media platforms, like Instagram whose main users are aged under 24, and was able to convince them that we needed to expand our reach to new audiences. We have since launched a Facebook page, an Instagram channel and diversified our use of Twitter. We have managed to grow our very niche social media channels, so we now have over 50,000 followers on Twitter and over 1,000 on Instagram.

My team and I want to help promote and support the work of Tribunal judges, both inside and outside the tribunals, e.g. those who act as Diversity and Community Relation Judges (DCRJs), by showcasing their stories on social media.

External audiences still do not fully comprehend what the role of a judge and non-legal members entails and what tribunals are responsible for. Members of the public are more likely to come across tribunals in their daily lives and given their often more informal set-up makes them ideal to utilise to engage with audiences via social media or other channels. We have recorded a number of interviews with tribunal judges about their career paths and intend to undertake much more of this to showcase the diversity that exists within tribunals, which we understand is greater than in other parts of the judiciary.

By showing external audiences that we are more reflective of society than they may believe, we will increase public confidence but also attract a more diverse pool of future applicants for judicial roles.

The COVID-19 pandemic has halted a number of communication activities that were planned around helping to tackle some of these obstacles, but we are now moving to more innovative and virtual ways to continue our communications.

If you would like to be part of any of the initiatives we are taking forward or have any queries please contact me on website.enquiries@judiciary.uk.

Asif Siddiquee is Head of Strategic Communications, Judicial Office

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The Role of the Private Secretary to the SPT

No typical day!

By Joanne Keatley

What does a Private Secretary do? Is it the same as a PA? Do you make the Judge's tea and coffee? What does Covid-19 have to do with your job? As the saying goes, if I had a pound for every time I have heard these questions well, let's put it this way, I would no longer need the job!

I am the head of the Senior Presidents' Office (SPO) and Private Secretary to the Senior President of Tribunals (SPT), a role I have held for nearly a year now. Prior to joining SPO, I have had a number of varied roles, as is so often the way with a Civil Servant. I started off my Civil Service career in a jobcentre in Birmingham and had no clue where I wanted to go next. I somewhat accidentally fell into the world of justice, applying for a job that I thought sounded interesting in the Office of the Sentencing Council. I was as surprised as anyone when I was offered the job but it's where my interest and genuine passion for working in the justice system all began and it gave me hugely valuable experience of working closely with the judiciary. I've had a few brief stints in other departments since then but always find myself drawn back to the world of justice. When I saw the advert for this role, I knew straight away that I wanted to apply.

...there really is no typical day...you never know what is going to land in your inbox...

The job description said I would be 'responsible for ensuring that the Office of the SPT provides high quality policy and legal advice and support to the SPT and the Tribunals Judicial Executive Board (TJEB).' And in a nutshell, that is the job. I am supported by an office of five (two Deputy Private Secretaries, two lawyers and a Diary Manager) and together we are responsible for ensuring that the SPT can fulfil his statutory duties, that he is fully briefed for any meetings he is attending, that any policies that cross his desk are well thought out with any identified risks highlighted and he is well advised on any decisions he might have to make, so he can make a fully informed decision. There is also a level of administrative support; the office is responsible for setting up meetings, circulating updates, taking

minutes, collecting visitors and yes, occasionally we make the odd cup of tea!

On top of this, the office also seeks to provide support to the Chamber Presidents/Employment Presidents and TJEB as and when needed. It may be that Presidents are seeking a steer on the SPT's views or it may be that they need some advice on how to handle a certain issue within their jurisdiction. Whatever the query, the SPO will always do its best to assist.

What I couldn't be prepared for when taking on the job was the absolute breadth of things that cross your desk – there really is no typical day. On any given day, you never know what is going to land in your inbox – the queries range from the mundane (someone wants to arrange a meeting) to the slightly bizarre (arrangements for flag-flying) but it keeps the job interesting. The workload is intense; on average I read (not receive but actually read) about 200 emails a day and spend 5 hours on average in calls and meetings so as you can imagine prioritisation becomes an important skill!

When something comes into my inbox for the attention of the SPT, my first job is to consider whether there are any questions that immediately arise or whether further advice is needed. My role is to make sure the SPT has all the information to hand to make an informed decision. If the query or submission is unclear or I can identify areas about which the SPT is likely to have questions, I will clarify those in the first instance. Some submissions will require other pairs of eyes, it might be that it is cross-cutting and I need to speak to my counterpart in another judges' office or it might be that it requires HR or legal advice to help identify the risks. Only once I have considered all the implications and ensured all the necessary information the SPT needs is available, will it be put to him with advice. I am very lucky that the SPT really values the advice his officials provide and will always give it his full consideration. However, this of course does not mean he always agrees. This is all part of the process and ultimately my job is to deliver the SPT's objectives.

...responding to the Covid-19 pandemic has been an adrenaline-filled, sleep-deprived challenge...

So, how did my role change during covid-19? Well, there is the practical aspect of remote working which I know pretty much everyone has similarly had to get to grips with. Whilst remote working is commonplace within the Civil Service, it is less so within Private Office. It is naturally far easier for Private Office to perform its role if we can pop our head around the door to pick the SPT's brains on something and someone in the team will accompany him to most meetings and so needs to be physically present. However, the adjustment to home working has been relatively straightforward. As many of you will know, the SPT is very tech-savvy and so he had no trouble adjusting to remote meetings and video calls. This has meant that our office's business has been able to continue more or less as normal and often it feels as though nothing has changed. I am sure this would have felt like a very different experience if the SPT was less confident with IT and so we have been very fortunate.

With regards to the actual workload, the biggest effect was the increase in volume! Within weeks of the pandemic unfolding, the SPT had issued four Practice Directions, set out his four-stage recovery plan and all the Presidents had produced bespoke guidance for their jurisdictions. We were having to stay on top of an ever-changing landscape, from new legislation on remote hearings to new guidelines on social distancing and naturally people had many questions on what this meant for them and their work. Many of these questions, quite rightly, made it into my inbox but being unchartered territory often no one knew the answer and there was frantic movement across Government to agree policies.

Over the month, the reactive 'fire-fighting' has eased off and we have now moved into phase three of the recovery plan. Whilst this feels less frantic we are all still dealing with an ever-changing, unprecedented landscape. All Government departments have their own recovery plans and many of them will affect tribunals business, some obviously so (e.g. HMCTS) and others less obviously so (e.g. Department of Work and Pensions, the Home Office). It is always important for a Private Secretary to establish strong relationships with other Government officials but it is now more so than ever so problems can be identified early and Government departments can be clear of judicial priorities.

Overall, responding to the Covid-19 pandemic has been an adrenaline-filled, sleep-deprived challenge for the SPT's Private Office (and no doubt more so for the SPT!). It has required a great amount of team spirit and it has been a great honour to work so closely with the SPT as he led the bold and decisive response of the tribunals to the pandemic.

Joanne Keatley is Private Secretary to the Senior President of Tribunals

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Making secondary legislation

SOME WORKINGS OF GOVERNMENT

By Tim Jewell

My learning curve as a new member of the First-tier Tribunal has been steep. The challenges are both prosaic and profound: ranging from how to get into the car park at Bedford to helping determine fact-heavy, borderline social security appeals.

As a UK Government lawyer too, that experience has also prompted me to reflect on the making and operation of law itself, and how it affects people. Not least how laws made on one side of my professional life actually take effect when faced with the practical realities of the other.

That's a big subject. My more modest purpose is to try to unpack it just a bit: to try to shed some light on the making of statutory rules, for those interested in the work of tribunals.

I say nothing, of course, about any particular rules. Government lawyers tend to be serial-specialists. So I've advised four very different departments, and worked on subjects as diverse as environmental regulation (water law's a particular favourite – both fresh and salty), occupational pensions, data protection, criminal procedure, and elections and referendums. But I have no connection with making rules for the jurisdiction in which I sit.

Likewise, both judicial independence and Government's ability to receive confidential advice are critical principles. But legislation can't anticipate every case, and making it is a public, discursive business. So thinking a bit about the system as a whole is worthwhile. What certainly is clear to me, even after just a short time as a fee-paid tribunal judge, is the value in decision-takers in courts and tribunals and rule-makers in government deepening their understanding of what the other does.

Making laws in practice

A starting point is to consider some of the practicalities of legislating. For many understandable reasons, even that's a challenge – particularly for laws other than the apex, the Act of the UK Parliament. It's still more so for laws made by the three devolved legislatures, or by Ministers in the three devolved governments – all of which enjoy extensive legislative competence, and each in different ways. Aspiring lawyers consider how to legislate all too briefly. And in my case that was some time ago, long before most contemporary devolution. Meanwhile, the volume and complexity of statute and statutory rules can make it difficult for practitioners faced with a very substantial caseload to look deeply beyond the many, many words themselves. In any event, we're understandably often more concerned with immediate effects rather than distant origins.

What certainly is clear to me, ... is the value in decision-takers in courts and tribunals and rule-makers in government deepening their understanding of what the other does.

Three thousand SIs

A brilliant graphic from the Institute for Government's *Parliamentary Monitor 2018*[1] helps explain why: between 2010 and 2015, around 3,000 'statutory instruments' (SIs) were made annually on average, on the latest (though 2009) figures, running to 12,000 pages a year. That contrasts with a falling number of Acts, spread over about a third of that number of pages[2]. Both the overall volume of, and the relationship between, primary and secondary rules (or tertiary and beyond) are certain to change with the UK's exit from the EU – not least as directly-applicable EU law diminishes. Whichever way we look at it, though, less law and less complexity seem unlikely: selected parts of EU law have been retained since UK departure from the EU, many with modifications; as supra-national rules decline, and new international and domestic priorities emerge, the legislative jigsaw will become more intricate still.

Quality control

The legal and practical reality is that SIs are generally made by Ministers, and they're initiated and developed not in Parliament but in government departments and agencies. The vast majority of non-devolved SIs are drafted by lawyers advising the policy-owning department, or by the Government Legal Department's 'SI Hub': a team of expert

[1] See *Parliamentary Monitor 2018, page 45*.

[2] The House of Commons Library publishes a huge range of useful information about both the form and content of legislation including *Acts and Statutory Instruments: the volume of UK legislation 1950 to 2016, page 19*.

SI drafters supporting other GLD legal teams. (The devolved administrations have their own in-house lawyers). External drafters are only very rarely involved. The Office of the Parliamentary Counsel will assure changes to non-devolved primary legislation, but are primarily occupied with Bills. Maintaining common approaches and standards is a very substantial concern – no small task.

The content and intended effects of statutory rules are anything but the exclusive domain of lawyers.

The making of those rules will be subject to Parliamentary oversight in almost all cases[3]. And there's a complex administrative process by which civil servants and officials in both Houses of Parliament help assure quality too (they are functionally quite separate, despite sharing a building). Of the latter, the advisers to the Joint Committee on Statutory Instruments (JCSI) deserve a special mention, as readers of its reports will know[4]. The JCSI's advisers aren't civil service lawyers but are employed by each House – reporting to Speaker's Counsel in the Commons and Counsel to the Chairman of Committees in the Lords – and are themselves highly experienced drafters, often with extensive experience of drafting in Government before advising in Parliament.

Policy as law

Another practical reality is that statute law is often a form of legally binding policy. One underrated consequence is that the content and intended effects of statutory rules are anything but the exclusive domain of lawyers. That obviously matters a lot to the drafters who, like every other advisory lawyer, act only on instructions. But it seems to me it matters when we use those rules too.

For example, while all SIs have legislative form, the extent to which their content is driven by 'legal' as opposed to 'policy' factors varies a great deal.

- Sometimes they include lots of 'lawyers' law': technical provisions about things like scope, geographical reach, relationships with other rules, or – the bane of SI drafters' existence, but the life blood of legal coherence – commencement, transitional, transitory, supplementary or consequential provisions. (One way to understand where these things come from is to look at the UK Government SI drafters' guide, *Statutory Instrument Practice*[5]; who knew?).
- Some content will be an amalgam of law and policy. I tend to think of procedural provision that way: it's territory in which lawyers can be confident guides, but we all know the extent to which the design and operation of administrative or judicial procedures involves making many, often substantial, policy choices. That's not just because process costs money, time and effort – for those navigating it and for the State – but because it also goes to factors like fairness, inclusivity, and accessibility: matters of concern to all of us.
- In yet other cases, policy, financial or technical matters will dominate. Of the 37 UK SIs published in the first three weeks of 2020, for example, highlights include changing the amount of a person's residuary estate due to their surviving spouse or civil partner on intestacy, new police conduct standards, and changes to greenhouse emissions trading arrangements. It's not lawyers who decide what the substance of those rules should be – any more than we decide how much pollution should be permissible in rivers, or how much notice should be given of a by-election – but it is a drafter who has to make them work legislatively.

That's pretty unscientific. But I hope it hints at some of the practicalities of rule-making. It also shows that discussion is extensive and endemic – between lawyers and policy experts, between those making rules and those likely to be affected by them, sometimes with and within the expert groups responsible for making or advising on things like the civil or criminal procedure rules, and also between Governments and legislatures. The strength of lawyers' voices in those discussions will reflect that variety.

Some less obvious choices

This also points towards some of the less obvious, but still significant, choices that have to be made when developing statutory rules. It's with some of those that I'll end, and pretty subjective they are too.

- Style matters. Drafting is very personal. But, in legislation, consistency matters as well: similar words and similar techniques should have similar effect. Lots of time is spent managing the journey between those two poles.
- A great deal is also being done on general approach, including to improve legislation itself. Refreshed Guidance from the Office of the Parliamentary Counsel is impressive, for example, and a fascinating general read, if you're

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[3] The *UK Parliament website* gives a flavour.

[4] *https://www.parliament.uk/business/committees/committees-a-z/joint-select/statutory-instruments/*

[5] The National Archives. *Statutory Instrument Practice A guide to help you prepare and publish Statutory Instruments and understand the Parliamentary procedures relating to them. 5th Edition. (November 2017)*

so inclined[6]. So too is the work of the Government Legal Department on gender neutral drafting[7]. The fact that gender stereotypes are entrenched in legislation itself may be a reason to change them, not let them be.

- Though notice how that too is a policy conclusion and not a legal one. The law 'works' either way, it just lags behind changing values. Modernisation – like other matters of legislative form – is therefore itself a policy choice, and involves cost. It can also unsettle established approaches to how rules are read and applied by actual users. Building layers of new laws on old can in any event stress the foundations.
- Either way, the fact of legislative modernisation itself speaks of a concern to make sure that legislative form doesn't get in the way of actual understanding. It too is one way to remove obstacles to the delivery of policy through legislation, and help enable decision-makers to make good decisions.
- Related is the common trade off between length and clarity. Clear, specific rules can be very long. Knowing when to stop is one of the more surprising legislative skills.
- Laws can't anticipate every eventuality. If they try, they tend to become more general and more abstract. In which case, what the law says for all cases and what it means in any particular one can become more strained. That, of course, will leave more scope for interpretation, and make outcomes less predictable. That's in no one's interest. So drafting is a trade off between completeness on the one hand, and individual and judicial discretion on the other: an issue illustrated really clearly by the scope left for decision makers by general legislative principles (an issue long preceding the overriding objective, as the 1975 Debate on the Renton Committee on the Preparation of Legislation reminds us[8]).
- Similarly, for all the reasons I've given, the content of law isn't only – or, sometimes, even mostly – a question of drafting: it's about the underlying policy. And the key to understanding those, as we also know well, is often not only legislation but the explanations that surrounded its preparation, enactment or implementation.

Ultimate responsibility

The making of laws can sometimes seem a very distant thing. But when a person or legislature makes law, it knowingly gives others – ultimately, courts and tribunals – responsibility for deciding what it means and how it applies. How much latitude that presents will of course depend on context. But I hope I've not laboured too much the point that it also generally involves making more choices than might be immediately apparent. Some of those might be a sign of the real world limitations of legislation itself. Others might be made in recognition of where decision-making expertise really lies. Either way, despite the abstraction, it's a very human process.

[6] *https://www.gov.uk/government/collections/the-office-of-the-parliamentary-counsel-guidance*

[7] *https://civilservice.blog.gov.uk/2020/01/10/breaking-down-gender-stereotypes-in-legal-writing/*

[8] *https://api.parliament.uk/historic-hansard/lords/1975/dec/10/renton-committee-report-on-legislation*

Tim Jewell is a fee-paid Judge of the First-tier Tribunal, Social Entitlement Chamber.
He's also a Senior Civil Servant and lawyer in the Government Legal Department:
Director, Cabinet Office Legal Advisers.

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A vital centre for justice

Havant Justice Centre – going from strength to strength

By Michael Tildesley

In 2017, Mark Sutherland Williams spoke eloquently about the opening of Havant Justice Centre and of the aspiration for Havant to become a professional, cost effective and user-friendly multi-jurisdictional centre. Mark held Havant up as a beacon of what can be achieved by the judiciary from different jurisdictions working together with local HMCTS managers to create something worthwhile, in a climate of cuts and closures. Mark described the process as "Surfing on the waves of change" to emphasise the need for both judiciary and administrative staff to take charge of the new circumstances and not to allow change to be done to them.

We are now almost three years on from the excitement and the hopes of the opening, which begs the question are we still standing and surfing or have the waves engulfed and swallowed our aspirations for Havant Justice Centre?

At the beginning of the project, we identified court utilisation rates as a barometer of success. We had in mind a rate of 65 per cent as a reasonable goal. HMCTS use One Performance Truth (OPT) as the measure for utilisation and it is brutal in its application, as it excludes use of the accommodation for purposes not directly connected with hearings and is restricted to actual sitting time. OPT is not kind to tribunals because, unlike courts, the hearing lists

are generally limited to one or two cases which are susceptible to late settlements, particularly in the party to party tribunals.

When Havant opened, the utilisation rate hovered around 30 per cent, although the figure for bookings was in the region of 45 per cent. Since then, the utilisation rate has steadily increased and in November 2019 the benchmark of 65 per cent was breached with a rate of 66.7 per cent being recorded for that month.

The type of tribunals that regularly sit at Havant has expanded from the original two, Social Security and Child Support (SSCS) and Residential Property (RPT) to four, with the addition of Special Educational Needs and Disability (SEND) and War Pensions and Armed Forces Compensation (WPAFC). It is anticipated that the number will soon be five, following an expression of interest from Criminal Injuries Compensation (CIC) to use Havant as its base for hearings on the South Coast.

...the utilisation rate... benchmark of 65 per cent was breached with a rate of 66.7 per cent...

The Employment Tribunal (ET) was one of the three original sponsors for Havant but its use of Havant has been hampered until very recently by the lack of judicial resource. It is hoped, now that the judicial resource issue has been addressed, greater use would be made of Havant by the ET.

During the past three years the Tax Tribunal, General Regulatory Chamber, Lands Registration and Upper Tribunal (Lands) have sat on an occasional basis. Havant is also used by magistrates for their training, by the Advisory Committee for the appointment of magistrates, and for adoption celebrations.

The design and the budget for Havant Justice Centre provided for four hearing rooms of various sizes and degrees of formality, so as to enable the full range of tribunal and civil cases to be heard at the venue. In addition, there are a number of multi-use rooms off the main waiting areas which give the necessary facilities for the holding of mediation sessions. Both the ET and RPT use Havant for mediation. Although the funds have been scarce since the opening, monies have been found to make the hearing rooms secure and to carry out essential repairs and decoration.

Since 2017, all the hearing rooms have been equipped with reliable wifi, digital recording equipment, and multi-screens with spider phones installed in three hearing rooms. Also, seven all-in-one machines (formerly LIP screens) have been allocated for use at Havant. There is also a fully-equipped medical room allowing for examinations in connection with SSCS hearings.

The allocation of all-in-one machines to Havant allowed the piloting of video-enabled hearings by SEND to address a current problem in the jurisdiction caused by a shortage of fee-paid judicial office holders in the South West. This involved beaming a judge into the hearing by video from another part of the country. Another hearing was saved by the video-enabled participation of a specialist member. RPT is setting up a pilot with local authorities to promote the use of electronic hearing bundles through the platform of Viewpoint. SSCS had planned to use the Common Video Platform (CVP) to enable a Presenting Officer from a Respondent Government Department to appear in Tribunal by means of a video-link in specific cases involving a judge sitting alone. Unfortunately, the plans received a setback with the announcement of the withdrawal of funding for CVP from mid-January 2020 and the refusal of HMRC to co-operate with the pilot in the appeal identified for testing this.

Havant provides accommodation for five salaried members of judiciary (three for RPT, one for HESC, and the Regional Medical Member for SSCS) and for 16 members of administrative staff led by a Delivery Manager.

The RPT case officers who transferred from the Chichester Office and the one SSCS clerk based at Havant constitute the original staff core. This core has been enhanced by the arrival of four new members of staff which will shortly increase by another three new members. All new members of staff are trained as RPT case officers and as tribunal clerks, which means that Havant has a cadre of skilled staff to service a wide range of tribunals with different requirements.

“I felt listened to and that I had a voice.”

The provision of skilled staff who understand the processes of the various tribunals brings enormous benefits in the quality of service offered by the hearing centre to the users and to visiting judiciary.

The Delivery Manager collects feedback on the services and facilities offered on a regular basis. The outcomes of the feedback in respect of staff are unanimous in praise of their professionalism and helpfulness.

The following comments are typical of the ones made by users:

> “The staff were professional, helpful and approachable. They ran through what to expect and suggested if we need anything we only had to ask.”

> "I can only say how impressed I was with the support offered to frightened disabled people who are under a lot of stress. It made a horrible day much more bearable. I felt listened to and that I had a voice."

Likewise, from visiting judiciary:

> "Very competent and kept her patience during a trying couple of days, scanning and emailing documents between the parties and the panel. Making tea and coffee was over and above the line of duty."

> "I have to come to Havant on a few occasions I enjoy coming here and the staff are friendly and welcoming and it is close to the station."

The co-location of case officers and judiciary in the same office also has its benefits, as one professional user commented:

> "Far superior service provided than that by the County Court. Always easy to speak to the case handler, response time for correspondence is good. Tribunal judges are proactive in trying to progress cases to a conclusion."

This commitment to providing a quality of service extends to the contract security staff who are very much part of the team at Havant. As one user put it: "The service given by security staff was kind and understanding."

The users' comments on the facilities are favourable overall. The Delivery Manager addresses concerns and provides a report on the public noticeboard entitled: "You Said" and "What We Did". The two main issues which have been raised were signage from the Civic Centre and the lack of a hot drinks facility at Havant. The Delivery Manager has been in contact with the local council regarding the signage. The resident security officer now supplies a hot drinks facility to users at a small charge.

One user, although complimentary about the staff, was not impressed with the state of decoration:

> "The premises are a disgrace and an indication of the cavalier attitude of those in authority. Is it that difficult to paint the walls"?

The Operations Manager, the Cluster Manager and the Head of Civil, Family and Tribunals have given unstinted support to the Havant cause. They have approved the allocation of tribunal cases to Havant, increased the staff establishment and provided advice and resources to progress the various judicial initiatives on the application of technology.

SSCS have initiated Tribunal User Group meetings for Havant, the most recent of which saw representatives from advice centres and social landlords covering Portsmouth, Havant and the Isle of Wight meet with judiciary and HMCTS staff based both locally and from the administrative centre in Cardiff.

There have been disappointments during the last three years. The chief one was the decision by HMCTS Property Board not to use Havant as a hearing centre for part of the civil caseload, following the closure of the County Court at Chichester. I felt it was an opportunity missed to further the aim of One Judiciary, particularly as there would be minimal inconvenience to users.

"The collaborative approach encourages the judges to look beyond the horizons of their own jurisdictions and to learn from others."

There are a number of factors that have contributed to the successes that have been achieved so far. By far the most important is the commitment of staff at all levels and of the judiciary from the various tribunals to work together to create something special and worthwhile at Havant. The commitment of staff is remarkable considering the uncertainties to their future posed by HMCTS Reform.

The leadership of the salaried judges from the tribunals based at Havant has been vital in the ongoing development of the Justice Centre. The departure of two of the three judges who were involved in the original project has not interrupted the momentum of moving forward. Their replacements, Joanna Brownhill of SSCS and Mark Emerton of ET, have taken up the mantle of their predecessors and striven to do what is best for all the tribunals involved. The judicial contribution has been enhanced by the addition of the Health Education and Social Care Chamber (HESC) contingent of Meleri Tudur and Clive Dow. Siobhan McGrath, the Chamber President for the First-tier Property Tribunal, continues to maintain an active interest and promotes the case for Havant in places that others cannot reach.

The judges work collaboratively, which requires them, on occasions, to put the interests of their own tribunal behind those of others in greater need. Specific examples have included the surrender of office space to accommodate newly appointed judges and certain tribunals carrying the risks associated with the over-listing policy.

The collaborative approach encourages the judges to look beyond the horizons of their own jurisdictions and to learn from others. The work done by the ET on sources of advice provided the impetus for the Judicial Standing Committee to agree and publish an information leaflet identifying the various bodies that offer advice to users of the various

tribunals based at Havant. The HESC's initiatives in respect of the application of information technology have been inspirational and spurred those with Luddite tendencies to examine new possibilities.

The commitment and energy of the people involved come to naught unless there are reporting structures in place to consolidate the achievements and to forge the way ahead. This is secured through the Judicial Standing Committee which comprises judges from the four principal tribunals and HMCTS staff including the Cluster Manager and the Head of Civil, Family and Tribunals. The seniority of the members in attendance enable decisions to be made.

The Standing Committee is chaired by Mark Emerton and meets three times a year. Agendas are prepared for each meeting and minutes are kept. The Delivery Manager provides the meeting with reports on utilisation, the buildings and the outcomes of the various surveys on quality of service. The Head of Civil, Family and Tribunals reports on the action plan for the various initiatives to do with information technology.

The final part of the jigsaw of success factors is publicity and taking every opportunity to raise the profile of Havant amongst the user and wider community. The Delivery Manager has compiled a flier on Havant which is circulated to Tribunals at regular intervals.

Recently HHJ Cutler CBE, the Resident Judge at Winchester, encouraged the High Sheriff of Hampshire to visit Havant and meet with tribunals judiciary and staff. The Portsmouth News reported on the visit with the headline "High Sheriff meets with the tribunal judges at Vital Centre for Justice".

Havant is now firmly on the map as the primary venue for tribunals in Portsmouth and Hampshire. We are positively surfing the waves.

Michael Tildesley is a Regional Tribunal Judge (Property Chamber) Residential Property

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King Arthur's Round Table in practice

SENSORY HEARING FACILITIES IN THE GLASGOW TRIBUNALS CENTRE

By May Dunsmuir

This second article explores how the sensory hearing facilities in Scotland are working in practice; and considers some of the challenges and adaptations made along the way. May's first article about the facilities was published in *Tribunals* journal edition 1 of 2020.

The sensory hearing facilities in the Glasgow Tribunals Centre, the first in Scotland, opened for business in September 2019. Since then they have been in regular use by the Additional Support Needs jurisdiction (the equivalent to this is the Special Educational Needs and Disability – SEND – jurisdiction in England) and by the courts for evidence by commission. The facilities have been designed to reduce sensory overload for children with conditions like autism; and for those with a disability. The facilities were built by the Scottish Courts and Tribunals Service with the support of the Scottish Government. Running costs are absorbed into the Scottish Tribunal estate.

Setting the barometer

How a hearing begins sets the barometer for the day. The appearance of ease, organisation and flair helps the hearing process to look and feel in control, which is important to the tribunal members, the parties and their representatives, particularly those who are not legally qualified. Attending a sensory hearing facility is no different. However, if you explore and engage the 'rights, will and preferences'[1] of the person with a disability (and to date all children using the facilities have had one or more disabilities) and what effective access to justice means[2] (including reasonable adjustments) the pre-hearing arrangements have to be more sophisticated. In one hearing this included preparing a hearing room map to identify where each person attending would be seated.

The clerk needs to be fully informed in advance of any tailored processes, whether this involves a therapy pet attending the hearing, or the dimming of lighting, reduction in natural light or other features.

[1] UN CRPD, *Article 12.4* Equal recognition before the law.

[2] Ibid. *Article 13.1* Access to justice: States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

King Arthur's round table

Some tweaks were necessary following early hearings. For example, the large round table ('King Arthur's round table') in hearing room 2 proved a squeeze for parties to navigate around from the attached waiting room entrance. A simple adjustment to the layout fixed the problem, with the table moved a foot or so from the door. The attached waiting room is used only by the child, their representative and supporter. The other party and witnesses enter through a second door. This room distinction has proven successful. The child attending the hearing appears to enjoy the fact that there is a waiting room attached to the hearing room for their exclusive use.

"The child knows that the hearing participants can "see through" the mirror from the hearing room but s/he does not have to see or hear them."

The round table very much belongs to the children who helped to design the new facilities and its benefits very much outweigh some of the challenges which have arisen. Part of the principle of the sensory environment is the absence of 'clutter', which applies equally to the table itself. In order to maximise this, we have adopted the following practices:

- We now use smaller name bars, to use up less of the table space.
- The legal member has access to hard copy materials, but these are expected to be placed on the floor or under the table until needed, rather than on the table (a pile of books in itself can be intimidating for children and parents).
- There is no IT or AV equipment on the table. The uploading of images to the sensory wall is done by the clerk using a laptop and the recording equipment is settled in the ceiling with a suspended mic. This is regulated from one central wall source, which the clerk operates.
- We also realised fairly quickly that the location of the witness at the table needed careful thought, to ensure that they could not overlook the solicitor's or a tribunal member's notebook; so, a default seating layout was created, with the assistance of the clerks, who played an important part in deciding the practical arrangements. The witness is now situated to one side of the tribunal members, between them and the parties. S/he is given access to the bundle in the usual way by the clerk (if this is appropriate to the evidence) and is sufficiently apart from all so that s/he is unable to overlook any notetaking.

The 1:1 room

Hearing room 2 has the 1:1 room attached. For a child who wishes to give their evidence without seeing anyone other than the person accompanying them and the questioner, this is a very valuable resource. The child can see a mirror in the room, which can be reduced or increased in size by a roller blind, which is the same colour as the walls. The child knows that the hearing participants can "see through" the mirror from the hearing room but s/he does not have to see or hear them. The child enters the 1:1 room from a direct access door, next to the waiting room. The location is important as the child's journey should not involve too much navigation or distraction. This means that the child does not have to come through the hearing room itself.

"One child visiting the room described feeling like he was being 'hugged' by the sensory properties."

When the 1:1 room is in use, everyone in the hearing room has to be able to see and hear the proceedings. The irregular shape of the hearing room allows for a second default seating plan for these purposes. The audio facilities work very well and the high tech specification allows the clerk to manage the operation of this using an iPad style monitor attached to the wall of the hearing room. The clerk will switch the audio on and can control the volume as necessary. There is no echo or distortion, which makes for ease of hearing. When it is not in use, the external blind (on the hearing room side) is fully closed, which helps it to blend into the wall, reducing the potential for the 1:1 room to offer a distraction to those in the hearing room.

The room has been used well and creatively – not just in the way intended. One tribunal took the views of the child, with a tribunal member in the room along with the child and their supporter. The tribunal remained 'as one' during this time as they were always within the sight and hearing of one another. I observed this in practice and I witnessed the ease with which the child was able to settle.

One child visiting the room described feeling like he was being 'hugged' by the sensory properties. When you enter the room, its small size, lack of clutter and acoustic value feels calming. I have noticed visitors exhale when they enter. Children with autism have found it of particular value. It seems that where once a child would have struggled to come to a hearing, this facility offers hope for a chance to be able to attend. Parents also find it valuable. Some have asked that it be used to provide their child with an opportunity to speak.

And now, lockdown…

The sensory hearing facilities were formally launched on 25 February 2020, just a few weeks before the word 'lockdown' took on new meaning. A five-day hearing had commenced just beforehand. The tribunal was able to use the high spec video link facilities available in each hearing room to their maximum, taking evidence from expert witnesses in Canada and Australia. This had to be postponed on day 3 as it was no longer safe to use public transport or to be in a physical hearing environment. It is likely that this hearing will conclude using remote means. No physical hearings are taking place at the moment.

"This is cracking"

Returning to the launch, some of the young people who had supported me in the design of the facilities, were in attendance. They accompanied me on a tour, which the Scottish Minister for Children and Young People, Miss Maree Todd, attended. The young people were delighted to see what they had achieved. I must confess to feeling more nervous about their comments than any others. One described the round table (which he had helped design) as "marvellous"; and the sensory room, as "cracking". Praise indeed.

I conducted a hearing in 2019 with a child party, around whom the whole suite of facilities could have been designed. The child had a number of debilitating sensory conditions and was offered a wide range of support to attend, including the use of the new visual guide, which could be personalised, a pre-hearing visit and the choice of who should sit where and who should enter the hearing room first. Although initially wishing to bring a therapy pet, the child decided not to on the day. The child had strong views about who should sit where and this was agreed and set out in a case conference call note beforehand, to ease anxiety. This child wanted to be in the room first, before anyone else, including me. This was acceded to and appeared to give the child a sense of control over their own proceedings. This suggestion (of who entered the hearing room first) came from a discussion of the facilities with a European expert on incapacity law, who suggested that the child should be able to make that decision when exercising her 'rights, will and preferences'[3]. This small step can, without eroding the principles of justice, give a child a sense of equality and parity in the proceedings. Important principles in our overriding objective (which mirror those of the SEND)[4].

Reducing sensory overload

One other room of significance has been the sensory room. This has proven of great interest among visitors and hearing attendees. It provides a calming environment and tackles sensory overload with ease. Those who enter tend to stay longer than anticipated! One design feature requires adjustment and that is the location of the entrance door, which sits to the side of what is a narrow room. A wheelchair user would have difficulties with the sharp turns necessary to be able to enter the room with ease. The entrance is also located through a door to another area, which is not consistent with the sensory principle of limited navigation and ease of use. The door will easily be re-located off the sensory corridor, which will address the problem.

"The principal sensory components cannot be changed, but that does not mean that they cannot be tweaked or, quite literally, moved around."

It has also become apparent that multiple use of the sensory hearing rooms in one day (by more than one jurisdiction) is difficult and could lead to the sensory environment being compromised by noise or distress. Accordingly, we have in place set days for jurisdictional use, which can be negotiated when there are lengthy hearings, and which will be regularly reviewed to see how it works in practice.

Be flexible and fearless

One of the most important learning points is to be flexible and fearless when it comes to testing new things in practice. The principal sensory components cannot be changed, but that does not mean that they cannot be tweaked or, quite literally, moved around. The sensory facilities will be attractive to more tribunal jurisdictions, and that can be accommodated.

The first sensory hearing facilities in Glasgow were always intended to be a platform, and I am pleased to write that the new Inverness Justice Centre (opened in March 2020) has its own sensory hearing room, waiting room and 1:1 room, with a sensory 'corner' about to be added to the waiting room (to replicate a sensory room).

[3] UN CRPD Equal recognition before the law, *Article 12.4*. Also relevant is Article 7, which requires provision of age-appropriate assistance to children with disabilities. *Article 7.3* requires that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children. In order to realise that right, children with disabilities should be provided with disability and age-appropriate assistance.

[4] The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018, rule 2.

There have been many visitors to the facilities and many positive remarks but one of the most poignant for me is this:

> "Absolutely brilliant to see the new accommodation and a big congratulations to all involved. I have a cousin who is care experienced and at the age of 74 is overwhelmed by the notion that young people's views and opinions are being actively sought in determining future services; "Nobody thought to ask us". "

The importance of seeking children's views and opinions in the design of hearing facilities was reinforced by a young person who spoke at the launch:

> *"...the sensory hearing facilities have been all about wrapping the system around the child, not wrapping the child around the system."*

> "Being asked for my opinion on the layout, images and colour scheme for the needs to learn website, which was something that at the time felt so small, made me feel that my opinion not only mattered but was valued. It is so nice to see the outcome of this work being displayed on the floor to help children and young people who will attend this hearing facility. Also, being able to help during the telephone training made me feel important as I knew it had the potential to make a difference."

Wrapping the system around the child

In conclusion, the sensory hearing facilities have been all about wrapping the system around the child, not wrapping the child around the system. In this way it not only improves access to justice for children, it improves the quality of their evidence, creates an atmosphere of ease when taking their views and enhances the overall value of the proceedings. If this is the test for effective access to justice, then I think we are going in the right direction.

May Dunsmuir is Chamber President, Health and Education Chamber, First-tier Tribunal for Scotland

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Recording tribunal proceedings

INNOVATION MEETS NEW CHALLENGES

By Daniel Flury

Recording Tribunal Proceedings

As many readers will know, the First-tier Tribunal and Employment Tribunals do not routinely record their proceedings. While there has been a long-standing desire from many Tribunals to replicate the arrangements that exist in the Crown, County and Family Courts as well as the Upper Tribunal, routine recordings of Tribunal proceedings are rarely made.

However, through a combination of the HMCTS reform programme and the Tribunals response to the coronavirus pandemic, the provision of universal recording facilities and supporting arrangements has taken a significant step to becoming a reality.

Why record?

In making the case for recording, the Tribunals judiciary have made a number of arguments that I imagine many of you will be familiar with. For example:

- It provides a clear and incontrovertible record of proceedings in contrast to what are usually handwritten notes made by the judge and member.
- An audio recording and clear record could subsequently assist the determination of any grounds of appeal.
- It encourages better behaviour from parties and witnesses and encourages them to give accurate and detailed evidence.
- It greatly assists when dealing quickly and fairly with complaints made against the Tribunal.
- It assists those parties in need of a resonable adjustment such as hearing or memory loss.

> *"...the provision of universal recording facilities and supporting arrangements has taken a significant step to becoming a reality."*

- It creates a more 'professional' experience of Tribunal proceedings.

Given these clear benefits, many will be puzzled as to why it has taken so long to establish recording across the First-tier and Employment Tribunals. In seeking to understand why, we need to look at the arrangements for recording elsewhere in HMCTS.

How to record?

Since 2012, HMCTS has used the Digital Audio Recording Transcription and Storage (DARTs) system to record proceedings in the Crown, County and Family Courts. DARTs effectively replaced the court stenographer with a system of microphones, recording facilities and IT servers to allow for the universal recording of proceedings. If you enter any Crown Court, you'll see a large red digital clock on the clerks' bench that, when running, indicates that a recording is being made.

Recordings are then stored in a central IT server and can be accessed by Judges and HMCTS staff through an online portal. Where a party wishes to access this recording, in accordance with various procedure rules, they can apply to the judge for access who will either permit the party to listen to the recording by attending a court building or through the provision of a transcript made at either the public or at the party's expense. The closest and best exposition of these arrangements can be found in Sir Robert Carnwath's 2008 Practice Direction on recording arrangements in the Upper Tribunal[1].

As you can imagine, the installation of the DARTs system is not without cost, and to a certain extent, this has been the primary barrier to introducing universal provision across the Tribunals. The costs comprise not just installation of the hardware itself and subsequent maintenance but as some of you will know, there are certain Tribunal facilities that, whilst perfectly adequate in other respects, lack basic technical infrastructure. These include appropriate cabling and data points to permit any quick and easy installation of DARTs. This said, following the creation of HMCTS, more Tribunals have sat in the civil and family courts and, where possible, some have used the DARTs facilities to record proceedings.

Whilst DARTs is the preferred method of recording in the courts of record, the Tribunals have not stood completely still in making their own provision. The notable example is the SSCS Tribunal in Scotland who use handheld recording devices to record proceedings. Once the recording is made the memory card is sent to the Glasgow administration who upload it onto a standalone storage server and, if a party requests a copy, the recording is sent to the party on CD.

Despite this initiative, innovation and partial use, the First-tier and Employment Tribunal remains some way from recording all proceedings with appropriate and suitable provision throughout.

HMCTS Reform

If there ever was an opportunity to address the above, it is through the HMCTS reform programme which, of course, seeks to modernise the courts and tribunals system. The best example of how this has been achieved is in the First-tier Immigration and Asylum Chamber. The FtTIAC judiciary were clear from the outset that any modernisation should include the provision of suitable recording equipment throughout. This was on the basis that not only would it support the objectives listed above but it could also support any expansion of recent pilots where the Tribunal has produced a short form oral rather than written judgment.

"...the reality of the last few months is that it has forced all to consider how we operate and in doing so has accelerated, in the space of weeks, what was previously thought to have been impossible or to have taken years."

To achieve this, rather than install DARTs throughout, HMCTS purchased 300 state-of-the-art TASCAM DR-40 recording devices and microphones to support recording of oral hearings. These were purchased after a number of tests with alternative handheld devices. However, recording the proceedings only partially solves the problem. HMCTS has to be able to quickly and easily access any recording. To do this, the recording is extracted from the device and stored in the new core case database system alongside all other material relating to the appeal. These devices were rolled out to the FtTIAC in March 2020 and a number were also made available for use in the SSCS, Residential Property and Employment Tribunals. Some progress but still a long way to go and then the events of late March 2020 took hold…

The Coronavirus Pandemic

It feels a little insensitive to link a global health pandemic to our plight, but the reality of the last few months is that

[1] https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Practice+Directions/Tribunals/Transcriptsofproceedings.pdf

it has forced all to consider how we operate and in doing so has accelerated, in the space of weeks, what was previously thought to have been impossible or to have taken years. As many of you know, the Tribunals have led the way in the justice system's response to the need to comply with public health guidelines. We've quickly embraced what has been described as remote hearings and thousands of hearings are taking place each day through the likes of BT Meet Me telephone conference, Skype or Cloud Video Platform (CVP) video conferencing. These new ways of working have provided a huge shot of adrenalin and impetus into the otherwise nascent plans to record. Through in-built provision in BT Meet Me, Skype and CVP we're able to record and retrieve recordings in hearings quickly and easily. This ability was recognised and consolidated in the Senior President's Practice Directions of 2 April[2] which stipulated that hearings must be recorded. This was supported by the provisions in the Coronavirus Act 2020 that strengthened penalties for unauthorised recordings and extended these provisions to the First-tier Tribunal[3].

The Future of Recording

Given this widespread provision, HMCTS is now working closely with the Senior President's Office and the Ministry of Justice to produce a draft Practice Direction to further consolidate the use of recordings within the Employment and First-tier Tribunals. Although further legislation to bring the Employment Tribunals in line with the First-tier may be required, any Practice Direction could bring together and clarify the arrangements for the handling, storage and retrieval of recordings and/or transcripts.

As for hardware, while we're planning to provide additional handheld recording devices to all in 2020, these devices will ultimately become more and more redundant as the use of CVP becomes more and more widespread. CVP can be used to record both video as well as face-to-face oral hearings and has the additional benefit of being stored on the DARTs server while avoiding the expense of DARTs installation. Our intention is to ultimately provide the Tribunals with a number of ways to record – whether that is handheld devices, the conventional DARTs system or CVP – and then to consolidate the many gains and finally deliver our long-term objective to record through a consolidated Practice Direction.

Finally, while we've certainly made strides in introducing recording, I do not think the journey is close to ending. For example, you may be aware that the computer you're reading this on can both automatically record and transcribe whatever you or anyone else tells it to. As the technology continues to develop and advance, I am confident that the Tribunals will continue to challenge, innovate and adapt to ultimately deliver a better service to its users.

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[2] https://www.judiciary.uk/wp-content/uploads/2020/04/02-Apr-30-Practice-Direction-Audio-Video-Hearings.pdf

[3] http://www.legislation.gov.uk/ukpga/2020/7/schedule/25/enacted

Daniel Flury is Deputy Director (Tribunals), HMCTS

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1000 video hearings

INNOVATION MEETS NEW CHALLENGES

By Meleri Tudur

If a picture paints a thousand words, what does a thousand video hearings do?

On the 23 March 2020, the First-tier Tribunals Special Educational Needs and Disability (SEND)/Care Standards and Primary Health Lists (CS/PHL) jurisdictions moved to fully digital working and fully video hearings. To all appearances, the transition was smooth and swift: the preferred analogy is that of a swan, with grace and elegance on the surface, underpinned by purposeful activity underneath.

It was a leap of faith: do digital or die trying. On the 17 March 2020, at a meeting of the judiciary and administration in Darlington, when it was apparent that the country was heading for lockdown, a proactive and enthusiastic team unanimously decided to take that leap. The task was enormous: there was guidance to be written, training to be delivered and announcements to be made, with four working days to complete the work. At that point, we did not even know whether it was achievable: we had previously conducted video hearings in emergencies using Kinly Cloud Video Platform (CVP) but there was no certainty that it would work on a large scale. We had backup BT MeetMe lines, so that if video failed, audio would be available. If audio failed, we could offer paper hearings using digital bundles with the parties' consent. Otherwise, the prospect was cancelled hearings and long delays. We had nothing to lose because the alternative was unthinkable: vulnerable children and young people whose education would be impacted by the failure to make decisions on appeals and the care industry with registrations decisions

> *"What has been achieved during lockdown has exceeded all expectations."*

affecting vulnerable users, which could be adversely affected by the inability to conduct hearings.

The First-tier Tribunal SEND had postponed about 1000 hearings over the last year because of lack of judicial resources, lack of hearing venues and an ever-increasing workload. On that day in March, the jurisdictional lead identified the cases to be taken out of the list for the following week, with instructions to relist as soon as possible. The earliest they could be listed was June. Over the year, HMCTS had paid out some £60,000 in ex gratia payments for postponed hearings.

What has been achieved during lockdown has exceeded all expectations. By the beginning of April, all the staff in the Darlington office were issued with laptops and enabled to work from home. The show was very much on the (virtual) road. By the end of June 2020, the Tribunals will have held over one thousand video hearings.

"There has been an explosion of ideas, creative solutions and hard work to ensure success."

In three short months, judicial office holders and staff have acquired new skills, mastered new technology platforms, developed new ways of digital working, adopted a lexicon of technology jargon and learnt the etiquette of remote interaction. There has been an explosion of ideas, creative solutions and hard work to ensure success. The biggest ever tribunal pilot of remote digital working has been running for 12 weeks and lessons learned at such a pace that the guidance had been amended and updated four times before the end of April. Information, advice and training has been shared across courts and tribunals, with others now following in the Health Education and Social Care Chamber's (HESC) footsteps. In the Property Chamber, mediation is offered by Kinly CVP; in the Employment Tribunal, remote hearings. Crown Courts are testing its use. There is phased implementation in the Family Courts.

Most unexpected was the positive response from SEND and CS/PHL users: Kinly CVP has been used for hearings, meetings, user groups, training and virtual offices. The tribunal users have given positive feedback from their experiences and are asking for guarantees that the tribunal will not roll back from video hearings. Support for users into hearings by Video Hearing Support Officers has been an essential element and HMCTS have already delivered a team of 40, trained to the HESC model, up and running to support hearings nationally and cross jurisdictionally. Of course, there were issues: biggest is corporate firewalls preventing access to hearings, but those without video can access Kinly CVP by phone, creating 'hybrid' or 'blended' hearings with participants using different means of accessing the hearing where necessary.

Foremost in the success story has been the hard work of judiciary and administrative staff. Fee-paid judicial office holders engaged in familiarisation and digital working training during lockdown, at their own expense, training prepared and delivered by both the administrative staff and salaried judiciary, all working diligently to plug knowledge gaps and facilitate new ways of working. We cannot even begin to count the extra input that the whole team have added to their already overlong hours of work: but the effort has paid dividends.

The answer to the question? A thousand video hearings have cleared postponed hearings; allowed fee-paid judicial office holders to sit and work during lockdown; stopped travel of the length and breadth of the country; enabled listing of more hearings than would be possible face-to-face and most importantly, ensured that not one hearing has been postponed for want of resources. Decisions have been made and issued digitally and users are still positive.

Planning for emergence to maintain digital working will require re-evaluation of judicial training and equipment needs, a system to provide all users with remote access and the flexibility to adapt hearings to suit the individual circumstances through case management. We have proved digital working is not only possible but effective and uncovered a treasure trove of opportunities for all jurisdictions.

Meleri Tudur is Deputy Chamber President – First-tier Tribunal Health, Education and Social Care.

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Equal Treatment Bench Book corner

News

By Rebecca Howard

Good Practice for Remote Hearings – Interim Guidance

The Equal Treatment Bench Book (ETBB) team has produced Interim Guidance for conducting fair hearings in these challenging times. It recognises that judicial office holders must make difficult decisions about whether to hold remote hearings and if so, how to conduct them fairly.

Remote hearings can have advantages as well as disadvantages and it is ultimately a balancing exercise for the Judge as to whether a hearing should proceed remotely. The needs of the parties and their representatives must be considered alongside the importance of a speedy resolution of the issues.

"Remote hearings can have advantages as well as disadvantages and it is ultimately a balancing exercise for the Judge as to whether a hearing should proceed remotely."

The Guidance stresses the importance, at a time when many are living under such difficult conditions, of listening to views as to adjourning, or hearing a case in a particular way. The situation is changing rapidly and the interim nature of the Guidance reflects that.

The Guidance identifies a range of factors that Judge's might consider; such as:

- Not to assume everyone has access to technology: there is a disparity of such access and access to the internet based upon socio-economic factors, age and disability.
- Some individuals may not be able to read or internalise the HMCTS guidance for a remote hearing. Those living alone may not have assistance, and there is still a barrier in admitting to reading difficulties.
- A remote hearing taking place at home might occur alongside distractions which inhibit evidence, such as domestic violence, coercive control, and overcrowding: parties may not have a quiet private room, and there may be demands on their attention from pets, partners, children.
- Consider whether the content of evidence/questions would be appropriate for children to hear; of particular importance where there is no other adult to care for the children during lockdown. Or someone may have withheld full detail from other adults in the household.
- Changing the date or time of the hearing at short notice may cause extra difficulty with arrangements made to avoid interruptions.
- The consequences and pressures of Covid-19 may relegate the importance of court or tribunal proceedings; this doesn't necessarily signify disinterest.
- Community mental health and other services have been scaled back/made remote, yet the pandemic may be exacerbating pre-existing problems due to social isolation, increased stress, and lack of medication and the Judge may not be aware of the problem.
- Interpreter and Intermediary use may be problematic unless specific arrangements can be made.
- Technology may give rise to specific difficulties for those with sensory impairments.
- Virtual hearings take longer, because of technical difficulties, slower communication and the need for more breaks due to the increased concentration required as well as often unsuitable seating arrangements and posture.

The Guidance also gives some useful tips for conducting a remote hearing in a way that enables everyone to participate fully; which include:

- Explain at the outset the risk of IT failing and what to do if the link fails.
- Enquire as to the needs of those appearing, so that you can work out accommodations and manage the hearing accordingly.
- Establish at the outset whether there will be any unavoidable interruptions as those who are the only adult in the home may be worrying about these, e.g. deliveries; important incoming phone calls; childcare issues.
- Spell out the approach to the hearing so that the parties understand what is expected.
- Carefully monitor throughout that everyone is present in the hearing and able to follow.
- Try to establish a person's level of understanding of the process using language that is "user friendly".
- Consider and make adjustments for the particular difficulties faced by individuals speaking English as a second language or through an interpreter.
- Explain, monitor and control turn-taking for contributions.

"The situation is changing rapidly and the interim nature of the Guidance reflects that."

- Make no assumptions about people's behaviour. It may be different to what one would expect in court: they are at home.
- Time lapses: conversation does not "flow" in a video hearing as it might face to face. Expect stress from parties who want to have their say but it is all taking "so long".
- Check whether everyone can navigate and/or download e-bundles.
- A witness may wish to take a religious Oath but not have a holy book because they are at home or they may be unable safely to touch it if in court. They should be allowed the choice of taking the Oath without the book or affirming.
- Allow more time for breaks and do not be tempted to extend hours to get hearings completed. This will be exhausting for everyone, and may be particularly problematic for litigants in person, those speaking English as a second language and people with a range of mental or physical impairments who find the process particularly tiring.

The full Interim Guidance on *Good Practice for Remote Hearings* and the *Equal Treatment Bench Book* are available at *www.judiciary.uk*.

Rebecca Howard is a member of the Tribunals Journal Editorial Board and a Tribunal Judge (Employment)

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A valedictory with an eye to the future...

SPT UPDATE

By Ernest Ryder

This article marks my last as the Senior President, after five years in the position. With the outbreak of Covid-19, the last few months of my judicial career have not quite been what I was expecting but the experience has only reinforced what I already knew, which is that the tribunals is made up of some of the brightest, hardest working and passionate judicial office holders there are and I am immensely proud to have been your leadership judge.

I know the past few months have been hard on many of you, both personally and professionally. However, I also know that you have all worked tirelessly to keep tribunals justice open for business throughout these difficult times and to support each other, and me. I will always be grateful to you for this.

I am in awe of all we have achieved in such a short space of time; from SEND performing 100 per cent of its hearings remotely, to every Tribunal developing its own bespoke guidance within a matter of weeks. I introduced four Practice Directions within the first weeks of the unfolding crisis and the Tribunals Procedure Committee also issued new temporary rules. There was new legislation and new policies and all this occurred against the backdrop of a global pandemic. This must have been, at the very least, unsettling for each and every one of you but the changes were embraced with such vigour and enthusiasm that you all made it look easy.

Of course, we could not have achieved what we have without the support of others across Government, especially HMCTS and MoJ. I am very grateful to all those in HMCTS and beyond who have gone the extra mile in support of tribunals.

While we are far from out the other side, now is the time to reflect honestly on the past few months, identifying what has gone well and those areas where improvements could be made. As we continue to use the pilot Practice Directions and temporary Rules, we must do so with one eye to the future. There will undoubtedly be things we can, and should, take from this experience into new ways of working and there will undoubtedly be other areas where the best thing to do is to return to previous good practice.

I have no doubt that my successor will ably lead the tribunals through this next challenge and I wish all of you the best.

Finally, if I may, I would like to end my final article as Senior President by saying thank you to the journal. The first thing I did five years ago was to ask to have a regular column. I would like to thank the Tribunals Journal Editorial Board, particularly the Chair, Judge Christa Christensen. It is a fantastic product and I have always enjoyed it; I hope I shall remain on the copy list when I take up my new post as Master of Pembroke College, Oxford!

I would also like to record my gratitude to my Chamber Presidents and Employment Presidents, both past and

present. I could not have been more fortunate to have worked alongside such fantastic leaders. Finally, I would like to thank each and every one of my judges and panel members. It has been an honour and a privilege to be your Senior President.

Sir Ernest Ryder is the Senior President of Tribunals

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Recent publications

EXTERNAL LINKS

By Bronwyn McKenna

JUSTICE response to HMCTS survey on conducting video hearings:
JUSTICE has carried out a survey of the experiences of the JUSTICE membership, across many first instance remote hearings during the COVID-19 pandemic to inform its response to the HMCTS consultation on video hearings.

Public Administration and a Just Wales:
This research report which has been funded by the Nuffield Foundation examines administrative justice in Wales. The authors are Dr Sarah Nason and Ann Sherlock (Bangor University), Dr Helen Taylor (Cardiff Metropolitan University), Dr Huw Pritchard (Cardiff University Wales Governance Centre). It highlights examples of good practice in Wales; including attempts to improve the accessibility of administrative law, partnership-working at various levels across and between public bodies, preventing poor administrative practice, collaboration between service providers, and promoting 'right first time' decision-making by public bodies.

Administrative Justice Council webinar on the impact of COVID-19:
The Administrative Justice Council has held a webinar on COVID-19 and administrative justice.

Civil Justice Council Report - rapid review of remote hearings:
The Civil Justice Council has published a report following its rapid review of remote hearings.

Government statistics:
The Home Office published statistics relating to Covid-19 and the immigration system.

Parliamentary affairs:
The Centre for Mental Health and Capacity Law published a submission to the Scottish Government's Human Rights and Equality Committee inquiry into Covid-19.

Academic blog posts which may be of interest:

Johnny Tan (LSE), *Online hearings and the quality of justice*.

Margaret Doyle (University of Essex), *Going online in a hurry*.

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".

Project Implicit website 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. A public law and administrative justice website 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.

Bronwyn McKenna is a First-tier Tribunal Judge (Social Entitlement)

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Dr Adrian V Stokes OBE

TRIBUNALS JOURNAL EDITORIAL BOARD MEMBER 2015 – 2020

It is with enormous sorrow that the Tribunals Journal Editorial Board, on which Adrian had sat since 2015, learned of his death. Adrian was a valued and much respected member of our editorial board, contributing vibrantly to discussion with great insight and intelligence. He always engaged with energy, integrity and commitment to the discussion in hand and the board was so very pleased that he accepted an extension of his appointment for another three years, which would have taken it through to 2022. It is a matter of great sadness that his generous acceptance of that extension to his work for the editorial board could not be realised and that we will not continue to benefit from his expertise going forward. But more than that, Adrian was very much loved and appreciated for who he was, as a person. One of the benefits of the relatively long duration of appointments to the board is that it allows connections between board members to grow and relationships to develop, allowing us to get to know and appreciate each other despite hectic individual professional commitments. It was a great honour and privilege to have served on the board alongside Adrian and the board speaks as one when we say that we are hugely grateful to him for his contribution to our work, his outstanding personal qualities and his warmth, good humour and friendship. He will be sorely missed and never forgotten.

Thank you Adrian!

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Aims and scope of *Tribunals* journal

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

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