JUDICIAL COLLEGE

TRIBUNALS
TRIBUNALS
EDITION 2 — 2018
TRIBUNALS

Editorial 2018 Edition 2

EDITORIAL

By Christa Christensen

I would like to start by welcoming four new members to the Editorial Board. I am confident that the continuing vibrancy of the journal is assured by these new appointments. **Judge Belinda Cheney** was recently appointed as a District Tribunal Judge in SSCS having previously held judicial office as a fee-paid judge in the Mental Health Tribunal and as an Assistant Coroner. Belinda is qualified as a solicitor and barrister in New Zealand and has worked in private practice in London. **Judge Rozanna Head-Rapson** sits as a fee-paid judge in the Social Entitlement Chamber, in the Immigration & Asylum Chamber and in Special Educational Needs & Disability. She is also a fee-paid judge in the Court of Protection. Rozanna is a solicitor with experience in publishing and within academia and set up her own niche practice. **Judge Christopher McNall** left a career as an academic in Poland and the UK and qualified as a barrister. He was appointed as a Deputy District Judge and now also holds judicial appointment as a fee paid judge in the Tax Chamber. He also sits as a Judge of the devolved Tribunals in Wales and has an interest in the relationship between the Civil Courts and the Tribunals system. When **Professor Martin Partington** was a Professor of Law at the University of Bristol he organised a major conference on Administrative Law and was appointed to the Leggatt Review of Tribunals whose recommendations led directly to the creation of the Tribunals Service. Martin combined his work at the University with a fee-paid position in the Social Security Appeal Tribunal (as it was then called) and was involved in the training provided to social security judges. Martin now chairs the Dispute Service which runs an on-line dispute adjudication service for landlords and tenants.

'I would like to start by welcoming four new members to the Editorial Board. I am confident that the continuing vibrancy of the journal is assured by these new appointments.'

The Board is keen to keep a focus on the perennially important topic of ensuring that judicial decisions are free from biases and to ensure that, as human beings, all judges are aware of the 'shortcuts' we make in our thinking processes. The article from **Simon Ward** *'Decision making for Tribunal Members: Are you debiasing?'* is a comprehensive explanation of three types of bias that exist and what measures we can all take to mitigate against them. It is full of helpful tips.

There is an article from **Isabel McCord** which explains the work of the War Pensions and Armed Forces Compensation Tribunal and, in particular, the work of the Service Member. The article explains the Armed Forces Covenant and something of the history of the work of the Chamber.

Matters international are tackled in the article by **Ben Yallop** – Taking international work in new directions. Ben explains the role of the Judicial Office and the Judiciary in international work and the importance of working strategically,

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sustainably and in partnership to develop the Rule of Law globally. If you are interested in knowing how to get involved in international work, read Ben's article.

Judge Hannah Bright provides food for thought in terms of developing the future of judicial training. This is the first in a series of two articles from Hannah. You can learn about the death of knowledge, the advent of the information age and techniques such as 'flipping the classroom', gamification and even having fun! Yes, the 'F word' is mentioned. Hannah's second article will appear in Edition 3 of 2018.

We learn from **Judge Brian Doyle** that ADR is alive and well in the Employment Tribunal. Brian sets out how Judicial Mediation and Judicial Assessment operate within the Employment Tribunal. Brian describes how within the former, the judge assists the parties through facilitative methods resulting in a net saving of hearing days in 2017 of 1,195 days. Within the latter scheme, the judge gives the parties an early neutral indication of the strengths and weaknesses of their case.

Another topic of perennial interest to the Board is the cross-fertilisation of judicial skills across courts and tribunal. **HHJ Michael Simon's** article *SEND in the gown* explains how the skills he acquired as a judge in the Special Educational Needs & Disability tribunal equipped him well for his appointment as a Circuit Judge in crime; in particular with his ability to address a jury in a respectful, comprehensive and non-patronising way. Michael also explains how his years in SEND have helped to attune him to the needs of witnesses, lawyers and defendants and adjustments that may need to be made.

Christa Christensen is Chair of the Editorial Board Back to contents

Decision making for Tribunals members

ARE YOU DEBIASING? By Simon Ward

"The big problem, as it is everywhere, is with unconscious bias. I dare say that we all suffer from a degree of unconscious bias, and it can occur in all sorts of manifestations. It is almost by definition an unknown unknown, and therefore extraordinarily difficult to get rid of, or even to allow for. But we must, as I have said, do our best in that connection as in every other."
Lord Neuberger[1]

Introduction

Sound decision making is a key skill for Tribunal Members. It involves clear and coherent thinking, along with organized and reasoned choices. Such careful consideration and deliberation of the details of a case allow rational and balanced conclusions to be made. Yet research into how humans make decisions shows that there are many pitfalls and flaws in our thinking processes.[2] In fact psychological studies show that our brains have inbuilt tendencies to make mistakes, sometimes in widespread, systematic ways, and despite our best efforts to be cogent and logical.[3] Some influences on decision making such as interruptions and distractions are relatively easy to predict and identify. Consequently, measures to avoid these more visible influences should be relatively straightforward. On the other hand, many errors in decision making are hidden from our conscious view of the world and so appear to be much harder to mitigate. However, it is increasingly recognised by researchers that many of these subconscious thinking errors, or what psychologists call cognitive biases, can be minimised if "debiasing" counter-measures are used.[4] This article highlights a number of these counter-measures found in the literature and collates them into a common debiasing approach. It is proposed that by using this approach Tribunals can combat Lord Neuberger's 'big problem', cited above. It is also proposed that if the processes needed for debiasing are made explicit then readers can gain a better understanding of how they can explain and so rebut the recently proposed legal challenge that judicial decision making has been cognitively biased.[5]

1 *Lord Neuberger, Fairness in the courts: the best we can do*, Address to the Criminal Justice Alliance, 2015, 18

2 Institute of Medicine, To err is human: building a safer health system, 2000 Tie National Academies Press, Washigton DC; A King & I Crewe, The blunders of our governments, 2014 One World, London.

3 D Kahneman, Thinking, fast and slow, 2012 Penguin, London.

4 P Croskerry et al, Cognitive debiasing 1: origins of bias and theory of debiasing, 2013 BMJ Qual Saf 22, ii58.

5 G Langdon-Down, Expert witnesses: under the microscope, 2015 Law Society Gazette 7 Dec, 20.

Shortcuts and errors

A central feature of human decision making is the tendency to use shortcuts in our thinking processes. This propensity of the brain to simplify reasoning, such as by using "rules of thumb" or guideposts to steer cognition[6 7], helps speed up decision making and preserve processing power or "bandwidth". However, these shortcut mechanisms, which psychologists call heuristics, tend to produce 'good-enough' solutions more than perfect ones.[8] These good-enough answers can work well, although from time to time they are not sufficiently precise or accurate for the decision undertaken. This mismatch, albeit involuntary, then leads to a decisional error or cognitive bias. Moreover, psychologists have shown that cognitive biases occur in very predictable ways. In fact, the patterns of biases are so distinctive that their presence allows identification of the use of heuristics in otherwise seemingly thought-through and rational decisions.[9] Importantly for Tribunals, cognitive biases are more likely to happen when making decisions under conditions of uncertainty, such as "on balance of probabilities", or when rushed or under various types of pressure or stress.[10 11]

Biases

Researchers have now identified over a hundred cognitive biases, some generic and others context or task specific.[12] Previous articles in this journal have discussed a number of these biases and their impact on Tribunals.[13] Five common and generally agreed biases are shown below [Box 1], along with suggested cognitive counter-measures that could be used.[14 15]

Box 1. Five common cognitive biases and possible counter-measures

Cognitive bias	Cognitive mechanism for bias	Cognitive counter-measure
Representativeness	Similarity or resemblance to a group is used to imply representativeness of that group rather than using the real probability of membership.	Applying the actual base rate rather than the perceived occurrence rate of the factor being considered, is recommended so the correct likelihood is utilised.
Availability	Easily recalled or available memories or experiences are used to predict or estimate an outcome rather than the actual objective occurrence.	Using measures to reduce reliance on memory such as reminders, prompts and checklists, is advocated so that accuracy is maintained.
Anchoring	Salient, noticeable or prominent features are preferred and given undue influence or anchored onto before evaluation is completed.	Slowing down decision making to allow time to evaluate matters fully is advised so the correct weight or apportionment is applied.
Confirmation	Information that confirms our own pre-existing expectations or beliefs is filtered and selected in preference to opposing or contradictory aspects.	Actively seeking out alternative possibilities or positions is suggested so as to challenge and counter subjective, partisan or partial viewpoints.

6 A typical rule of thumb is Occam's razor or the principle of parsimony or simplicity, which is used to point medical professionals to a simpler diagnosis rather than a more complicated or less congruent one.

7 M Andrêa et al., Use of rules of thumb in the consultation in general practice- an act of balance between the individual and the general perspective, 2003 Family Practice 20, 514.

8 Heuristics are described as simple cognitive procedures that help 'find adequate, though often imperfect, answers to difficult questions'. See: Kahneman (n 3) 98.

9 D Kahneman, A perspective on judgment and choice, 2003 American Psychologist 58, 702.

10 *S Bunn & S Stammers, Unintentional bias in Court, 2015 Post note 0512*, Parliamentary Office of Science & Technology Published 22/10/15.

11 *S Bunn & S Stammers, Unintentional bias in forensic investigation, 2015 Post brief 0015*, Parliamentary Office of Science & Technology. Published 01/10/15.

12 Many of these biases are due to mistakes in thinking about statistics and probabilities. See: P Croskerry, From mindless to mindful practice- cognitive bias and clinical decision making, 2013 New Engl J Med 368, 2445.

13 For example see: L Cuthbert, Cognitive biases: 15 more to think about, Tribunals Autumn 2016, 10.

14 P Croskerry, Achieving quality in clinical decision making: cognitive strategies and detection of bias, 2002 Acad Emerg Med 9, 1184.

15 M L Graber et al, Diagnostic error in internal medicine, 2005 Arch Intern Med 165, 1493.

Cognitive bias	Cognitive mechanism for bias	Cognitive counter-measure
Optimism	Overconfident or optimistic evaluations are made of how much we know and how reliably we know it, whilst our own knowledge limits are undervalued	Comparing the current evaluation to a reference group of similar membership is recommended so as to allow calibration of the current decision

But before further examples are highlighted a word of caution is needed first. Readers should be aware that studies focusing on heuristics and biases are often undertaken by researchers in well-controlled conditions or laboratory experiments.[16] Consequently there is significant controversy within academia about the generalizability of findings from this type of research to the complex and unpredictable real-world circumstances and 'in the moment' contexts of practice.[17] In addition, criteria for 'optimality' in decision making are not agreed by academics.[18] Even definitions for biases can be contested. Accordingly, universally accepted recommendations for debiasing counter-measures are not available. As a result, the following advice should be seen more as practical pointers or tips rather than definitive guidance. Future developments in cognition science will also, in all likelihood, lead to changes in any advice given now.

Yet despite these caveats there are many measures present in the existing literature on debiasing that look useful and applicable to Tribunals. Many of these counter-measures overlap so for ease of explanation and clarity I discuss them under the following four headlines: a general strategy, education and training, prevention and specific measures.

1. **General strategy.** The literature does propose at least four generalisations on debiasing which look relevant to Tribunals. The first proposition is that individuals making decisions need to be aware of the major distorting impact of cognitive biases and the importance of implementing debiasing measures. Secondly, individuals need to be committed to enhancing and altering if necessary their thinking processes. Thirdly, debiasing measures need to be used on a regular and continuing basis so they form part of routine practice. Finally, insightfulness and an ability to introspect and interrogate one's own thinking are required. The overall general strategy can be summarised as one of acquiring and developing a mind-set attuned to habitual and effective debiasing. Luckily, the brain's flexibility and intrinsic ability to learn, so-called plasticity, are there to support Members with this cognitive project.
2. **Education and training.** This general strategy and the four propositions advocated are all pertinent to Members' training. Indeed, the necessity of training on debiasing is highlighted in many of the articles sampled. A useful, practical style of training is described as follows in Box 2.

Box 2. Training in stages

Training in stages is advocated.[19] Individuals start by learning to detect biases in others, as this is 'always easier'; and then learn to identify their own biases which is harder. This process begins with the identification of easy or obvious biases and then progresses to recognising less visible or subtle biases. These stages equate to successful bias 'detection'. Next, individuals learn how to self-generate an appropriate debiasing measure for the situation at hand. This stage is followed by learning how to apply the chosen counter-measure so that recovery from the bias is successful. This remedy or bias 'override' requires a not insignificant amount of mental agility and self-reflection. Finally, the last stage involves ongoing monitoring and surveillance for biases so that measures can be implemented early and quickly. This vigilance promotes adaptation and refining of thought processes so that in future biases are more easily inhibited by the 'well-calibrated mind' now developed.[20] .

Various teaching formats are advocated for a training course on debiasing, with active learning using practical methods such as modelling and simulated scenarios particularly recommended. There are many suggestions for the knowledge content of an appropriate course [Box 3]. These include general aspects of reasoning and logic, as well as more specific areas around individual cognitive biases. Readers will probably have their own topic suggestions as well. However, the central aim of training is to encourage the regular use of debiasing measures as this repetition

16 D Kahneman & G Klein, Conditions for intuitive expertise: a failure to disagree, 2009 American Psychologist 64, 518.

17 K A Lambe et al, Dual-process cognitive interventions to enhance diagnostic reasoning: a systematic review, 2016 BMJ Qual Saf 25, 808.

18 Kahneman & Klein (n 16) 519.

19 I Dror, A novel approach to minimize error in the medical domain: cognitive neuroscientific insights into training, 2011 Medical Teacher 33, 34.

20 P Croskerry et al, Cognitive debiasing 2: impediments to and strategies for change, 2013 BMJ Qual Saf 22, ii65.

is key to inducing the self-perpetuating 'changes in brain circuits' necessary for habit formation, and hence the maintenance of the debiasing habit.[21] An additional aim for training, which I discuss next, is to help with bias prevention.

Box 3. A debiasing curriculum

Models of human decision making, memory and cognitive architecture.[22]

Inferences, inferential rules and syllogisms.

Questioning techniques which avoid inducing biases.

Framing effects or the impact on answers of how a question is asked.[23]

Critical thinking, deductive and inductive reasoning.

Metacognition or thinking about thinking.

The knowledge around cognitive biases, their traps and pitfalls.[24]

Specific debiasing measures.[25]

Recognising situations that are high risk for biases.

Cultural differences in styles of thinking.[26]

'However, the central aim of training is to encourage the regular use of debiasing measures as this repetition is key to inducing the self-perpetuating 'changes in brain circuits' necessary for habit formation, and hence the maintenance of the debiasing habit.'

3. **Prevention.** Stopping cognitive biases before they occur is important for effective decision making. This task is aided by the identification and avoidance of situations that are high risk for biases.[27] For example, biases are more common when our brains are tired, not concentrating or distracted. So, paying attention, avoiding fatigue and minimising interruptions are obvious but straightforward preventative measures.[28] Similarly, excessive material, records or documents can distract or divert the brain from the nub of an issue and so the removal of extraneous or irrelevant information is also suggested.[29] Concise, high quality information has the reverse effect. Other higher risk situations that are preventable include resource shortages, emotional influences [Box 4] and even being hungry.[30]

21 T M Marteau et al, Changing human behavior to prevent disease: the importance of targeting automatic processes, 2012 Science 337, 1492; For an example of habit formation see: B J Everitt et al, Neural mechanisms underlying the vulnerability to develop compulsive drug-seeking habits and addiction, 2008 Phil Trans R Soc B 363, 3125.

22 For example, contemporary cognitive models can use the notion of bounded rationality which sees individuals as rational within the limits imposed by heuristics and biases.

23 A Tversky & D Kahneman, The framing of decisions and the psychology of choice, 1981 Science 211, 453.

24 M L Graber et al, Cognitive interventions to reduce diagnostic error: a narrative review, 2012 BMJ Qual Saf 21, 535.

25 Croskerry (n 14) 1202.

26 See for example: R E Nisbett et al, Culture and systems of thought: holistic versus analytic cognition, 2001 Psychological Review 108 291; A Norenzayan et al, Cultural preferences for formal versus intuitive reasoning, 2002 Cognitive Science 26, 653.

27 Situations with complexity, ambiguity or inconsistency all encourage heuristics and cognitive biases.

28 Attentiveness is reported to be enhanced by increased levels of cardiovascular fitness.

29 I Dror et al, Contextual information renders experts vulnerable to making erroneous identifications, 2006 Forensic Science Int 156, 74; see also: I Dror & R Rosenthal, Meta-analytically quantifying the reliability and bias ability of forensic experts, 2008 Journal of Forensic Sciences 53, 900.

30 An American study describes a situation where judges, when making repeated rulings 'show an increased tendency to rule in favour of the status quo. This tendency can be overcome by taking a break to eat a meal, consistent with previous research demonstrating the effects of a short rest, positive mood, and glucose on mental resource replenishment'. See: S Danziger et al, Extraneous factors in judicial decisions, 2011 Proc Natl Acad Sci USA 108, 6889; see also: B Englich at al, Playing dice with criminal sentences: the influence of irrelevant anchors on experts' judicial decision making, 2006 Pers Soc Psychol Bull 32, 188.

Box 4. Emotional responses

Emotions are well-recognised to alter the way we think, overriding rational thought processes and quickly encouraging biases.[31] Preventing these affective responses is a particular challenge as the evolutionarily older parts of the brain that control emotions are deep-seated and entrenched. These "primitive" parts of the brain react rapidly and are hard to compensate for.[32] Even so, a number of potentially helpful measures are advised. For example, taking a 'time-out' or break in proceedings can provide space for emotions to settle; changing the focus of discussions to other matters or returning to the provocative issue later on can also help. On a longer term, learning to monitor objectively and address one's own subjective emotions is endorsed and reassuringly, the literature suggests that this skill of maintaining objectivity gets easier with practice and experience.

4. **Specific Measures.** Four specific debiasing measures are regularly cited. The first of these is the use of standard operating procedures [SOPs]. In fact, SOPs are similar to the Tribunal's practice and procedures already in use, so I will not discuss this area in detail. Suffice to say that biases are inhibited by using structured and methodical procedures which encourage consistency and accuracy. This methodology, where decisional steps are pre-set, can also help reduce the reliance on memory which is itself a well-recognised source of cognitive distortions and pitfalls.

   The second measure advised is the simple task of ensuring that there is the appropriate amount of time for decision making. Indeed, taking time and 'slowing down' thinking is recommended by much of the literature.[33] Moulton goes as far as considering 'slowing down when you should' as the fundamental aspect of expert decision-making.[34] Yet the underlying aim is not just a less hurried style of thinking but the imposition of analytical or 'conscious review' on proceedings.[35] This rational review, which some authors explain as like asking for a second opinion from your conscious mind, aims to ensure an appropriately rigorous and consistent evaluation of the matters being determined.

   An additional aspect of this conscious review is the cognitive skill of 'decoupling'.[36] This involves the conscious disengagement of intuitive and impulsive thinking from rational thought [Box 5]. It is put forward as a core thinking skill for debiasing.

Box 5. Conscious decoupling

Conscious decoupling is the cognitive ability to see one's own impulsive and intuitive thinking for what it is; so the latter thinking can be deliberately and actively separated or decoupled from rational reasoning. It can be imagined as standing back from one's own immediate situation and actively observing one's own thoughts and feelings, consciously acknowledging and interrogating them. Decoupling can also be conceptualised as introducing a space between perception and response, so that the intervening thoughts can be examined and questioned.[37]

   The submission of thoughts for conscious verification allows biases to be countered and shortcuts and impulsivity to be actively suppressed or overridden.

   The third commonly cited specific measure is cognitive forcing. This is a type of obligatory or forced function where an active intervention stops a behaviour from happening until a specific condition has been satisfied. Typically, these pre-planned functions or stop points use some form of physical cue or prompt that forces an individual to apply consciously an additional step or condition before proceeding. For instance, this might

31 For further discussions see: H Bright, A case of being mindful, *Tribunals Autumn 2015*, 8

32 Humans make inferences about a person such as likability and trustworthiness when only exposed to their face for one hundredth of a millisecond. See: J Willis & A Todorov, First impressions. Making up your mind after a 100-Ms exposure to a face, 2006 Psychological Science 17, 592

33 P Croskerry, The cognitive imperative: thinking about how we think, 2000 Acad Emerg Med 7, 1228.

34 C E Moulton et al, Slowing down when you should: a new model of expert judgment, 2007 Acad Med 82, S110

35 Graber (n 24)

36 Croskerry (n 20) ii67

37 Similar cognitive strategies are used in mindfulness training

be a log or checklist that has to be completed in order to continue the task, as increasingly used in medicine; whilst for Tribunals it could be an enforced procedure that compels the consideration of alternative explanations or viewpoints, such as necessarily considering the options for and against a particular position, before a final decision is made.

For Members the extra forcing step could be as simple as a well-chosen or reframed question that precipitates a further deliberation or discussion of the issues; or it could be a prompted consideration of a counter-factual with a question such as 'What if…?' or 'If only…?' Examples of these forcing steps are shown below [Box 6]. However, the desired outcome of all these forcing functions is to make us engage our rational thought processes and to challenge us to keep our minds open and balanced. Interestingly these functions suggest that dissent and differences are useful, even necessary for healthy and effective deliberations, albeit graciously undertaken.

Box 6. Cognitive forcing steps

Consider the alternatives: Looking at or imagining things from a different angle or another person's viewpoint: "in someone else's shoes".

Consider the opposite: Taking the opposite view – "playing devil's advocate" or disconfirming your own position.

Think like an outsider[38]: Taking the perspective or position of an outside observer.

Prospective hindsight[39]: Looking into the future and seeing that the wrong outcome occurred and so looking back to see what was missed and what else should have been considered.

Finally, the last specific debiasing measure recommended by the literature I sampled is guided reflection. This involves a colleague actively encouraging and helping you reflect on an issue and your reasoning about it.[40] This can range from a few pertinent questions prompted by a fellow panellist, to a more detailed conversation or critique. It might even include the colleague explaining or thinking-aloud how they see the same point or being a critical friend and asking the odd awkward question. The pivotal step though, is for the colleague to stimulate you into thinking about your own thinking and then for you to explicitly talk about it. This introspection and verbalising of thought processes can be encouraged for example, by exploring any evidential conflicts or uncertainties present, what they might mean or how they could be interpreted. Other areas for reflection could include a discussion about the inferences made or how a particular position or viewpoint can be justified; whilst an explanation of how part of a statement of reasons would need to be formulated could also be demonstrated or explored.

These reflective conversations are guided because it can be easier for a colleague to identify flawed thinking, as mentioned above. So, the guide can help illuminate these imperfections and also feedback, not as a criticism but for support and development.[41] Guided reflection is described as 'positive and reinforcing when an error is detected and informative when it is not'.[42] An example the author observed of one of these mutually beneficial and valuable conversations is summarised below [Box 7].

Box 7. Debiasing in action

At the start of the concluding deliberations the Member said that he found individuals with emotionally unstable personality disorder a challenge. A colleague asked him why that was the case? The Member went on to say that he had felt an emotional reaction in himself during the oral evidence gathering and that he could feel this altering how he saw the appellant. He said that he recognised that his emotional response was a potential bias and so he

38 Described as useful in particular for countering overconfidence and hindsight biases, as well as anchoring. See: K L Milkman, How can decision making be improved? 2009 Perspectives on Psychological Sci 4, 379.

39 Described as useful for countering overconfidence in particular. See: Kahneman & Klein (n 16) 524.

40 Self-awareness can be described as starting with the cognitive ability of "reflection" as a passive process, moving to the active process of "reflecting on", and then leading to an ability for "reflecting back on" when fully complete.

41 Such feedback is described as useful for overconfidence bias. See: Graber (n 24).

42 Dror (n 19) 36.

wanted to verbalise his feelings and make them explicit as a counter-measure. The colleague asked him to explain more. The Member said that by "putting things on the table" he wanted to [metaphorically] put this bias to one side. Making this explicit would also allow his panel colleagues to support him in making an objective decision. An amicable discussion followed and a number of alternatives were explored and reflected upon before making a readily agreed determination.

A précis for practice

One significant problem with cognitive debiasing is that no counter-measure or mitigation manoeuvre works for every situation or for all individuals. So, whilst there is much that can be done to lessen the impact of cognitive biases, as discussed, it is not possible to exclude completely their influence even with contextually-specific interventions. As these biases are ubiquitous and often hard to identify, it would seem sensible to debias routinely as part of standard procedure. Indeed, many readers will consider they already habitually debias, although others may not be quite so sure. For those unsure, I pose a question. What do you do when you encounter an unusual yet apparently honest and thought-through view from a Member, which you think might suggest some cognitive bias?

Indeed, this Member's differing viewpoint may take you by surprise, albeit not necessarily overtly. Even so I suspect you would **pause** and reflect purposely on what has been said, digesting this alternative position. If you write things down you are sensibly forcing yourself to slow down and think. Your aim will be to engage your rational brain and stop the automatic and emotional parts from responding. You might say something along the lines of 'Let's talk about that'. What will probably happen next is that you start to **probe** gently the Member's comments, asking for clarification perhaps, but slowly unpicking the chain of thought that led to what was said. You talk through and verbalise the issues and sometimes invoke various devices to probe more deeply. For example, you may play devil's advocate, act as an outside observer or even resurrect 'the man on the Clapham omnibus' as comparison viewpoints.[43] Either way, you are meaning to **prompt other perspectives** to find out where to place the Member's view on the spectrum or landscape of viewpoints. Some might say you are challenging the Member's well-intentioned position, others may call it a critique or conceptual reframing. However, a psychologist would see it as calibration; a cognitive process where various viewpoints are sought out, explained and cross-compared with each other and with pertinent objective criteria. The differing viewpoints become important points of calibration in this rational method and allow the relevant weight to be applied to each one. So, in a simplistic way 'Pause, probe and prompt other perspectives' is the shortcut answer to my question above. A rule of thumb perhaps, but hopefully a useful take-home reminder to debias.

Conclusions

An important insight of modern science is that our minds are not like cameras faithfully registering and recording all our encounters with the world.[44] In fact, we see the world through the distortions of our own cognitive processing with many of our perceptions suppressed, ignored or bypassed. With minimal conscious awareness, we select and filter large amounts of incoming information and quickly process it to create our own subjective understandings and interpretations. We do not see the world as it actually is.

'With minimal conscious awareness, we select and filter large amounts of incoming information and quickly process it to create our own subjective understandings and interpretations. We do not see the world as it actually is.'

Our minds also have restricted processing and storage capacities. Therefore, to avoid informational overload and maintain processing performance, various cognitive compromises or trade-offs are used such as balancing expediency versus accuracy. Yet these same processing efficiencies make us prone to inaccurate and imprecise thinking and decisional glitches. For Tribunals, as for other situations where decisions are made in the context of some uncertainty, assuming that cognitive biases are inevitably present seems a sensible starting point. A mind-set attuned to habitual and effective debiasing is therefore essential if these biases are to be minimised consistently. We can then be Members 'who can recognise and counter their own biases whether conscious or unconscious', as advocated recently by Lady Hale PSC.[45]

This article has outlined a common approach to debiasing based on advice collated from the literature. This approach and the measures it comprises, will be familiar to many readers and will no doubt be in use already; it will be less

43 Collins MR identifies 'the ordinary reasonable man, "the man on the Clapham omnibus," as Lord Bowen phrased it', at page 109 in McQuire v Western Morning News Co Ltd [1903] 2 KB 100.

44 I E Dror et al, Cognitive bias and its impact on expert witnesses and the court, 2015 The Judges' Journal, 54, 8.

45 Lady Hale, Judges, power and accountability: constitutional implications of judicial selection, Constitutional Law Summer school, Belfast, 11/8/17 www.supremecourt.uk/docs/speech-170811.pdf.

familiar to others and so will hopefully have prompted or "nudged" individuals into reflecting on and perhaps finessing their own Tribunal practices. Either way, colleagues are invited to pick and choose debiasing "tools" from this article's toolbox of advice. They can be adapted or modified to best suit a particular need or circumstance, and customised to fit a colleague's preferred way of working during hearings. In particular, conscious review, where matters are checked and verified, and decoupling, where intuitive and rational thinking are actively disengaged from each other, come highly recommended. Also by explaining openly how debiasing can be undertaken readers will hopefully be able to rebut with ease a future legal challenge that their decision making has been cognitively biased. This is all the more important for Members as making errors is what defines us as humans.

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FSR-G-217, Issue 1, 2015, 20 www.gov.uk/government/publications/cognitive-bias-effects-relevant-to-forensic-science-examinations

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Dr Simon Ward is a Regional Medical Member SSCS FTT London Back to contents

What do Service Members do?

WPAFC Tribunals By Isabel McCord

History

Firstly, some background on the WPAFC tribunal to help readers understand the service member role. I am indebted to Judge Andrew Bano and his most useful book War Pensions and Armed Forces Compensation – Law and Practice in this respect.

The provision of pensions for those killed or injured in the service of their country goes back as far as the reign of King Alfred and continues to the present day under the War Pensions Scheme (WPS) and the Armed Forces Compensation Scheme (AFCS).

The Pensions Appeal Tribunal (PAT), the forerunner to the WPAFC tribunal, was established in 1917. It consisted of a county court judge, admiral, general, surgeon, physician and trade union representative. By 1918, the tribunal comprised a chairman, usually a lawyer, and two service members with assistance from a medical assessor. The PAT was put on a statutory basis by the War Pensions (Administrative Provisions) Act 1919 and thereafter tribunal members were appointed by the Lord Chancellor. The tribunal chairman had to be a barrister or solicitor with at least seven years' experience, while the other tribunal members were a qualified medical practitioner and disabled ex-servicemen.

The Second World War led to the requirement to provide compensation for death and injuries of non-service personnel as a result of enemy action, e.g. the Civil Defence Volunteers, merchant seamen and civilians. The Pensions Appeal Tribunals Act 1943 required the service member to be a former officer in appeals relating to officers and a former non-commissioned officer in other appeals. Further, the service member was to be of the same sex as the appellant.

The current composition of the tribunal derives from the Child Support, Pensions and Social Security Act 2000 which repealed the earlier provisions regarding composition. From then on all tribunals comprised a lawyer as chair, a medical practitioner and a service member.

The WPAFCC took over the functions of the PAT in England and Wales in 2007 as a result of the Tribunals, Courts and Enforcement Act 2007. PATs in Scotland and Northern Ireland remain separate with their own rules of procedure. As such, tribunal members who sit in England and Wales do not automatically sit in Scotland and Northern Ireland unless they have been specifically appointed to those tribunals.

This support to service people is enshrined in the Armed Forces Covenant, which is a promise by the nation to treat fairly those who serve or who have served in the Armed Forces and their families. In this, the WPAFC tribunal plays an important role, by independently considering the Secretary of State for Defence's decision through an investigation of the facts of the case.

In doing so, it uses the WPS and AFCS legislation. The WPS covers deaths or injuries sustained before 6 April 2005. Those sustained on or after 6 April 2005 are covered by the AFCS. Different legislation leads to different rules governing each scheme. For example, under the WPS, a claim cannot be made until the claimant has left the Armed Forces but there is no time limit for making a claim, except in the case of funeral expenses. Under the AFCS, a claim can be made while the claimant is still serving but has to be made within seven years of the injury or from when the injury is made worse by service.

What sort of cases do we hear?

The tribunal hears appeals brought by a wide range of appellants who have been injured or have died as a result of their service in the armed forces or through enemy action. Such people include: ex-service and currently serving members of the Armed Forces; their dependents (for example widows); merchant seamen; civilians and in some cases, service personnel of foreign countries such as Poland. The appeal may be about "entitlement", so the cause of the injury or illness has to be established and a link with service identified. In the case of the WPS the test is whether the death/injury was caused or aggravated by service and, in the case of the AFCS, whether it was predominantly caused or predominantly made worse by service. Or it may be about what compensation should be awarded for the death/injury. Under the WPS, this decision requires an assessment of the appellant's functional limitations resulting from the injury while under the AFCS, the injury is matched to a tariff, some of which do include functional limitations.

So, what are the differences between employment in the Armed Forces to that in civilian life? The Services have a hierarchical structure and obedience to orders is instilled in those who join. Great emphasis is placed on physical fitness, both on entering the services and maintaining it during service. Team work is vital to success on operations so service personnel do not want to let their team down even when not fully fit. Integrity plays a key role so most appellants are trying to be truthful although they may be poor historians. In return they do have high expectations of being treated fairly by MOD and the Tribunal. Finally, white males are in the majority, with women making up about 12.7% of officers and 9.4% of other ranks while BMEs comprise 2.4% of officers and 8.1% of other ranks.

'The Service member assists the tribunal in understanding service life, such as the conditions service personnel endure...'

The service and age of appellants is very varied. For instance, the case could be about an injury that occurred in the Second World War, or the Falklands, or more recent conflicts. Or it could concern an injury from playing rugby for a unit, or a war widow claiming her husband has died as a result of an injury received during service. The age of the appellants attending a tribunal in any one day can range from 20 to 90. Mainly the appellants are represented by the Royal British Legion but also other Service charities. The MOD provides a Presenting Officer who acts as a friend to the court.

What's the service member's role?

The Service member has substantial experience of service in the Royal Navy/Royal Marines, Army or RAF. Today, we have a wide variety of backgrounds in our service members who are drawn from all three services. Through their

experience they are in a unique position to understand the circumstances in which the injury occurred, and what the appellant and witnesses say about the incident. Through questioning based on their knowledge and experience of the service environment, they can test the appellant's credibility. Further, they can help other tribunal members understand the service related issues of the case and how they differ from situations in civilian life. This expert nature of the service member's role is recognised by the Upper Tribunal when it hears appeals but remits them back to the First-tier Tribunal for a rehearing by panel including the medical and service experts.

The Service member assists the tribunal in understanding service life, such as the conditions service personnel endure when deployed on operations and training for operations. This includes what their specific duties are, the load they will carry when out on patrol and how stressful these duties can be. They know what happens when service personnel join up. During these times, these newcomers to the Services have to live on Service premises and may be "gated" (not allowed to leave camp) for some of their basic training. This is pertinent in a bullying case, as it is not possible for the victim to simply go home at the end of the working day and "escape" the bully.

Why do I enjoy my role as a service member?

I have been sitting on WPAFC tribunals since 2005. During my 32 years in the Army I was fortunate to work with many different Army cap badges as well as the other services. On leaving I wanted to contribute to the welfare of service people so applied to become a tribunal member. I thoroughly enjoy the challenge of analysing the evidence and using the expertise of all members to give our appellants a fair hearing.

In 2016 I sat with Blake J deciding cases brought by 12 appellants who had served on Christmas Island or at Maralinga in SW Australia at the time of the nuclear tests in the 1950s and argued their medical conditions resulted from exposure to ionising radiation. It was a fascinating experience, from which I learnt a great deal, including how to deal with twenty two lever arch files crammed full of documentary evidence and more importantly, for my future tribunal work, how the tribunal should approach expert scientific evidence. In determining the value of that evidence, the tribunal had to test its scientific robustness and weigh it against alternative views held by other scientists. From our discussions on the application of the principles of common law regarding expert witnesses, as reflected in *CPR 35*, I was reminded that they should be experts in their evidence and that evidence should be independent and objective.

Isabel McCord is a WPAFC Service Member *Back to contents*

ADR in the Employment Tribunal

DISPUTE RESOLUTION By Brian Doyle

Introduction

The Employment Tribunal (ET) deals with a wide range of employment disputes, requiring sophisticated case management, lengthy hearings, disputed evidence, extensive factual findings and complex legal issues.[1] [2] As a "party versus party" jurisdiction its proceedings are inevitably adversarial, with a challenging mix of representation. There is a long history of voluntary and statutory alternative dispute resolution (ADR) in the ET, some of it imposed and not always welcomed (such as the workplace dispute resolution procedures in the early 2000s) and some of it under-used and less than successful (such as the Acas[3] arbitration scheme for claims of unfair dismissal and under the flexible working legislation).

The starting point for ADR in the ET is the overriding objective.[4] This enables ETs to deal with cases fairly and justly. That includes dealing with cases in ways which are proportionate to the complexity and importance of the issues and saving expense. ADR thus has a role to play.

An ET shall encourage the use by parties of the services of Acas, judicial or other mediation, or other means of resolving their disputes by agreement.[5] The President may make practice directions about the provision of mediation

1 This article draws my earlier article in (2015) 81(1) Arbitration 20-24. It describes the position in the Employment Tribunal in England & Wales only.

2 President, Employment Tribunals (England & Wales). The President is assisted by two lead judges on ADR, currently EJ Michael Ord and EJ Vincent Ryan.

3 Advisory, Conciliation and Arbitration Service (conventionally abbreviated as Acas).

4 Employment Tribunals Rules of Procedure 2013, rule 2.

5 Employment Tribunals Rules of Procedure 2013, rule 3.

by Employment Judges (EJ) of mediation. An EJ may be permitted to act as mediator in a case even though they have been selected to decide matters in that case.[6]

The opportunity to promote ADR arises after the acceptance of the response to a claim. An EJ considers the case file to confirm whether there are arguable complaints and defences. The judge may make a case management order proposing judicial mediation or other forms of dispute resolution.[7] A preliminary hearing may be ordered at which the ET may explore the possibility of settlement or ADR (including judicial mediation).[8]

Acas

'The role of Acas is pivotal.'

The role of Acas is pivotal to ADR in the ET. Before 2014, Acas offered a successful pre-claim conciliation service, designed to keep employment disputes in the workplace and out of the ET. That had built upon its statutory post-claim conciliation service available once a claim had been presented to the ET. Post-claim conciliation continues to play an important part in ET litigation.

Pre-claim conciliation has now been replaced by a statutory early conciliation scheme.[9] Before a prospective claimant presents an application to an ET they must contact Acas. The conciliation officer endeavours to promote a settlement between the prospective parties. If settlement is not possible or early conciliation is declined, Acas issues a certificate to the prospective claimant, without which an ET claim cannot be presented.

Judicial mediation

The other major area of ADR in the ET concerns judicial mediation. Judicial mediation by selected and specially trained EJs was piloted in 2006 and rolled out nationwide in 2009.[10] All salaried EJs and some fee-paid judges are approved as judicial mediators. A judge who mediates in a particular case may thereafter continue to deal with its case management, but will not conduct the final hearing.

EJs identify potential cases as part of routine case management. In suitable cases, the ET informs the parties of the availability of judicial mediation. If both parties are interested, the Regional Employment Judge assesses suitability and lists the matter for a private hearing. Typically, case management orders are then suspended, although listing of any final hearing is maintained.

An offer of judicial mediation will only be made if both parties are committed to ADR. Offers are made only where it is anticipated that there will be at least three days of final hearing. Originally, only discrimination cases were eligible, but the scope of the scheme is now considerably wider. An important consideration might be whether there is a continuing employment relationship or a non-monetary dimension (such as a return to work or reasonable adjustments for a disabled employee).

As originally introduced, the mediation judges used the facilitative mediation method. In a facilitative mediation, the judge provides the structure and process in order to assist the parties to reach a settlement. The mediator judge does not make recommendations or express an opinion or predict how the tribunal would resolve the case at hearing. The judge "holds the ring" and acts as a go- between for the parties to negotiate a resolution of the dispute.

The limitations of that have been recognised. The parties regularly wanted the mediator judge to be more interventionist. They sought his or her input on matters such as what the issues would be at a hearing, which party would have to prove what matters, how a tribunal would approach those questions and what remedies might be forthcoming (and in what amount) in a successful claim. The parties wanted the judge to assist them in assessing the risks of the litigation and the benefits of settlement.

Many mediator judges in the ET also chafed at the restrictions imposed by the facilitative method. What was the sense of using an expensive judicial resource merely as a conduit for shuttle diplomacy? More recently, therefore, the judges will switch to an indicative or evaluative mediation method, if facilitative mediation has been exhausted and if the parties agree. The indicative or evaluation method assists the parties to reach a resolution by expressing an opinion on the strengths and weakness of each side's case and by making recommendations or suggestions for settlement.

Judicial mediation is successful, although we cannot be certain how many cases would have settled in any event. In 2009, there were 247 judicial mediations in the ET in England and Wales[11], with a success rate of 62%. In 2010, there

6 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, regulation 11.

7 Employment Tribunals Rules of Procedure 2013, rule 26.

8 Employment Tribunals Rules of Procedure 2013, rule 53.

9 Employment Tribunals Act 1996, ss 18-18C; Employment Tribunals (Early Conciliation: Exemptions & Rules of Procedure) Regulations 2014; Employment Tribunals (Constitution & Rules of Procedure) (Amendment) Regulations 2014.

10 It is supported by recently updated Presidential Guidance on General Case Management and Presidential Guidance on ADR.

11 There is a separate scheme in the ET in Scotland.

were 423 mediations (65%). This rose to 525 in 2011 (70%) and 576 in 2012 (70%).

There was a noticeable effect on judicial mediation during the period when fees were payable for ET claims and hearings, and when the caseload fell by some 70%. The need to pay fees might have made a claimant more willing to consider judicial mediation and settlement generally. However, there was a £600 judicial mediation fee to be paid by the respondent. Many respondents ceased to be interested in what was once a free service.

The numbers began to decline following the introduction of fees in 2013 (and of Acas early conciliation in 2014): 473 mediations in 2013 (67%); 318 mediations in 2014 (69%); 346 in 2015 (71%); 407 in 2016 (66%); and 399 in 2017 (69%). The positive effect of the abolition of fees and the return of ET caseload will not be felt in terms of judicial mediations until 2018.

About 999 net hearing days were saved in 2009 as a result of judicial mediations, rising to 1,579 net days in 2012. Savings fell to as low as 867 net days in 2014, although returning to 1,156 net days in 2015, 1,215 net days in 2016 and 1,195 net days in 2017. The number of saved hearing days increases if settlements after the offer of judicial mediation (but before the mediation takes place) and settlements after an otherwise unsuccessful mediation are included. The offer of mediation can often lead to a settlement before the mediation takes place. Similarly, the work done by the judge and parties at an otherwise unsuccessful mediation can lead to a settlement before the final hearing. The ET monitors these settlements and they increase the success rate to almost 75% of cases in which judicial mediation is offered.

'the judge provides the structure and process in order to assist the parties to reach a settlement'

Problems are also created for judicial mediation by the need for Treasury approval of settlements in many public sector employment disputes; by litigants in person taking unrealistic positions in the mediation; by respondents making nuisance value offers; and by parties misusing judicial mediation to test each other's case.

Judicial assessment

Since October 2016, the ET has also been offering a form of early neutral evaluation of claims and responses – judicial assessment.

Judicial assessment is an impartial and confidential assessment by an EJ, at an early stage in the proceedings, of the strengths, weaknesses and risks of the parties' respective claims, allegations and contentions. The purpose of judicial assessment is to encourage parties to resolve their dispute by agreement. It is not envisaged that settlement discussions will necessarily occur during the judicial assessment itself.

ET proceedings are costly of parties' time and resources. They are stressful for parties and witnesses. Almost every case entails risks for both parties. An early assessment of the case by an EJ may assist the parties in identifying what the case is really about and what is at stake. It may clarify and narrow the issues and encourage settlement. This may lead to resolution of the case before positions become entrenched and costs excessive. It may shorten and simplify the hearing. Judicial assessment is particularly valuable because of the lack of information and advice available to parties in ET cases, many of whom are unrepresented.

'1,195 net hearing days were saved in 2017'

Judicial assessment will generally be offered at the first case management hearing. It will take place after the issues have been clarified and formal case management orders have been made. Most cases listed for a case management hearing will be suitable for judicial assessment.

The parties must freely consent to judicial assessment. The EJ will explain the advantages of judicial assessment, but no pressure is placed on any party to agree to it. Judicial assessment is strictly confidential. Anything said in the judicial assessment might be used in subsequent discussions between the parties or in a judicial mediation. However, the views expressed by the EJ are otherwise non-attributable and confidential.

Judicial assessment evaluates the strength of the parties' cases. EJs use their skill and experience in doing this, while remaining impartial. Recognising that evidence will not have been heard, the judge may give appropriate indications about the possible outcome of the case. The judge is not necessarily disqualified from further involvement in the case. That is a matter for the judgment of the judge and of the parties on the usual principles that apply to conflicts and bias.

Judicial assessment is not the same as judicial mediation. An outcome may be that a case is listed for judicial mediation. Judicial assessment is indicative, involving a practical assessment of the case by the EJ. Judicial mediation is usually facilitative, but can be indicative or evaluative; aims to assist the parties to resolve the issues between them without giving indications of prospects of success; and is usually allocated a full day of the ET's time. It is possible that a judicial assessment will lead to immediate settlement negotiations. This is not its primary purpose, but will be

encouraged, and time made available for it.

The ET does not maintain statistics for the number of judicial assessments that result from case management hearings or with what outcome. We intended to do so at first, but, if well done, neutral evaluation is a pervasive technique of good case management. It is thus rather elusive of being captured in recorded data. The general impression is that it provides another tool in the judge's ADR toolbox, but that many legally represented parties regard it as premature. Disclosure of documents and exchange of witness statements have not yet focussed the parties' minds on the real litigation risks. The relatively short timelines in ET litigation mean that later judicial neutral evaluation (after case management but before the hearing) is impractical, particularly when Acas conciliation remains an option anyway.

Conclusion

'ADR is alive and well in the ET.'

ADR is alive and well in the ET. EJs have developed new and improved techniques of ADR in case and hearing management. The objective is to contain employment disputes within the workplace, but where that cannot be, then to ensure that they do not proceed into the ET too readily. Where ET litigation is unavoidable, EJs remain alert to the possibilities created by ADR at all stages of a case, often with invaluable Acas assistance.

Judge Brian Doyle is President of the Employment Tribunals (England & Wales) Back to contents

SEND in the gown

INTERPLAY BETWEEN ROLES

By Michael Simon

When copies of the Tribunals journal used to land on my desk, and more recently via a link in my inbox, I sometimes mused that one day I might get around to writing a learned article worthy of this august publication. The journal has always been filled with erudite treatises on topics of import for those working in one or more of the myriad of tribunals that play such a pivotal role in regulating the interaction primarily between the state and the individual. The content of such expositions frequently has had application across tribunal jurisdictions. What though of any interplay between one's role as a tribunal judge and that in the 'uniformed branch'[1] of the court system, where I now sit full-time? I hope to explore the answer through this article.

My experience as a tribunal judge was solely in the Special Educational Needs and Disability (SEND) wing of the Health, Education and Social Care Chamber (as it now is). When first appointed in 2004, alongside a tranche of new judges, it was to exercise the dual jurisdictions of appeals in respect of special educational needs and of claims of disability discrimination in a school context. Since my full-time appointment to the Circuit Bench in 2016, I have been putting all my efforts into dispensing justice exclusively in the Crown Court.

'What though of any interplay between one's role as a tribunal judge and that in the 'uniformed branch' of the court system'

During my 12 years in SEND, I was fortunate to have the opportunity to sit frequently and, as part of a national panel, to sit in a very wide variety of venues across England. Panels for a SEND hearing are made up of a judge and one or two specialist members, appointed for their knowledge and expertise in respect of special educational needs and/or disability issues. The outcome, representing the collective view of the panel, is communicated through a detailed judgment drafted by the judge, but approved by the specialist members. Appellants and claimants may be self-representing, supported by knowledgeable lay people or have the benefit of a solicitor or counsel. Respondent local authorities and schools are frequently represented by in-house non-legal advisers or else by lawyers. SEND is a distinctly inquisitorial jurisdiction with as little formality as possible.

A criminal trial in the Crown Court is a paradigm of the adversarial system, which, of necessity in many respects, oozes with formality. Perhaps the starkest difference between the role of a circuit judge in the Crown Court and the judicial function in almost any other forum is that, with limited exceptions, I am not the arbiter of the facts of a case. That task is entrusted to the jury, with carefully crafted, case-specific directions on law from me. The transition to relinquishing control over the outcome of a case in this way does take some acclimatisation.

1 The term 'uniformed branch' was aptly used by Judge Meleri Tudur, Deputy Chamber President of the First-tier Tribunal (Health, Education and Social Care Chamber), when commissioning this article. Judges in the various tribunals arguably exercise more specialist jurisdictions than we generalists in the horsehair wigs.

There are some self-evident ways in which experience as a tribunal judge carries over into my work in court. The appellate jurisdiction of the Crown Court is still exercised by sitting alongside magistrates and my many years of acting as an equal voice in a triumvirate of decision-makers prepared me especially well for this particular role.

Another area of crossover lies in the discipline imposed by statute and rules of procedure in SEND, which are intended to provide a cohesive, comprehensive and predictable structure to the tribunal's proceedings. The concept of an overriding objective has been a permanent fixture in the world of the tribunal for more than a decade. Though markedly more expansive and more flexibly updateable, the relatively more recent Criminal Procedure Rules and associated practice directions are intended to perform a similar function. For me, coming from a statutory, rule-based jurisdiction, it has just meant learning a new suite of directives and procedures. Though this seems such an obvious statement, there do appear to be a fair few practitioners in the criminal justice system for whom the procedure rules remain something of a foreign language. Having said that, I have come across practitioners who remain a tad oblivious to the provisions of the Criminal Justice Act 2003, which so fundamentally altered the criminal legal landscape. I sometimes have to remind myself that a handful of barristers, who have appeared in front of me since my appointment, were called to the Bar before I was born and old habits die no less harder, if I may be forgiven for the corruption of the phrase, at law than in any comparable field.

Alongside the obvious cross-fertilisation of skills and experience, are some less scrutable ways in which my time in SEND prepared me for life on the bench. The composition of a jury is the result of a series of deliberately random acts. Juries are fashioned of an almost infinite set of permutations of age, gender, culture, ethnicity, nationality, socio-economic background and of every other characteristic by which individuals are defined. Yet, aside from the presence of an occasional lawyer, or even a judge, juries remain primarily conglomerations of lay people thrown together by chance (or fate, depending upon one's weltanschauung), who deserve respectful, comprehensible and non-patronising support to navigate the unfamiliar waters of the trial process. This is a key skill for a judge and my service in SEND has undoubtedly contributed in large measure to my approach to this task, given my exposure in the Tribunal to the many self-representing parties and lay representatives involved in hearings. If the vibe from the jury box is any accurate barometer, the resulting approach seems quite often to have a positive impact.

Having addressed broader issues of transferrable skills, I should add an important point about knowledge gained specifically from sitting in SEND. There is no doubt that the years spent familiarising myself with unfamiliar diagnoses and digesting professional and expert reports (reliable and less so) about the gamut of different types of special educational need or disability, of whatever origin, has put me in a strong position for understanding the needs of witnesses, jurors, lawyers and/or defendants and the adjustments to the process that can be required to allow them to engage fully and to the best of their ability. Equally, I feel confident in analysing reports from those whose opinions and conclusions may be somewhat less justified by the assessments they have conducted. Just knowing the right questions to pose in such circumstances, if not asked by others and in a purely clarificatory way when necessary, is itself a contribution to the pursuit of justice and to the fulfilment of the overriding objective. From discussions around the lunch table in the Judges' Mess, my knowledge base is clearly an advantage and I have already been allocated a few difficult and sensitive cases, where my SEND experience is considered to be of particular value.

What then of 'best practice'? Are there ways in which we can learn from each other, bearing in mind the distinctions present in different jurisdictions? Some years ago, a word was coined in the vernacular of judicial training. That word is 'judgecraft' – a breadth of judicial skills that apply universally to all fora and which found a type of idealised baseline for judicial competence. Beyond this, there are the enhancements that are necessary to fulfil specific judicial roles.

It is difficult to draw on precise examples of best practice that are uniquely present in the tribunal but are not already replicated in the court service and vice versa. All sectors of the justice system are working under significant pressures and judicial office-holders and staff alike are always demonstrating their tremendous dedication to their roles and the part they play in access to justice. Some features of process or procedure are difficult to translate from one forum to another, even though they have much merit where they are in place. The warned list system in the Crown Court essentially ensures that there is always work to pump into the available courts, even if the originally listed cases collapse or are adjourned. Though challenging to replicate, SEND operates as close a system as is feasible by a method of over-listing cases in London venues with the same aim in mind.

My experience of two very different jurisdictions is that in both (as I expect in most others as well) the judge's work is challenging, mentally stimulating and very important.

In composing this article, however, a specific thought has crystallised in my head. Whether in the uniformed or in the special branch, there is far more that unites us than distinguishes us.

'Whether in the uniformed or in the special branch, there is far more that unites us than distinguishes us.'

HHJ Michael Simon

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Taking international work in new directions

GLOBAL JUDICIAL LIAISON

By Ben Yallop

The judiciary, with support from the Judicial Office, is taking a new approach to international relations and training in a post-Brexit world. Ben Yallop JP, Head of International in the Judicial Office, explains how.

It is generally accepted that there are 195 countries in the world today (193 that are member states of the United Nations and two that are non-member observer states: The Holy See and the State of Palestine). Of these, through census information and best guesses, it Is further generally held that there are 121 countries with a million citizens or more, a figure which will have significance in a moment.

I have been in my role as Head of International for a little over a year and a half. Each time I receive an email about a certain country, either because their judiciary have contacted us, or I hear that a member of the judiciary is to visit, or some third party looks for support with judicial engagement, I have created an email folder. In the last couple of weeks, I have added Cambodia, Jordan, Malta, Nicaragua and Niger. The count of these folders now stands at 125, sailing past the magic 121.

To help put that into context, here is what that looks like on a map.

If you are prepared to take the number of sub-folders in my bloated inbox as an indication of our global reach you can see that our sphere of interest is extensive. Our judiciary is viewed extremely favourably. If somebody, somewhere in the world, is looking to enhance the Rule of Law, improve their system of justice or train their judges you can be reasonably confident that they will look to the UK.

But we can't talk to everyone at once.

Despite the scale of interest in our system we are focusing more carefully than we have ever done before. And not just because of Brexit. I have been working in justice for 15 years (five years at Southwark Crown Court and ten at the Judicial Office) and I have seen the amount of work for judges, in and out of court, increase on an unprecedented scale. Whilst not all the extra work for judges which flowed from the Constitutional Reform Act is unwelcome, time is at a premium. Judges are busy. And pressures on recruitment mean that parts of the judiciary are operating without the full complement needed. If an opportunity to conduct work overseas arises, and if we are to deprive the UK tribunals and courts, however briefly, of your expertise, we need to have a good reason. Hence the need for strategy and focus.

What is the strategy?

Over a decade ago, during his tenure as Lord Chief Justice of England & Wales, Lord Woolf created objectives for international work which are still valid and current today. These have not been replaced, but have been encompassed by new aims which apply to tribunals and courts judges alike.

Our aim for international work today, as established by the Judicial Executive Board, is:

> **'to strengthen the Rule of Law globally, particularly where this supports the UK's interests; and to promote UK law in established and emerging economies, supporting the UK's legal services sector as a whole.'**

To underpin this, we are focusing on:

> **'maintaining and promoting the worldwide reputation of the judiciary and courts and working to maintain and build networks that give the judiciary influence internationally'.**

So, the judiciary is now, more than ever, focusing on international work that is strategic and sustainable and, where appropriate, carried out in partnership.

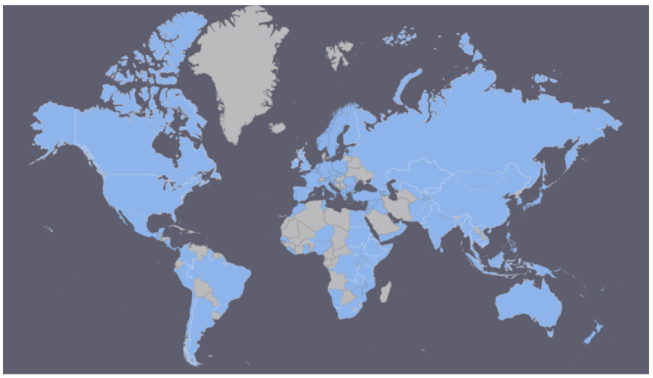
'...the judiciary is now, more than ever, focusing on international work that is strategic and sustainable and, where appropriate, carried out in partnership.'

Who, amongst the judiciary, is doing this?

Since late 2017, the Chancellor of the High Court, Sir Geoffrey Vos, has been ensuring that the Judicial Executive Board is closely involved in strategizing and in February 2018, Lord Justice Peter Gross was appointed the overarching Lead Judge for International Relations with responsibility for the coordination of international judicial work.

We have new structures in place, with clearer judicial leadership, to help ensure that international work is joined up and that we are presenting coherent and complementary messages.

- There is a new International Executive Group, chaired by the Chancellor of the High Court, which brings together the international leads to discuss strategy and to support prioritisation whilst collating information to be fed into the Judicial Executive Board and the Tribunals Judicial Executive Board.
- There is a new International Committee (expanded from a European Committee), which meets three times a year and is a sub-committee of the Judges' Council.
- There is a new International Training Committee, which meets every month or so to analyse requests for training and opportunities for the Judicial College.



Judicial members of the former, in addition to Sir Geoffrey Vos and Lord Justice Gross, are:

- Lady Justice Arden – for supranational bilateral meetings with the ECHR and CJEU
- Lord Justice Hamblen – for Europe
- Lord Justice Moylan – for Family
- UT Judge Gleeson – for Tribunals
- Mr Justice Robin Knowles – for Training
- Mr Justice Picken – for the European Network of Councils for the Judiciary (ENCJ) and the International Association of Judges

Why partner?

One thing which the Judicial Office team has been particularly keen to develop is the strength and number of relationships we have with other organisations who seek to promote the Rule of Law or deliver messages about the strengths of the UK legal system.

Judicial training – an example of the approach

The provision of training to overseas judges is a case in point and the International Training Committee has woven into its terms of reference a recognition that 'there is a need to target practical features of training and assistance that is strategic and sustainable and that these tend to include more programmes of three or four years in length'. Having a judge in the new role of International Training Coordinator (since October 2017, HHJ Rachel Karp) is already helping to reinforce this novel approach.

Our aim is that there should be no more one-off training exercises unless, on careful consideration, we think there is a good reason for doing so. One-offs may be important as pilots or as ways of commencing a relationship, opening up a new subject area, training trainers or as incoming visits for observation or advice.

But what we really want to do is to seize opportunities to contribute at a point in time that is of strategic importance for the country in question, to combine countries or for our contribution in one country to impact others in the region. Sometimes, this will mean saying 'no' to a request for support, or at least 'not yet'.

For example, in partnership with the FCO and CPS, the Judicial College has recently simultaneously trained trial judiciary (in various combinations) from Columbia, Costa Rica, El Salvador, Honduras, Guatemala, Mexico, Nicaragua, Panama and Peru in the adversarial process. Programmes continue in 2018 from 2016 and 2017. The training has also extended to anti-corruption (including sentencing) and case management. As a result, criminal justice reforms in these Central and South American legal systems, which have less experience of the use of adversarial trials, has been supported.

Today we are much less likely to be speaking to a foreign judiciary in isolation and are increasingly drawing on our excellent relationships with one or more Government departments, particularly the Foreign and Commonwealth Office (FCO), The FCO, in particular, is a crucial source not only of funding, but of information. In-country partners provide us with essential assistance with practical arrangements, co-ordination and security. Vitality, the FCO's ongoing presence in-country allows us to monitor the effectiveness of our engagement and allows us to assess its sustainability.

As well as with the FCO, we are increasingly likely to partner with, amongst others, DFID, the CPS, the MoJ, the Commonwealth Magistrates' and Judges' Association, the Slynn Foundation, the British Council, The Law Society, the Bar Council, the Stabilisation Unit, ROLE UK (*Rule of Law Expertise UK*), JUSTICE and so on. While the Judiciary is (of course) independent of the Executive and must be seen as such, we do not free-lance on foreign policy. Working with other organisations we can have a greater impact on justice than we could alone (as well as access to other funding streams) and there are several recent and very clear examples of the benefits of this approach.

What benefits is this change in approach having?

Much international judicial work, particularly training, has at its heart the fundamental aim of improving justice for those who are not so fortunate as us, lucky as we are in having access to a robust and efficient legal system with an incorruptible and independent judiciary.

But there is fresh realisation that there are other benefits to be had in this international work. The best estimates are that the legal services sector brings in £25bn each year to the UK economy and the Government is increasingly aware that our judges can be effective diplomats too. Where parties have a choice where to litigate our influence is important in informing that choice.

The following examples show what can be achieved.

Example 1: Senior judicial delegation visits Iraq

In January 2018, with support from the FCO, judges of England & Wales (Lord Justice Gross, Lady Justice Rafferty and HHJ Hatton) made the first senior judicial visit to Iraq of any foreign judiciary since at least 2003. You may have seen *a short report online*.

The benefits which have flowed from this visit are manifold. We were able to bolster the position of the impressive CJ of Iraq, facilitate access for the FCO to key justice institutions, and deliver messages, both in Iraq and more widely, about "the rule of law and judicial independence as cornerstones in efforts to protect personal liberty, fight terrorism, tackle corruption, and attract investment".

But, perhaps most welcome to many judges will be the reaction of our own Government, which has recognised the value of Judicial Diplomacy and the benefits it brings.

Here then is a valuable opportunity to display the importance of the justice system to our society at home, many of whom take it for granted, and to show just how crucial a part judges play in reinforcing the UK's position as a world leader.

The media attention too will, we hope, help to influence public opinion. Judges are prepared to go somewhere not high on most 'bucket lists' in order to support UK interests and global stability.

The Times 22 March 2018

trative overheads, holiday, maternity/ paternity, sick pay and pensions from

Reforms are in the pipeline: more virtual hearings, video links and pop-

"convincing policy justification and "appear to favour the principle of value

that, as digital services grow, it "makes

result, not simply a risk.

Visiting Iraq made our invisible export of justice plain as day

Lord Justice Gross

Enduring images of Iraq are usually of statues of Saddam Hussein being toppled and, more troublingly, of bombs, guns and fires.

Every year there is a ceremony at Westminster Abbey for the start of the new legal year. We dress in our ceremonial robes and wigs and process in. We invite overseas

and the rule of law. Last year the chief justice of Iraq, Faiq Zidan, attended as his first official visit abroad. We take it all for granted. He did not.

This year, to celebrate the Iraqi judiciary, he invited us to attend a ceremony that he created after his positive impressions and realisation of the utility of such a ceremony in London. I attended with my colleague from the Court of Appeal, Lady Justice Rafferty, and His Honour Judge Andrew Hatton, who sits in the Crown Court and is a director of judicial training. We were guests of honour sitting among 341 senior Iraqi judges flown in from all over Iraq.

learn from the respect and trust society still has in us. From time to time we visit other states — judges are taking a new approach to international work and are developing strategic and sustainable relationships in unexpected directions. Justice is an invisible export. But no senior judicial delegation from anywhere in the world had visited Iraq since at least 2003.

Where justice is lacking, grave difficulties arise for society. The chief justice's stated ambition is to address this deficiency and to demonstrate to Iraqis, and the world, the importance of the rule of law and his commitment to it. In

acknowledging our differences. In Iraq the rule of law is particularly crucial to the rights of individuals, providing a secure foundation for investment and combating corrosive corruption and terrorism.

We appreciate that, under the leadership of the present chief justice, the Iraqi courts may be an island in a choppy sea, but strengthening it can only help in addressing the formidable problems that remain. It is noteworthy that the Iraqi judiciary has been asked to supervise the forthcoming elections, where it can demonstrate its independence. To make progress, especially against corruption, there must be a properly functioning court

forthright views and courage of the impressive president of the Iraqi Bar Association, Ahlam Alami. She has been listed in the top ten most influential personalities in Iraq for 2017. She is the only woman on that list and the first woman to lead the association.

We hope there will be a productive and continuing relationship between our judiciaries. All of us who visited Baghdad were affected by the experience and the potential for impact on a national scale. Justice is never to be taken for granted.

Lord Justice Gross is lead judge for international relations, a former

Example 2: The Standing International Forum of Commercial Courts

In 2016 Lord Thomas, former Lord Chief Justice of England & Wales issued an invitation to his counterparts around the world to come together to create an international forum of commercial courts. Its aim would be to enable the judiciary worldwide to share experiences and discuss subjects of mutual interest. His invitation was accepted by countries with an established commercial court offering and those with a more recent offering. The Standing International Forum of Commercial Courts (SIFoCC) was born.

In May 2017, commercial courts from five continents gathered in London for the inaugural meeting. The attendees were without exception at senior judicial level, including Heads of Commercial Courts. 16 jurisdictions were represented by their Chief Justice. The meeting, as hoped, affirmed the importance and feasibility of cooperation and collaboration between all jurisdictions.

SIFoCC is a world first. It recognises the fact that the number of commercial courts in the world is growing. The strategy strives to avoid a view of the future as simply a competition between jurisdictions, and an approach in which we act simply as a competitor. It exists for three reasons:

- First, because users – that is, business and markets – will be better served if best practice is shared between courts and courts work together to keep pace with rapid commercial change.
- Second, because together courts can make a stronger contribution to the rule of law than they can separately, and through that contribute to stability and prosperity worldwide.
- Third, as a means of supporting developing countries long encouraged by agencies such as the World Bank to enhance their attractiveness to investors by offering effective means for resolving commercial disputes.

The secretariat for this important body is based in London and comprised of Judicial Office staff, furthering our international influence. You can see reports of the first meeting, the range of countries it allows us to engage with and other material online at *www.sifocc.org*

Europe

Of course, we have not forgotten Europe and many readers may be curious to know what impact Brexit is having. Our relationships with our judicial colleagues within the EU remain of critical importance and hold strong. Many judges are members of European bodies which share information about their respective systems, consider best practice, seek to develop the law and so forth and there seems to be an enduring appetite for us to continue to work very closely with our European neighbours. Sir Geoffrey Vos, and other senior judges, have been working hard within the EU to ensure that there are no misunderstandings about the ongoing strength of UK law. Lady Justice Arden, in particular, continues to keep strong our relationship with the supranational courts in Strasbourg and Luxembourg.

As a department, we are working hard in respect of analysing and addressing the technical and downstream impacts of Brexit. This is, of course, not easy. Simultaneously, we are doing all we can towards the promotion of the British legal services industry and English common law abroad.

What next?

It is not always easy to predict where our work will take us next. For all the talk of clear strategy we must retain some flexibility and, by design, we are sometimes reactive to opportunities. I envisage ongoing work to help the strengthening of ties with Commonwealth jurisdictions and hot judicial topics, attracting interest globally, include modern slavery and fintech. And we are keen, in all things, to use international work as a way to encourage improved morale and greater diversity within our own judiciary.

Heading overseas or welcoming foreign judges?

Whether you are heading overseas for a conference, planning to host a delegation of foreign visitors or something else entirely different, please do not hesitate to get in touch with the Judicial Office. We keep records of judges who have connections overseas and, if judges wish, can help to channel incoming visitors towards these valuable contacts. In short, we are here to support you in all things international.

We can offer briefing and background material, put you in touch with other judges who might have crucial insights and, if you are travelling yourself, we can alert the FCO to help keep you safe should an emergency arise. We

can also help you to ensure that the messages that the judiciary is delivering are consistent and complementary, protecting you from a host of potential pitfalls.

You can reach us via email at: *InternationalRelationsJudicialOffice@judiciary.uk* or in writing at: The International Team | Judicial Office | 11th Floor Thomas More Building | Royal Courts of Justice | Strand | London | WC2A 2LL. More information can be found at *www.judiciary.gov.uk/international*

Ben Yallop is Head of International at Judicial Office *Back to contents*

New directions in judicial training

PART ONE

By Hannah Bright

This is the first of two articles exploring ideas for the future of judicial training.

Life-long learning

Reform. Transformation. Change. Judicial office holders (JOHs) are used to hearing these words. But it's bigger than paperless courtrooms, virtual hearings and the closure of court buildings. Look at the wider picture – are we witnessing the biggest change in the history of human enlightenment since the invention of writing – the death of knowledge and the advent of the 'information age'?

The time span from the gaining of knowledge to the date when it becomes obsolete (its half-life) is shortening. The acquisition of knowledge at the outset of one's judicial career, to be updated as new law emerges, is no longer sufficient. We must keep up with the rapidly changing world around us, know our Snapchats from our WhatsApps. Our chatbots from our cloud platforms. We must run to stand still. We need life-long learning.

Bespoke, on-demand training

The individual is no longer the repository of knowledge. Instead, the organisation becomes the repository of information. The judge becomes expert in asking the right questions and accessing answers, to be supported by a Judicial College which provides carefully curated, signposted information and 'on demand' training, accessible whenever the need arises.

There's a revolution in the judiciary too. A significant pool of knowledge and experience is being lost in the 'silver tsunami', the wave of 'baby boomer' JOHs retiring. We are increasingly diverse, from different racial, gender, cultural, social and legal backgrounds, but also from different learning backgrounds and jurisdictions. 'One size fits all' training no longer cuts it. We need bespoke training, tailored to our personal needs.

'We must keep up with the rapidly changing world around us, know our Snapchats from our WhatsApps. Our chatbots from our cloud platforms.'

Coaching and training passports

Should we move from mentoring or appraisal to coaching? More experienced veterans could guide newer JOHs towards their goals, suggest effective strategies, discuss training needs, give support and encouragement and devise a structured programme of improvement and feedback. Coaching could maximise 'on the job' learning, mitigate the silver tsunami and provide a bespoke learning environment for each judge.

We could map training pathways and track progress through the creation of training 'passports' – a personal record of training needs, opportunities, achievements and courses completed. Such a training passport can be used to track and evidence continuing professional development, develop experiential or 'on the job' learning and provide focus for coaching.

Blended learning and flipping the classroom

A mix of e-learning and conventional training methods can maximise resources and tailor the learning method to the material, the aims and objectives, the target audience and the constraints of time and space. Using a mix of training methods is known as 'blended learning'. Imagine signing up for a training module on autism spectrum conditions, for example. The module might start with a video of an autistic litigant relating their experiences or film of a real or simulated court-room 'fail' by a judge. Or there could be a case study or quiz to engage curiosity or identify areas of difficulty.

The 'input' stage of training is done by delegates on their own, in a spare moment, at their leisure and as many times as they like. This delivery of content (the material to be learned) could be either by e-learning or reading a paper or watching a video. The next stage, practice and consolidation of learning, can be a short burst of face-to-face learning, focusing on practising skills, role play, group discussion or shared experiences. This is 'flipping the classroom': delivering content through independent study and using classroom time for practice. It maximises expensive face-to-face time by focusing on hands-on practice of skills and knowledge, and frees the trainer up to answer questions, check understanding and provide support.

Finally, learning can be embedded through a series of follow-up activities in the workplace, such as quizzes, tests, action plans, self-assessment exercises and peer group discussions through online chat rooms. The online and face-to-face portions should be well integrated into one whole, cohesive module of learning. Such blended learning has been shown to significantly improve outcomes over traditional learning, in part because different learning styles are accommodated.

Sounds expensive? Complicated? Not at all. The key to this type of learning is our new technology. With a judicial laptop or maybe a personal smartphone or tablet, every judge already carries a vast training resource. The potential of tech is huge, provided we recognise that it's a tool for furthering learning objectives, not an end in itself.

New technologies

With a smartphone or tablet, learning can be handy, anytime, anywhere, flexible and on demand. Micro-modules (short one or two-minute smartphone modules) are a great way to introduce topics, consolidate and reinforce learning or prompt online discussion. Quizzes, tests and chat rooms can be accessed by email. We already have the technology – trainers and learners simply need to be more creative with it.

Ever struggled with your new laptop? The answer may be right there in front of you. YouTube has thousands of instructional videos, teaching everything from pheasant plucking to identifying Peruvian monkey frog mating calls. It contains countless videos on sending an email in Outlook or saving a file to OneDrive. We need not wait to be trained in IT - we can be training ourselves. There are a multitude of podcasts and e-books on relevant topics, turning tedious commutes into learning time (or leisure time, if we prefer). All that's needed is clear signposting of these resources.

A multiplicity of online training tools is available, from Videoscribe (animated whiteboard videos) to Prezi (a visually stimulating, non-linear alternative to PowerPoint). Classroom polling tools, such as Kahoot.it!, Slido, or PollEverywhere, make use of smartphone technology for quizzes, plenary discussions, group work feedback and statistics in the classroom. Infographics (like Venngage) can deliver simple content attractively online.

The F word

But this all sounds like FUN?! Not nearly serious enough for judicial training, surely? While gravitas is vital in the courtroom or tribunal, why can't judges have fun while learning? In fact, making training fun improves learning. Fun experiences increase dopamine, endorphins and oxygen in the brain, promoting learning, improving memory and enhancing self-led learning.

'But this all sounds like FUN?! Not nearly serious enough for judicial training.'

There is one particular learning strategy which maximizes the fun. It also simply and easily engages and motivates learners, improves retention, enhances problem solving, offers experiential learning, builds in real life obstacles (such as time pressure, complexity and miscommunication), enables safe fails, gives immediate reinforcement and feedback and motivates learners to teach themselves, inciting them to devise and revise their actions until they arrive at the best possible answer. This tool is 'gamification'. While it sounds frivolous, it's a very serious matter in the world of training. A report by the Federation of American Scientists found that certain 'serious games' increased task completion by 300%, improved retention by 90%, increased participants' confidence in the field by 20%, conceptual knowledge by 20% and factual knowledge by 10%.

Even more fun!

So what is it? Ever tried the language learning app Duo Lingo? 'Gamification' uses features drawn from games (board games, card games or video games) within training. That doesn't mean you'll be asked to blast aliens or click on lines of luridly coloured fruit. Picture this: At the start of a training module on vulnerable witnesses, the trainer tells you there will be a short quiz at the end to see how much you have absorbed from the training. How do you react? You might groan, but it's clear that even such a simple ploy will significantly increase your engagement and motivation to learn, your enthusiasm and retention of the information. It will reinforce the learning content and provide you and the trainer with instant feedback on the efficacy of the training. That's 'gamification'. It doesn't have to look like a game or lack gravitas. It just means spicing up learning with the introduction of elements of reward, time pressure, collaboration or competition, random chance or other features of games.

Where gamification really comes into its own is soft skills training, where learning is virtually impossible without practice. The military and medical professions both use serious games for developing teamwork, leadership, ability to work under pressure, emotional intelligence, communication, self-control, negotiation and conflict resolution skills. Given the intellectual, time, communication and other pressures for a JOH, gamification has huge potential in our life-long learning and development.

I hope this article has prompted you to think about your own learning, where it might take you and what you might want. I also hope it has laid some groundwork for learning to become more tailored to you, the learner, and above all, more fun. Game on!

Hannah Bright is an Employment Judge Back to contents

Around the UK in 55 days

SPT UPDATE

By Ernest Ryder

On 16 May 2018, I began my tour of the UK to speak to judicial office holders about reform. Accompanied by note-taking members of my team from the judicial office and our reform consultants (Passepartout being engaged in other duties), I have met judges and members from around the UK to obtain comments, ideas and details of any concerns, and to answer questions arising out of the reform proposals set out in the recently released Judicial Ways of Working 2022 documents.

Rather than a £20,000 wager, the stake in this tour (and the mirroring tour that has taken place within the courts) has been the success of the HMCTS £1bn reform programme, which includes over 50 projects aimed at changing and improving the court and tribunal services by introducing new technology and modern ways of working. Like Phileas Fogg's belief that a rail improvement in India would increase the efficiency of worldwide travel, I believe that these new technologies and systems will improve the efficiency and effectiveness of our justice system. Whilst efficiency is an important driver, that is clearly not the only consideration. We need to consider whether the changes will improve access to justice, reinforce the rule of law and fortify our judiciary. Reform is not meant to change justice. It is meant to ensure that justice can continued to be administered by us in the future in a way that meets the needs of our users. And as members of the judiciary, you are in an excellent position to provide insight into how best this can be achieved.

During my tour I did not meet with the kind of scrapes that befell Mr Fogg, but there were a few difficulties, including a circuitous wander around Reading attempting to locate the tribunal building, and a poor WiFi connection that cut off my live streaming event part-way through. Notwithstanding these small challenges, undertaking the tour has been a hugely positive experience. I have been impressed by the number of you who attended the meetings, as I am well-aware of how difficult it is for you to take time out of your already pressing schedules. I would like to say a specific thank you to all of the Regional Judges and Presidents who helped to host the meetings and participated in the discussions. It was hugely helpful to be able to gain from you a sense of the attitudes to reform that have been expressed by those under your leadership (and the refreshments that you offered were also much appreciated!). I would also like to thank the operations managers and buildings managers, whose incredible support made the smooth-running of the meetings possible.

The feedback everyone provided during the reform meetings, and in well over 1000 survey returns (including those submitted by associations, chambers and tribunals), are now being analysed, to provide data both jurisdictionally, and cross-jurisdictionally between the courts and the tribunals. The next step is for the reports that result from that analysis to be considered by the Judicial Engagement Group and the Tribunals Judicial Executive Board, and discussed by the Reform Change Network on 23 July 2018, which includes in its membership all of the judicial office holders who are specifically involved in reform projects.

Over the coming weeks, there will be a detailed consideration of the feedback on a tribunal by tribunal basis, so we can start to plan for the future. As I have emphasised before, there will not be a 'one size fits all' solution for reforming the tribunals. However, I do expect that cross-jurisdictional themes will emerge and there will be areas in which there can be common elements. The strength of the reform programme is that it allows for the new technologies and systems that are being developed to be tailored to the requirements of each jurisdiction. Your input into what is needed for the tribunals in which you sit will be invaluable when the requirements of specific jurisdictions are being considered.

It will obviously take time to ensure that your efforts engaging with the reform process are fully and thoughtfully considered. Given the scale of the work involved, I am not expecting to be able to share the analysis of the feedback, or talk about its implications for the reform programme, until October. My tour is in no way the end of this story though, so watch this space.

I suppose my final thank you should be to all of you for being part of the 'Reform Club' and working with me to help the government create a legal system of which we can all be proud (and to Jules Verne for the shameless literary references!).

Sir Ernest Ryder is the Senior President of Tribunals Back to contents

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.

- *Tribunals journal*
  All copies of Tribunals journal from Spring 2006 to date
- *Senior President of Tribunals 2018 Annual Report* 25 May 2018)
  This is the third Annual Report by Sir Ernest Ryder
- *Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal* (11 June 2018)
- *HM Courts & Tribunals Service annual report and accounts 2017 to 2018* Practice Statements revising the Practice Statements of 13 November 2014.

Delegation of Functions to Tribunal Caseworkers First Tier Tribunal

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

- *War Pensions and Armed Forces Compensation Chambers*
- *Health, Education and Social Care Chamber*

Useful links

- *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*
- *Rightsnet*
- *Child Poverty Action Group*
- *The Public Law Project* – public law and administrative justice web site including relevant research.

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*