

Ombudsman and Tribunals Familiarisation Workshop

10.30am – 2pm, 11 October 2019

Simmons & Simmons

Attendees

Name	Role/Organisation
Naomi Creutzfeldt (Co-Chair)	Reader in Socio – Legal Studies, Westminster University
Donal Galligan (Co-Chair)	Director, Ombudsman Association
Sir Ernest Ryder	Senior President of Tribunals
Rob Behrens	PHSO Ombudsman
Andrew Medlock	Deputy Director, Parliamentary & Health Service Ombudsman
Mick King	Local Government and Social Care Ombudsman (LGSCO)
Sharon Chappell	Assistant Ombudsman, LGSCO
Richard Blakeway	Housing Ombudsman
Emma Foxall	Deputy Housing Ombudsman
Anthony Arter	Chair, Ombudsman Association (and Pensions Ombudsman)
Evan Lerwill	Assistant Ombudsman, LGSCO
Judge John Aitken	President Social Entitlement Chamber
Judge Alison McKenna	President of the General Regulatory Chamber
Judge Meleri Tudur	Deputy President of the Special Educational Needs Tribunal (SEND)
Judge Siobhan McGrath	President of the First Tier Property Chamber
Judge Fiona Monk	Regional Employment Judge Midlands (West) Employment Tribunal, Principal Judge (Strategy & Implementation)
Jason Greenwood	Delivery Manager, SEND tribunal
Richard Kirkham	Senior Lecturer, Sheffield University
Brian Thompson	Senior Lecturer in Law, Liverpool University
Chris Hodges	Professor of Justice Systems, Oxford University
Margaret Doyle	UK AJI
Robert Thomas	Professor of Public Law, Manchester University
Diane Sechi	Solicitor, Simmons & Simmons
Chilli Reid	Executive Director, AdviceUK
Eileen Pereira	CEO, Personal Support Unit
Heidi Bancroft	Secretary to the AJC
Ann Sherlock	Senior Research Fellow, Bangor University
Joe Tomlison	Senior Lecturer in Public Law, University of York
Nick O'Brien	Honorary Research Fellow, Liverpool University
Luc Altmann	Deputy Head of Insight, HMCTS
Ash Patel	Deputy Director of Justice, Nuffield

1) Welcome and brief overview of planned research into ombudsman and tribunals – Dr. Naomi Creutzfeldt, Chair

Dr. Naomi Creutzfeldt welcomed attendees and thanked the Arts and Humanities Research Council for funding the workshop. She set out the planned research in this area which would set a template that could be taken into other jurisdictions. She had applied to Nuffield for funding a post doc to research the user journey through the admin justice system to learn about the pathways to either ombudsman or tribunals, which would include a short film that showed a lay audience what a typical pathway for a complainant would be. It would also include systematic interviews with ombudsman schemes and tribunal case workers and participant observations to understand the process more fully (all of this with ethical consent and respecting the data protection rules).

2) The Ombudsman and Tribunals Familiarisation Initiative

Sir Ernest Ryder set the scene by referring to the [speech](#) he had given at the Ombudsman Association Conference in May, wherein he outlined his concern that the current administrative justice system was incoherent. He summarised his speech and emphasised the need to understand the user perspective. To change for the better, there was an urgent need for a clear agenda for discussion, research and training. There was an imperative need for the two organisations present to work together, with effective signposting and a memorandum of understanding; they should be working towards joint presentations to the Government to ensure that there was a clear understanding of how they both operate. He also stressed the need for the accessibility of data owned by the ombudsman schemes and the judiciary, which was at the heart of research. The SPT wanted to open up the debate on how to improve decision-making, and this required honest contemplation on what did and didn't work.

3) Response to SPT Speech – Dr Naomi Creutzfeldt and Richard Kirkham

Richard Kirkham and Naomi Creutzfeldt had drafted a [blog](#) in response to the SPT's Ombudsman Association speech. Richard summarised their response and spoke about the need for legislative reform, in the wake of systematic incorrect decision-making. They had responded to the four areas suggested by the SPT as the way forward. He concluded that there was a need for further research to understand to what extent Ombudsman and tribunals work together already, and whether the Ombudsman receiving their own initiative powers would change the dynamic between the two bodies. He believed the suggested programme of interoperability to be a radical one, although he questioned whether the ombudsman role would become too legalized.

Naomi stressed the importance of the user perception of the system and the opportunity of digitisation to understand and improve their experience. She noted that exchange of best practice between the two systems would be beneficial. She acknowledged that although researchers faced the usual challenges of access, there was a need for continued research in this area, together with a willingness to co-operate.

4) Benefits of Working Together – 'McKenna – Berg Model', Judge Alison McKenna

Judge Alison McKenna outlined the pragmatic arrangement that she and Jodi Berg, former Charity Commissioner drew up in 2010, which became known as the 'McKenna-Berg Model'. This came off the back of the newly created first tier charity tribunal to hear appeals from charities. They agreed to divide the appeals between the two organisations - procedural and customer services complaints would fall under Jodi's remit whereas substantial areas to be remedied would fall to Alison McKenna

at the charity tribunal. They created an MOU between the two organisations, which set out how and when they would each signpost the public towards the pathway best suited to their needs, the order of priority, the need for a liaison officer, the requirement of regular meetings, exchange of decisions and the sharing of their annual report. Although the model was no longer in operation, due to structural changes, Alison believed it could still be a useful starting point for further discussions.

5) View from Different Sectors

Naomi asked for views from the sectors followed by comments from around the table.

Anthony Arter (Chair of Ombudsman Association and Pensions Ombudsman) welcomed the two sectors working closer together. He had crossed that divide as the pensions ombudsman and built a good relationship with high court judges, which he considered an important relationship when dealing with decisions which are challenged in the high court. He gave a good example of working together with a high court judge to deliver justice in a particular case.

Local Government and Social Care Ombudsman (LGSCO) /SEND Tribunal

Mick King (LGSCO) welcomed the creative thinking for administrative justice particularly around special educational needs and disability (SEND) which was a huge area of concern. The LGSCO currently upheld nine out of ten cases put before them. It was recognised that the public experience of both tribunals and ombudsman was a frustrating and fragmented one, and that the Ombudsman was only able to provide partial remedies owing to legislative restrictions. Although it was acknowledged that local authorities were working under considerable pressure, appeal rights were routinely compromised, and unsustainable decisions were made. His organisation welcomed a fresh approach to create a more coherent administrative justice framework. Their belief was that legislative change to sweep away barriers was required but this did not need to be contentious, instead enhancing both organisations and allowing them to work in parallel.

Judge Meleri Tudur (Deputy President, the Health Education and Social Care Chamber) explained that the first tier SEND Tribunal were part-way through a Government-implemented two-year programme, whereby their jurisdiction had been extended to allow users to request recommendations about the health and social care needs and provision specified in EHC plans when making a SEND appeal. The Department of Education had estimated 350 appeals over the course of the programme, in fact 1300 appeals had already been registered. This was an example of how a user could successfully bring all their issues to the tribunal and have them dealt with at the same time. The draft Protocol was welcomed. Legislative changes were not a concern to the Tribunal, and they were happy to share copies of decisions with the ombudsman, where possible.

Discussions ensued around suggestions for a more joined up approach, including a joint website. It was confirmed that this had been discussed previously, and one was being set up by the SEND Tribunal but was still very much in its infancy.

Housing Ombudsman / Property Chamber

Richard Blakeway (Housing Ombudsman) explained that the Housing Ombudsman had seen a rapid increase in demand for their services over recent years, showing an obvious appetite for redress through the scheme. Signposting was not straightforward, this was a rapidly changing sector and

there were a number of alternative redress schemes available (including more than one ombudsman that dealt with housing). He pointed out that it was a complex environment for leaseholders, with a number of complaints falling outside of their jurisdiction. He emphasized the need to signpost at the right time and early on in the process, whilst welcoming the initiative of working with tribunals.

Judge Siobhan McGrath (President of the First Tier Property Chamber) gave two examples of cases where there was a cross-over of jurisdiction between the tribunal and Ombudsman in this sector, and further questioned whether such cases should be engaging with the legal system at all. Judge McGrath has spoken with Chris Hodges about the logistics of the different jurisdictions working together, and one suggestion had been a property portal - where housing/property disputes were lodged, and consideration was made as to who would deal with the case, which would also include advice and mediation. She didn't anticipate the need for legislative reform and would be meeting with the HMCTS reform team the following week to discuss designs.

The SPT pointed out that the similarities between the roles of tribunal and ombudsman caseworkers. The opportunity for interoperability was clear between the two and the opportunity to share joint practice.

Parliamentary and Health Service Ombudsman (PHSO) / Social Entitlement Chamber

Rob Behrens (Parliamentary and Health Service Ombudsman) welcomed the SPT's initiative and his address in Belfast. He explained that the PHSO were currently undergoing a three-year transformation programme, which was relevant to this strategy. It included the accreditation of case handling staff, the use of mediation and early resolution strategies, the publication of all casework and the development of good complaints handling across the Country. His belief was that the Ombudsman scheme required own initiative powers, and he gave examples of how Ombudsman schemes in Wales and Northern Ireland already had those powers. He thought that some legislative change could be needed but emphasized that good practice was already in place, with tribunals already signposting to the PHSO.

Judge John Aitken (President, Social Entitlement Chamber) responded with his analysis of the courts and tribunals digitisation programme which had been positive, resulting in centralised and digitised reforms. He informed the group that 60% appeals for social security and child support cases were currently being submitted online. Whilst he recognised the risks of digitisation, he believed this would reduce costs and speed up administration. He was also positive about the increased role of caseworkers in decision-making. He echoed the thoughts of others by saying he didn't believe legislative change was required in order to move forwards. However, he stressed the importance of consultation with the public.

Discussions continued around issues with universal credit, poor decision-making and inadequate internal review by the DWP and how this was picked up by the two sectors. Engagement with DWP was cited as a problem but the development of continuous online resolution provided the essential link to providing feedback to the DWP. Whilst universal credit had not been an area that the ombudsman had received complaints about making it difficult to investigate in the absence of own initiative powers. It was agreed that the desire for a closer working relationship between the two sectors was not a euphemism for judicialisation of the ombudsman system.

- 6) Introduction of Tribunals/Ombudsman Familiarisation Working Group – Donal Galligan, Chair of the Working Group

Donal Galligan set out the background to the working group which had been formed to encourage ways for the two sectors to work together, which was one of the priorities of the AJC. It had good representation from across the sectors including ombudsman schemes, tribunals, academics, advice sector organisations and pro bono lawyers. They were in the process of developing three pilots which they hoped would be rolled-out more widely to other UK jurisdictions.

7) Case Study: LGSCO/SEND Tribunal Pilot – Sharon Chappell, Assistant Local Government and Social Care Ombudsman

Sharon Chappell, Assistant Local Government and Social Care Ombudsman (LGSCO) spoke about one of the pilots being taken forward by the working group and between the LGSCO and first-tier SEND tribunal. She explained that SEND was currently the area of most concern at the LGSCO. After initial discussions with Donal and Jason Greenwood, she attended the First Tier SEND tribunal offices in Darlington earlier this year, to spend time with their admin support teams. This had given her a much greater understanding of the work and pressures those teams were experiencing. A protocol has been drafted on information sharing between the two organisations. Whilst this focused on small achievable areas, there was scope to become more ambitious. Staff at the LGSCO would also observe tribunals which would give them appreciation of a tribunal environment. Jason Greenwood reiterated how helpful the visit had been in gaining reciprocal insight and understanding. Discussions included the importance of including other redress mechanisms, such as mediation, and the publication of case decisions and data.

8) Discussion – How can the two sectors work better together?

The meeting discussed forthcoming changes anticipated in other jurisdictions, including Scotland and Wales, giving comparative research opportunities. Chilli Reid urged both sectors to keep the user at the core of all decisions. It was agreed that digitisation would lead to more data becoming available, and that investigations would arise out of that data, which would be published and be openly accessible. There was agreement that emphasis needed to be put on users having a universal right to redress without having to pick through a maze of information to find the correct route.

There were discussions around whether changes could be implemented easily. Tribunals had been moving towards a simpler system with exit points at each stage for some time. Software had followed these changes, so any alterations should not be difficult to execute.

It was proposed that further workshops should be scheduled for additional exchanges of ideas, and that invitations extended to other accountability agencies.

It was noted that the bigger Government departments have internal complaints systems, and users were often filtered out before they reached the Ombudsman stage. This was counterproductive to redress, because the Ombudsman was not then picking up systemic issues. Procedures that involved complaining first through MP's were agreed to be similarly off-putting to users.

It was suggested by the SPT that the Secretary of State for Justice or a junior minister be invited to join in these discussions to gain leverage, and that both the tribunals and ombudsman schemes working together on this would send a much more powerful message for change to the Government. It was highlighted that the forthcoming [report](#) on the Commission of Justice in Wales and the recommendations it made would be of interest.

The SPT concluded that his plea for collaboration would require improved bilateral working including signposting; publication of new data; reporting of decisions in all jurisdictions; sponsoring research into new and existing processes; the sharing of investigative and training resources; joint advancement of the need for ombudsman to have own-initiative powers; and work to focus on the tribunal reform process. In terms of sequence, there should first be bi-laterals between the organisations and then tri-laterals with the UK Government. He suggested that a Working Party be established (separate from the working group's day-to-day activities) to identify and research 'bigger picture' solutions and to organise a conference involving a wider group of stakeholders, including regulatory bodies.

DG thanked everyone for attending and asked for anyone interested in assisting the working group or joining the Working Party to contact Heidi Bancroft by email.