SENIOR PRESIDENT OF TRIBUNALS

Senior President of Tribunals' Annual Report

February 2013

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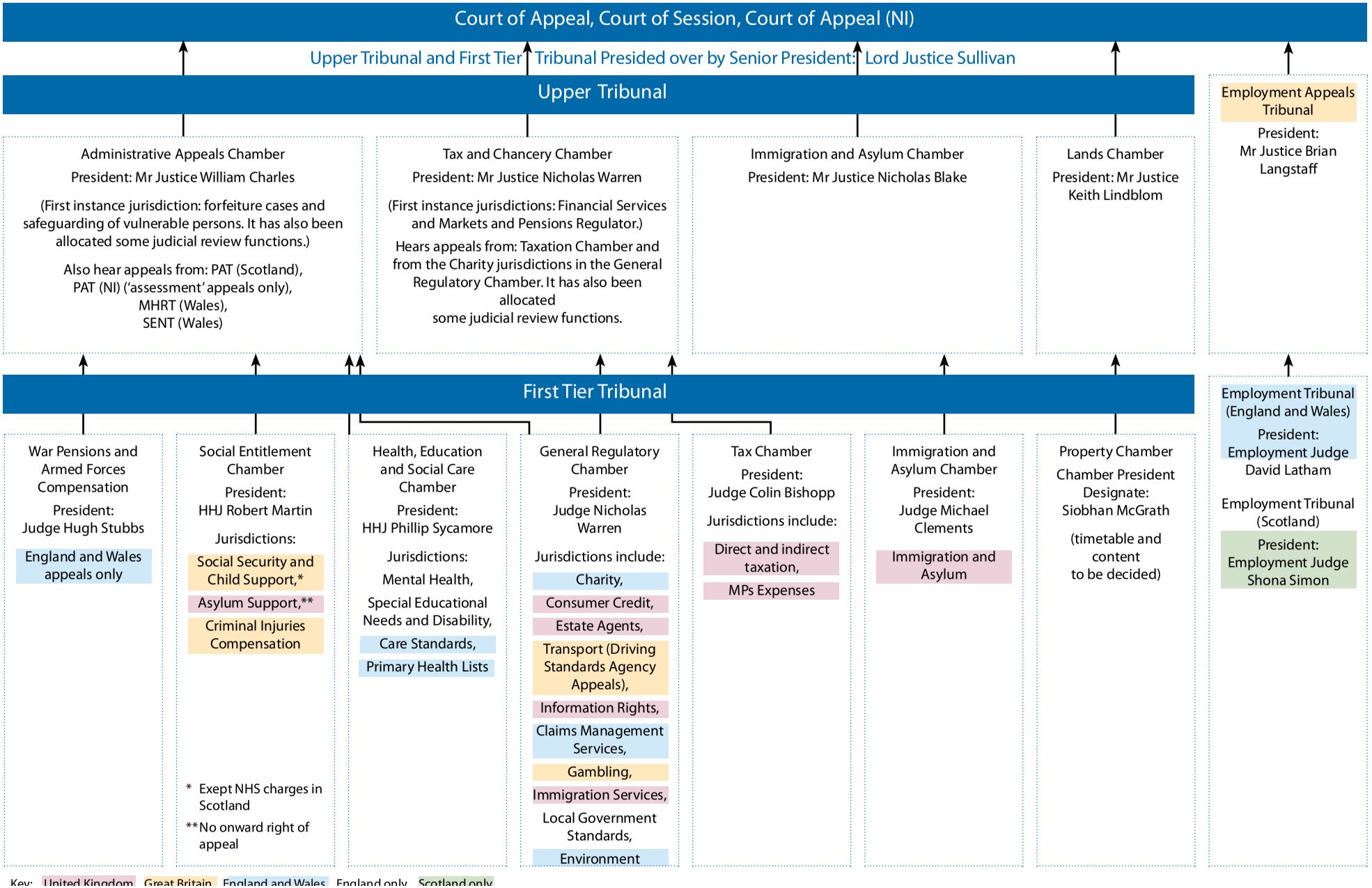


Senior President of Tribunals - Annual Report 2013

Introduction

By the Senior President of Tribunals, Sir Jeremy Sullivan

I could not start the introduction to my first Annual Report as Senior President without reference to my predecessor, Robert Carnwath. Robert was an inspirational first Senior President and is a difficult act to follow. During his term as Shadow Senior President and then as the first Senior President, he led tribunals through a remarkable transformation staying true to the Leggatt ideal, that tribunals should be for users – not the other way around. The Leggatt Report was the catalyst for the new tribunals system which Robert's vision and guidance helped put in place through the structure we have today. When he left the role of the Senior President to take up his appointment to the Supreme Court it was reassuring to read in his parting remarks that "tribunals have left their mark on me - and that will be evident in my work in the Supreme Court".

As Senior President, Robert Carnwath oversaw the creation of the current structure into the ten chambers in the two tiers that we have today. My early impressions as Senior President are of an organisational and leadership structure that works very well. The chambers structure groups like jurisdictions (or those requiring similar judicial expertise) together and has proved flexible enough absorb new jurisdictions into existing chambers.

Innovation in tribunals

With the unified structure in place and working well, we now move into a phase of consolidation allowing the structure itself to develop and mature and making best use of its judicial resources in an ever more challenging financial environment. This period of austerity gives a greater impetus to finding innovative and more efficient ways of doing justice. The Chamber and Tribunal Presidents are strong and effective leaders who will be able to lead their jurisdictions in meeting these challenges. Throughout this report you will find examples of that innovation and efficiency – for example video conferencing is on the increase, whether in the Employment Tribunal Scotland to accommodate cases involving off shore workers (which Shona Simon describes on page 61), or during the Olympics and Paralympics. The short time scales for decisions in the asylum support jurisdiction (of the Social Entitlement Chamber) and their base at Anchorage House in the heart of the Olympic site created a problem which they solved through extensive use of video-links enabling them to hear well over 90% of their scheduled cases during the period of the Games.

Tribunals are also extending their use of legally qualified registrars to undertake routine judicial work under delegation from judges, freeing up judges' time for more complex issues and hearings - Phillip Sycamore describes how the Health, Education & Social Care Chamber has extended its use of registrars from the special educational needs jurisdiction into mental health.

Judicial mediation continues to achieve high success rates in the Employment Tribunals in both Scotland and England & Wales. The savings in hearing days from this initiative increase year on year. The feedback from users is extremely encouraging.

Mediation (whether judicial or otherwise) can save judicial time and administrative resources but may also reduce the personal stress that users involved in formal hearings can experience – this can be particularly helpful where there is an on-going relationship between the parties, perhaps between families and schools, employees and employers, and landlords and tenants. Active case management, ensuring early resolution or fine tuning of the matters at dispute, is central to judicial and administrative activity is a further example of how we can improve services for users. I look forward to exploring with MoJ and HMCTS how this and other forms of dispute resolution can make for a more effective justice system.

Much of the work already underway is reflected in the Ministry of Justice's strategic work programme for Administrative Justice and Tribunals. The work programme has an emphasis on working with other Government departments on improving initial decision making and promoting early and proportionate dispute resolution across Government. The MoJ rightly recognises the need to place users at the centre of its strategy and I welcome their willingness to work with tribunal judiciary in achieving their objectives.

Judicial careers

A good news story for tribunals that I am happy to keep telling is the work being done on increasing diversity and career mobility. Over 40% of tribunal judges and members are women and 10% are from a BAME background.

I am sometimes asked why tribunals are more reflective of society at large than some other areas of the justice system – I think the answer is flexibility. Tribunals represent a less daunting first step into a judicial career and the number of fee-paid opportunities allows aspiring judges to experience a judicial role whilst combining it with other responsibilities. Tribunals also allow an office holder to sit in relatively discreet areas of law building up their expertise and confidence in judging in a familiar jurisdiction. Excellent training, tailored to the needs of the jurisdictions, is provided under

the auspices of the Judicial College. Although the great majority of the training for tribunal judges is delivered within individual jurisdictions, it is encouraging that the Board of the Judicial College also recognises that there should be space within the programme to provide training that spans both courts and tribunals and which aims to allow experienced judges to improve their judicial skills by learning from judges who sit in other jurisdictions. Developed jointly by courts and tribunals judiciary, this course will help prepare both tribunal and court judges for the challenges of sitting in less familiar settings.

More judicial interchange between courts and tribunals should ensue from the Crime and Courts Bill measures which will, if enacted, enable tribunal judges to be deployed into the courts just as the Tribunals, Courts and Enforcement Act allows court judges to sit in tribunals. Of course, the fundamental principle must be that there is an agreed business need for the deployment and the judge has, or can acquire with training, the necessary expertise, but I hope this provision will allow tribunal judges to broaden their career opportunities.

In the coming year

An important part of my role is to understand the current concerns of judges and members I intend to get out and about this year. I met recently the salaried judges of HESC and attended the jurisdictional boards of the Social Security & Child Support jurisdiction (of Social Entitlement) and the Employment Tribunal (England & Wales). At the time of writing I am due to attend training events of both the First-tier Tribunal Tax Chamber and the Upper Tribunal Immigration & Asylum Chamber, I have sat in the Employment Appeal Tribunal, and will be sitting in Administrative Appeals Chamber and the Lands Chamber. I aim to balance sitting in the Upper Tribunal with the ability to sit in the Court of Appeal on significant cases involving tribunals.

I have been impressed by the dedication and commitment shown by the tribunal judiciary and administrators to making tribunals more accessible and "user friendly" against the backdrop of the challenging times in which we live. My challenge in the coming months will be to provide the leadership to enable the outstanding work done so far to continue and to grow.

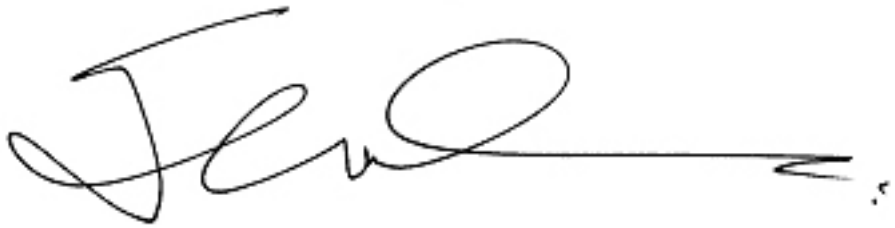
And Finally

I am grateful also to Anne Smith for acting as the Lord President's representative at the Tribunals Judicial Executive Board (TJEB) on cross-border issues. She will continue to attend TJEB following

her promotion to the Inner House on which many congratulations are due. It may be that by the time of the next annual report I will have an opposite number in Scotland; a President of Scottish Tribunals.

At its meeting in December, TJEB paid tribute to George Bartlett who retired as President of the Lands Chamber on 31st December 2012. George has been part of the tribunal reform process for many years and a wise and influential member of TJEB from its very beginning. George was the last President of the Lands Tribunal and the first of the new chamber - his experience and knowledge in that jurisdiction is highly regarded within the legal profession and beyond. I wish George a long and happy retirement and offer my best wishes to his successor Mr Justice (Keith) Lindblom.

I would also like to take this opportunity to thank Mr Justice (Paul) Walker for the work he did as both President of the Administrative Appeals Chamber and as Chairman of the Tribunals Procedure Committee. My best wishes of course go to Mr Justice (Bill) Charles his successor and to Hugh Stubbs who has replaced Andrew Bano as President of the War Pensions and Armed Forces Compensation Chamber. I would like to thank Andrew not only for his work as the first President of that Chamber but also as the lead judge on Judicial Information Technology. My empire continues to grow and we welcome Siobhan McGrath as the Chamber President Designate of the Property Chamber.



Chapter 1
Upper Tribunal Chamber Reports

Administrative Appeals Chamber:
Chamber President
Mr Justice (William) Charles

On 4 April 2011 Mr Justice (Paul) Walker concluded his term as Chamber President and returned full time to the High Court. I know that the Senior President and his predecessor are very grateful to him for his leadership and organisation of the Administrative Appeals Chamber (AAC) through a period of significant development. On a personal note I am grateful to him for his help on the hand over.

In last year's report Mr Justice Walker set out the wide range of the jurisdictions of this Chamber which are UK wide. I shall not repeat this but it is encapsulated in the diagram of the structure of the Tribunals system on the Judiciary of England and Wales website[1].

What has been evident to me as incoming President are a number of increasing pressures and areas of uncertainty which need to be addressed.

In its 33rd (2011) report the Senior Salaries Review Body (SSRB) recommended that the role of Judge of the Upper Tribunal be moved from salary group 6.1 to salary group 5. This reflected their evaluation, after a major review, of the burdens and responsibilities for the judges who exercise the increasing jurisdiction of the Upper Tribunal. This recommendation was not implemented. Rather, in March 2011 the Government indicated that it would respond at an appropriate time.

In its 34th (2012) report the SSRB commented that it understood why the Government had not implemented recommendations for salary increases during a pay freeze but where job evaluation has shown that posts are wrongly graded, they could not see why this should not be corrected immediately.

However, the position remains that the Government has not responded to this recommendation by either implementing or rejecting it, or by correcting the grading whilst maintaining the salary freeze.

Understandably, this continuing uncertainty and the attendant failure to recognise the burdens and responsibilities of Upper Tribunal Judges that found the grading recommendation is damaging to morale and the willingness of the judges to take on additional tasks.

Unsurprisingly, given their dedication and recognition of the present economic problems of the country, this damage has not yet had a knock-on effect on the performance of this Chamber. But, if as is expected

1 http://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-in-detail/judicial+roles/tribunals/senior-president-tribunals

the workload of the Chamber continues to increase, the potential for it having an adverse effect on that performance and on the recruitment of new judges cannot be ignored.The administration has also been under a number of pressures. Nonetheless, to their credit they have managed to introduce some improvements. But this has not resulted in a reduction of outstanding cases because the number of cases has increased.

In the financial year 2010–2011 the Chamber received 3,750 cases and disposed of 3,974. In 2011–2012 the Chamber received 4,887 cases and disposed of 4,369 and in 2012 to end of January, the Chamber received 4,967 cases and disposed of 4,413.

Efforts will continue to be made by the judges and the administration to identify and implement improvements.

As to the future, the substantial changes in the law relating to Social Security (including the introduction of Universal Credit and Personal Independent Payment) and Child Support to be introduced by the Welfare Reform Act 2012 will give rise to a significant increase in the work of the Chamber. It is difficult to predict the size or period of that increase but plans need to be made, and are being made, to address it.

The nature of the bulk of its work (Social Security and Child Support) means that the decisions of the Chamber on what a claimant is entitled to at law, and the time it takes to make those decisions, have an important impact on the day to day lives of claimants.

So, the general purport of this introduction is to record that this Chamber, no doubt like many other Tribunal Chambers and Courts, is facing and trying to deal with an increasing workload with limited resources against the background of the problems mentioned above.

The jurisdictional landscape

Whereas decisions of the First-tier Tribunal are binding only in the individual case, decisions of the Upper Tribunal on points of legal principle are binding on both lower tribunals and administrative decision makers. Such decisions therefore develop the law and practice of administrative decision-making. For this reason, decisions of interest are published on the internet.

With limited exceptions[2] , most appeals to the Chamber are on a point of law. Permission is needed and in broad terms, about 60% of applications for permission to appeal are refused. For appeals for which permission is granted by the Upper Tribunal or the First-tier Tribunal, about 95% are decided without an oral hearing and in social security cases, about 80% of appeals are successful.

In terms of numbers the great majority of the work of the Chamber relates to appeals from the First-tier Tribunal Social Entitlement Chamber in respect of Social Security and Child Support, which are GB wide jurisdictions. However, the nature, content and breadth of the other appeals and judicial review jurisdictions

2 For example, appeals from decision of Traffic Commissioners and the Independent Safeguarding Authority

gives rise to a number of cases that require more time and resources to be spent on them. Examples of cases heard during the year include:

War Pensions and Armed Forces Compensation

In *Secretary of State for Defence v RC (WP) [2012] UKUT 229 (AAC)* a three-judge panel presided over by the Chamber President resolved longstanding issues concerning the powers of the Secretary of State to refuse to carry out reviews of earlier decisions and awards and the rights of appeal to the First-tier Tribunal in such cases.

Information Rights

Specialist members[3] play a particularly important part, in information rights cases transferred on a discretionary basis from the First-tier Tribunal to the Upper Tribunal. This option is used for cases which may be particularly complex or sensitive. Most notably the former Chamber President Mr Justice Walker sat with Upper Tribunal Judge John Angel and Ms Suzanne Cosgrave to hear the appeals by a journalist Mr Evans of The Guardian newspaper against the Information Commissioner's decisions upholding refusals by seven government departments to supply information concerning correspondence between HRH Prince Charles and ministers *Evans v IC (Correspondence with Prince Charles in 2004 and 2005)[2012] UKUT 313 and 340 (AAC))*.

In *The Information Commissioner v Magherafelt District Council ([2012] UKUT 263 (AAC)*, following a request for information concerning disciplinary action taken against employees of the respondent local authority, the respondent had released a summarised schedule setting out certain details of the individuals concerned. The Information Commissioner ruled that the information contained in the schedule was fully anonymised, did not amount to personal data and was not exempt from disclosure. The First-tier Tribunal held that the information did amount to personal data and was exempt from disclosure. The Upper Tribunal held that although the precise definition of personal data in section 1(1)(b) of the Data Protection Act 1998 is data in relation to a living individual who can be identified from those data and other information which is in the possession of, or likely to come into the possession of, the data controller, it is also possible for the definition in section 1(1)(b) to be satisfied on the basis that a living individual could be identified from data linked to other information which was in the possession of (or likely to come into the possession of) persons other than the data controller. The widening of the ambit of the definition in section 1(1)(b) was permitted by, inter alia, interpreting that section in line with the principles in Recital 26 to the preamble to Directive 95/46/EC ('The Data Protection Directive'). On the facts of the case the Upper Tribunal found that a motivated individual, such as an investigative journalist, would have little difficulty in taking the necessary steps to identify individuals who had been subject to disciplinary action in the respondent local authority. One of the factors driving this finding were the facts that the respondent Council was a small employer based in a close-knit local community.

3 See People and Places

The Chamber has also issued decisions dealing with other important legal points on appeals from the information rights jurisdiction, such as the extent to which a public authority may later rely on additional or different exemptions/exclusions from those originally stated (*Birkett v Information Commissioner and SB [2012] AACR 32*) and the significance to be attached to legal professional privilege in determining whether the qualified exception from disclosure under the Environmental Information Regulations (EIR) 2004 applies (*DCLG v Information Commissioner and WR [2012] UKUT 103 (AAC).* In addition, an Upper Tribunal AAC judge has referred questions to the Court of Justice of the European Union as to the meaning of "public authority" under the EIR (*Fish Legal v Information Commissioner [2012] UKUT 177 (AAC)*)."

Mental Health

In *EC v Birmingham and Solihull Mental Health NHS Trust [2012] UKUT 178 (AAC)*, the question raised was whether patients detained under the Mental Health Act 1983 were entitled to challenge refusals by the First-tier Tribunal to make extra-statutory recommendations as to their future care or treatment. It was held that they were not entitled to do so because the First-tier Tribunal has no legal power to make such a recommendation.

Special Educational Needs and Disability

In *R (LR) v FtT(HESC) and Anor. [2012] UKUT 213 (AAC)* an opportunity was provided, relevant to Tribunals generally, to consider the role of the First-tier Tribunal in relation to reaching decisions by consent of the parties and the allocation of responsibility between the First-tier Tribunal, Upper Tribunal and High Court.

Further new rights of appeal have been introduced to the Chamber this year. In January 2010 Royal Assent was given to the Goods Vehicle (Licensing of Operators) Act (Northern Ireland) 2010 ("the GV Act"). This legislation retains the regulatory role of the Department of Environment for Northern Ireland. The Transport Regulation Unit has been set up within the Department specifically to exercise this function. In other respects, however, the GV Act broadly mirrors the provisions of the 1995 Act in Great Britain. In general where in GB there would be a right of appeal from a traffic commissioner's decision to the Upper Tribunal, the GV Act and regulations made under it will secure the result that, in Northern Ireland, equivalent decisions of the Department may similarly be appealed to the Upper Tribunal. A Commencement Order (S.R. 2012 No.262) brought the provisions of the GV Act into effect from 1 July 2012, on which date regulations made under the Act also came into force.

A right of appeal to the First-tier Tribunal and the Chamber was introduced in relation to the designation of Nitrate Vulnerable Zones. This means that for 62% of England which has been designated as being in Nitrate Vulnerable Zones certain measures must be taken by farms in those designated areas.

Another new right of appeal in 2012 is in respect of certain decisions made by Ofqual (England) and the Welsh Government (for Wales) to impose variable monetary penalties on exam boards that have failed to meet the conditions required for recognition (as an exam board).

New appeal rights to the General Regulatory Chamber of the First-tier Tribunal were introduced against civil sanctions imposing monetary penalties and/or enforcement notices, as an alternative to prosecution, in relation to aspects of pollution control and other aspects of environmental protection in both England and, separately at different dates, Wales. There is a further right of appeal on point of law to this Chamber.

Judicial Training

The Chamber's judicial studies programme included a range of events dealing both with legal developments in our various jurisdictions and presentations on issues which put the Chamber's appellate work into its wider social context. For example, a conference on the future of disability living allowance (DLA) and employment and support allowance (ESA) included presentations by Professor Cheryl Thomas of UCL about empirical research into the way in which three-person tribunal panels reach decisions in DLA appeals and by Professor Malcolm Harrington, the Secretary of State's independent reviewer, on the operation of the ESA scheme and proposals for reform.

Similarly a conference on appeals relating to safeguarding vulnerable groups heard from Professor Martin Wasik of Keele University about sentencing options for sex offenders and also from Child Exploitation and On-line Protection (CEOP) speakers about the profiling of sex offenders and their use of the internet. UT (AAC) Judges also attended a seminar on best practice in the use of judicial appraisal.

People and places

In September, the Chamber was pleased to receive a visit from the Chairman of the Administrative Appeals Committee Commission and four of his colleagues from the South Korean Anti Corruption and Civil Rights Commission. Upper Tribunal (AAC) Judges Mark Rowland and Christopher Ward hosted the visit which included an open discussion about the respective jurisdictions with the Upper Tribunal (AAC) Judges and observing an oral hearing.

There have been several changes to the Chamber's judiciary this year. On 31 August Judge Patrick Howell retired; Patrick was appointed a Social Security and Child Support Commissioner in 1994 and became a salaried Upper Tribunal Judge in November 2008. Patrick's intellect and fine analytical skills will be much missed by his colleagues in the Chamber.

Earlier in the year, on 31 January, HH Judge David Pearl retired as a Circuit Judge. David remains a fee-paid Deputy Upper Tribunal Judge but has stepped down as lead judge of the Safeguarding Vulnerable Groups jurisdictional group which deals with appeals concerning decisions of the Independent Safeguarding Authority. My thanks go to him for the very firm foundations he established in his time as lead judge and for the benefit of that experience brought to the wider Chamber.

In June James Goudie QC the lead specialist fee-paid Deputy Judge for information rights cases involving national security certificate appeals retired. I am grateful to him for the work he did for and the specialist knowledge he brought to the Chamber. Robin Purchas QC succeeded as lead judge for the jurisdiction.

For the first time since 2000 the Chamber held a Judicial Appointments Commission competition at the end of 2011 for two full-time salaried Judges and four fee–paid Deputy Judges.

I was pleased to welcome the first of the two new salaried judges who were successful in that competition, Stewart Wright, on 15 October when he took up his post. Paula Gray the second successful appointee will take up her post in April 2013. Both join the Upper Tribunal (AAC) from the F-tT SEC. Stewart and Paula will be joining the Chamber alongside their thirteen London-based salaried Judge colleagues, two salaried Judges based in Edinburgh and two salaried Judges in Belfast who deal with the Chamber's jurisdiction in Northern Ireland, which they combine with their roles as Chief Commissioner and Commissioner respectively. Andrew Bano, who until earlier last year was Chamber President of the First-tier Tribunal War Pensions and Armed Forces Compensation Chamber, has made a welcome return to the Chamber on a full time basis.

I was delighted to hear shortly after I became President that David Burns QC, an Edinburgh based fee paid Deputy Judge was appointed to the Court of Session in Scotland.

The Chamber has a body of 19 fee-paid Deputy Judges who sit regularly (16 in England and 3 in Scotland) dealing mostly with appeals from the Social Entitlement Chamber and the War Pensions and Armed Forces Compensation Chamber. The four newly-appointed fee-paid Deputy Judges have all now taken up their posts, two in London; Mark West and Michael Fordham QC and Ralph Smith QC and James Lunney in Edinburgh.

The Chamber also has a number of fee-paid specialist Judges and Members who sit on appeals from Traffic Commissioners, Information Rights cases transferred on a discretionary basis from the First-tier Tribunal to the Upper Tribunal and specialist members who sit on Independent Safeguarding Authority cases. Both my predecessor and I are grateful for the specialist knowledge they bring to the Chamber and their contribution to its work.

The Chamber's judges' work continues to be supported by a team of specialist Registrars led by Jill Walker and Jennifer Fowler in London, Christopher Smith in Edinburgh and Niall McSperrin in Belfast. Sadly, Marcus Revell, a well respected and valued member of the London Registrars for 14 years died in March 2012 after a long illness.

The London-based AAC Judges, Registrars and administrative staff are now well established in the Rolls Building with the passing of the first anniversary of the move which took place in October 2012. The London office is managed by Clare Farren and Lesley Armes. Both Clare and Lesley came with considerable experience of the core work of the Chamber having both previously managed the Commissioners for Social Security and Child Support office at separate times. Mrs Terry Stewart and Gillian McClearn continue in their respective roles as operational managers in Edinburgh and Belfast.

Tax & Chancery Chamber: Chamber President Mr Justice (Nicholas) Warren

Judiciary

During the course of the year, Judge Wallace retired as judge of the Upper Tribunal after a long and distinguished judicial career in that office and before that as a Special Commissioner and VAT Tribunal Chairman. He will be sadly missed, especially as a master of procedure where he was always willing and helpful in sharing his wide experience and wisdom.

During the course of 2011, a competition was held for the appointment of three new judges of the Chamber. The level of expertise and standing of the many applicants was excellent and I thank all of those who applied for doing so. Three outstanding appointments have been made. Judge Berner (already a judge of the First-tier Tribunal) brings a wealth of experience as a judge and as a practitioner in the tax field. Judge Sinfield joins the Chamber from a leading City firm of solicitors where he was a tax partner specialising in the field of VAT. And Judge Herrington joins us from his position as Chair of the Regulatory Decisions Committee of the Financial Services Authority, having previously been a partner in another leading City firm of solicitors specialising in financial services. He brings unrivalled expertise and experience to the Chamber in that field. I am absolutely delighted that they have accepted these appointments and wish them well in their new positions.

Financial services cases

There has been a regular flow of references from the Financial Services Authority during the course of the year all of which has, as previously, been dealt with by the judges and members of the Chamber. There has, as yet, been no case suitable for hearing by the Chancery Division judges all of whom are assigned to the Chamber. I mentioned last year the references concerning Northern Rock & Bradford and Bingley. Bradford & Bingley had not then been dealt with; but the (several hundred) references have now all been disposed of.

There has been an increase in work in the pensions jurisdiction (where we hear references from the Determinations Panel of the Pensions Regulator). Important points of principle have been decided in a case concerning the Lehman Brothers Pensions Scheme and in the case of Desmonds Gordon (the case from Northern Ireland which I mentioned in last year's report.

It is not anticipated that the dissolution of the Financial Services Authority and its replacement by two new regulators will have any significant impact on the nature or scale of our work in this jurisdiction.

Charity cases

There has been little work in the Charity jurisdiction. The reference mentioned in last year's report from

the Attorney-General raising questions about the effect of the "public benefit" requirement in the context of trusts for the relief of poverty has been dealt with. An appeal from the decision of the General Regulatory Tribunal (Charity) in the case of Catholic Care has been heard by Mr Justice Sales. The judge upheld the decision of the Tribunal as a result of which the charity was not permitted to change its constitution as it wished to.

Tax Appeals

As in previous years, the bulk of our work continues to comprise tax appeals. There continues to be steady flow of appeals and references passing through the system and our workload in tax appeals is again very much as predicted. We have dealt with a very wide range of cases, some raising very complex issues of law and involving very large sums of money. In the VAT field, the judges of the Chamber have again made a number of references to the European Court of Justice. We have accepted a small number of cases to be dealt with in the exercise of our first-instance jurisdiction. These cases raise important points of principle of substantive law or of practice.

Judicial review

It remains the case that the Chamber has yet to hear any substantive judicial review applications, although one is listed for later this year. Several applications have, however, been transferred from the Administrative Court; but they have been stayed pending decision sin the substantive tax appeals to which they are related. There are a number of judicial review applications in tax cases which remain in the Administrative court. Active consideration is being given to the transfer of at least some of them to the Chamber.

New jurisdiction

We are preparing for the transfer to the Chamber of a new jurisdiction relating to the Land Registry. At present, appeals from the Adjudicator to the HM Land Registry are dealt with in the Chancery Division. The Adjudicator's jurisdiction is transferring, in early 2013, into the newly formed Property Chamber of the First-tier Tribunal. Appeals from the Property Chamber in relation to the Adjudicator's jurisdiction will be dealt with in the Tax and Chancery Chamber.

Our judiciary and members

Apart from the changes which I have mentioned already, there have been no other departures of either full-

time or part-time judges or members this year. Following a competition held in late 2012 and early 2013 for new fee-paid members of the Chamber to sit in financial services cases, six appointments of high quality individuals will be made.

Administration

There have been a number of changes in the personnel in charge of the administration of the Chamber. Sharon Sober remained in charge of the team in Bedford Square until the later summer but has been (only temporarily I hope) assigned to deal with listing matters in the Tax Chamber. The team as always continues to provide an efficient service to the public and to the judiciary. I would once gain like to express my gratitude to them.

Immigration & Asylum Chamber: Chamber President Mr Justice (Nicholas) Blake

This report covers the activities of the Chamber from 1 October 2011 to 30 September 2012. During this time one new salaried judge has joined the Chamber (Madeleine Reeds) and two judges have retired (Launce Waumsley, salaried and Spencer Batiste fee-paid) I am most grateful for the contributions they have both made to the work of the Chamber. This brings the number of permanent UT judges to 35[4] with two appointments pending[5].

Performance

During the period under review, the new arrangements introduced last year, for First-tier judges to determine permission to appeal applications made to the First-tier Tribunal, have been fully implemented. Upper Tribunal salaried judiciary were responsible for the induction of First-tier Tribunal judges into this work. In this regard the *Presidential Guidance Note 1 2011: Permission to appeal to UTIAC* proved valuable. 26,121 such applications were determined in the 12 months up to 31 March, with a grant rate of 31%. 10,581 applications have been determined in the six months to 30 September with a grant rate of 28%.

61% of those refused permission to appeal by the FtT renewed the application to the UT in the 12 months up to 31 March and 65% in the six months up to 30 September. The work of the Chamber in determining

4 The UT has in addition to President, two non-statutory Vice Presidents one Principal Resident Judge and 32 full time salaried judges and a number of fee-paid and Deputy Judges. 7 Resident Judges of the First-tier Tribunal are also available to the UT on a limited basis. Non Legal Members of the former AIT are also assigned to the UT although in practice they sit predominantly in the First-tier Tribunal where it is considered their expertise can generally be best deployed.

5 Mark O Connor and Jeremy Rintoul joined the Chamber after 1 October 2012.

these renewed applications is set out in tabular form below.

UT Permission Applications[6]

	Year to end March 2012	Half-year to end Sept 2012
Decided	11,601	4,406
Granted	13%	10%
Refused	86%	89%
Withdrawn	1%	1%
Backlog outstanding	742	1,521

Since the Supreme Court clarified the law in *Cart* and *Eba*[7] Upper Tribunal decisions refusing permission to appeal can be subject to judicial review applications if second appeal criteria are met. Pending a rule change, guidance for Administrative Court judges as to how to assess such cases was given by Ouseley J in the case of *Khan and others*[8] applying a circumscribed time limit for such applications. A 16 day time limit for such applications has now been prescribed by amendments made to CPR 54.7A that came into force on 1 October 2012 with no right to an oral renewal. Where permission is granted by the Administrative Court judge, current practice is for the UT to consent to an order setting aside its decision so the application can be re-examined by the UT in the light of the judicial review grounds. As a result few such cases reach substantive determination by the High Court.

Where permission to appeal has been granted, the task of the Upper Tribunal Judge is to decide whether there has been an error of law made by the First-tier Judge, if so whether the decision of that Judge should be re-made and if so how and with what result. The aim of the Chamber is to re-make decisions for itself where re-making is required, and in most cases it is envisaged that this can be done on the evidential findings of the First-tier Tribunal, where these are undisturbed by the error of law. However, there are a small minority of cases, where there has been no hearing at all or no fair hearing making a complete re-hearing on all factual issues necessary, where it may be more appropriate for the case to be re-made by a judge of the First-tier Tribunal.

On 25 September 2012, the Senior President of Tribunals issued a revised Chamber Practice Statement regarding the circumstances in which remittal to the First-tier Tribunal, as opposed to re-making, is likely to occur, following the setting aside of the First-tier Tribunal's decision:

> *"7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:*

6 At the time of writing this report these figures are provisional only and will be officially confirmed or revised in due course.

7 UKSC [2011] 28; [2011] Imm AR 704 and [2011] UKSC 29; [2011] Imm AR 745

8 [2011] EWHC 2763 (Admin)

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

7.3 Remaking rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found, even if some further fact finding is necessary."

This statement reflects the developing practice of the UT and in part is a response to the recognition in *JD (Congo)*[9] that it is more likely that some other compelling reason for the Court of Appeal to entertain an appeal will arise where there has, in practice, been one level of judicial consideration of the relevant facts and although it may lead to a small increase in the number of such remittals by comparison with figures for the year ending March 2012. Where such a remittal is to be made, the UT judge will fix the date for such a hearing in the First-tier Tribunal, where the state of the lists enables a prompt re-determination, and a significantly shorter period to final determination of the appeal than if it were re-made afresh by the Upper Tribunal and then proceeded on appeal to the Court of Appeal.

The performance of the UT in determining appeals is reflected in the following table:

UT Appeals[10]

	Yr to end March 2012	Half-year to end Sept 2012
Decided	9,055	4,556
Allowed	43%	36%
Dismissed	50%	55%
Remit	1%	3%
Withdrawn	6%	6%
Backlog outstanding	5,594	4,603

Where the UT decides an appeal, the losing party may seek permission to appeal to the Court of Appeal on the grounds that "the proposed appeal would (a) raise some important point of principle or practice; or (b) there is some other compelling reason for the [Court of Appeal] to hear the appeal". Guidance has been given as to what is an important point of principle in *PR (Sri Lanka)*[11] and *JD (Congo)*[12]. A number of such issues continue to come before the Court of Appeal particularly in Article 8 and Country Guidance cases[13].

9 [2012] EWCA Civ 327; [2012] Imm AR 719

10 See footnote 6 for the status of the figures for the half year

11 [2011] EWCA Civ 988; [2011] Imm AR 904

12 See footnote 6 for citation

13 HM (Iraq) [2011] EWCA Civ 1536 , EM Lebanon [2012] EWCA Civ MM (Sri Lanka) [2012] EWCA Civ 1057 and Hayat, SSHD, v SSHD, Treebhowan [2012] EWCA Civ 1054.

Judicial Review

In addition to determining appeals and applications for permission to appeal, judges of the UT IAC also have jurisdiction to determine judicial review applications in two classes of case.

The first class consists of discretionary transfers under the Tribunals, Courts and Enforcement Act 2007[14]. Paradoxically, the power to make such transfers is generally excluded where the decision relates to an exercise of functions under the Immigration Acts. However, this condition is not infringed where a claimant challenges an age assessment by a local authority (usually because he or she is an unaccompanied putative child asylum seeker from abroad). Since the decision of the Court of Appeal in *R (FZ) v London Borough of Croydon*[15] the High Court has been encouraged to transfer such cases to the UT.

The experience of the Upper Tribunal has been that once the case is transferred from the Administrative Court following the grant of permission, an early case management hearing, directions for disclosure of relevant data including immigration case history and an opportunity for informed exchanges between the parties before listing for hearing leads to many such cases settling. Where cases proceed to hearing, the resulting decisions are always reported, enabling best practice and relevant experience to be disseminated. There have been eight such reported cases in the year under review.

Age Assessment Judicial Review applications

	Year to end March 2012	Half-year to end Sept 2012
Applications received	46	7
Applications settled	17	15
Applications determined	2	3
Applications outstanding	27	16

A statutory exception to the prohibition on transfer of judicial review applications of immigration decisions to the Upper Tribunal is where the application is a challenge to a fresh claim decision made by the Secretary of State. A direction of the Lord Chief Justice[16] made pursuant to s.18 (6) and (7) of the TCEA and the Constitutional Reform Act 2005 Schedule 2 Part 1 provides that applications for judicial review lodged after 17 October 2011 that call into a question a decision of the Secretary of State not to treat representations made as a fresh asylum or human rights claim within the meaning of Part 5 of the Nationality, Immigration and Asylum Act 2002, must be transferred to the Upper Tribunal or be issued there, providing that such applications do not seek substantive relief against any other decision[17].

14 Ss.15 and 18 and 19 amending the Supreme Court Act 1981.

15 [2011] EWCA Civ 59

16 To be found at http://www.justice.gov.uk/tribunals/practice/practice-directions.

17 Where an application challenges a refusal to treat representations as a fresh claim, the fact that a stay or removal is also sought or a failure to consider subsequent representations before removal does not oust the Upper

All salaried judges of the Chamber have received training in the relevant law and procedure and are eligible to decide paper applications. There is a panel of such judges who are approved to conduct oral hearings of renewed applications. The Chamber has a rota of judges drawn from the same panel to decide urgent applications lodged before 4.30pm and thus reflects the working practices of the Administrative Court. Out of hours applications to stay removals still need to be made to the Duty Judge of the High Court, although the notice given of intended removal should preclude the need for such applications. Urgent applications pursuant to judicial review applications lodged in the Administrative Court out of London that need to be transferred to the Upper Tribunal are heard by judges of the regional courts who are qualified to sit as Upper Tribunal judges. It is not at present practical for UT judges to travel out of London to hear renewed applications for permission but as numbers increase and suitable facilities are made available to hear these matters, it is expected that there will be greater scope to hear these cases in the region where they arise.

Present experience suggests that once an application for permission is granted, there is usually no substantive hearing, and the matter is settled between the parties.

In NB (Algeria)[18] the Court of Appeal examined the position of an applicant for judicial review who had been refused permission in a judgment delivered orally but who wanted to appeal to the Court of Appeal and sought a stay in the meantime. It was concluded that the Rules required written reasons for a decision to be given (in addition to the reasons given orally) and the time for appealing any decision of the Upper Tribunal (including a refusal of permission) was the generous one of 28 days. Not only does this slow down the procedure for concluding such applications but also leaves the claimant vulnerable to removal in the period between refusal of permission and receipt of the written reasons for determination. It is hoped that speedy transcription of oral judgments combined with case management powers to curtail time for appeal to the Court of Appeal in this class of case to correspond with the practices of the Administrative Court will present a practical solution, pending changes in the Rules.

Fresh Claim Judicial Review Applications

	17 October to end March 2012	April to end September 2012
Permission (Paper):	169	250
Granted	26 (15%)	20 (8%)
Refused	143 (85%)	224 (90%)
Outstanding	81	72

Tribunal's jurisdiction.

18 [2012] EWCA Civ 1050

Renewed applications received at ACO	36	130
Renewed applications dealt with:	3	33
Granted	1	9
Refused	1	20
Substantive applications	0	0

These numbers are somewhat smaller than expected doubtless due to the limits on the UT's jurisdiction in immigration matters and the existence of Condition 4 under s.31A of the Supreme Court Act 1981. At the time of writing legislative proposals to rescind Condition 4 and enable a wider class of cases to be transferred to the UT are proceeding through Parliament. It is anticipated that as backlogs are cleared and numbers of immigration appeals decreases the UT will be able to take on such additional judicial review jurisdictional as the Lord Chief Justice considers appropriate. Greater numbers of applications would lead to an economy of scale and enable the UT to take over from the Administrative Court Office the administration of these cases, and justify more regular sittings by UT judges out of London.

Innovations

Notwithstanding the effect of financial strictures on the budget available to HMCTS the Chamber has endeavoured to improve its performance by greater use of modern technologies.

Parties to appeals and applications can, since the autumn of 2011, communicate with the administration by email at:

fieldhousecorrespondence@hmcts.gsi.gov.uk

This has reduced the time it takes for paper documents to be progressed through the system before reaching the judge.

All Upper Tribunal hearing rooms at Field House are now equipped with DARTS digital recording enabling oral judgments to be delivered in permission applications, directions hearings and determinations that lend themselves to this form of delivery.

Determinations in this form can be transcribed in-house for approval by judges in a few days.

At the time of writing this report, the arrival of wireless internet access is expected imminently enabling visiting Deputy Judges and the parties to use electronic media in preparation for a hearing

or in a hearing room. I am particularly grateful to Field House Centre Manager Heather Nelmes for ensuring that these improvements have been made available.

The Chamber continues to place emphasis on active case management, pursuant to the overriding objective in the Procedure Rules, refining its processes in the light of experience since February 2010 and in response to changing demands. Recent innovations include requiring parties to indicate in writing their case or response to the other party's case. This may frequently enable a judge to decide that the appeal can be determined fairly without a hearing or to limit the issues and/or evidence, thereby saving time at an oral hearing. Litigants who fail to comply with directions made by judges of the Chamber may find they are restricted in what is placed before the judge before a decision is made.

The Chamber continues to benefit from having senior visiting judiciary sit with judges of the Upper Tribunal at Field House. In addition, the flexibility afforded by the TCEA has been utilised by inviting judiciary from the Administrative Appeals Chamber of the Upper Tribunal to sit with us on appeals, which raised complex issues regarding welfare benefits and judges from this Chamber have sat in the AAC.

In December 2011 a Joint Presidential Guidance Note on Judicial Titles indicated that judges should be referred to by their statutory titles: Judge of the Upper or First-tier Tribunal rather than continue to use the courtesy title deriving from Asylum and Immigration Tribunal days of Immigration Judge or Senior Immigration Judge.

Judges of the Chamber together with the lead judge of the Administrative Court Mr Justice Ouseley constitute the Editorial Board of the Immigration Appeal Reports that are produced with the support of Samantha Steer and the members of the Legal Research Unit. In 2011 we moved to publishing 6 parts per year. This has significantly increased the range of cases we can report, and given more space for significant reported decisions of the Upper Tribunal that may otherwise not find their way into the law reports. It also means that the time lapse between promulgation and publication is very much shorter. In addition to these reports available to the general public the LRU also produces a monthly update of cases and other material, and a weekly electronic alerter available to all judges who decide immigration cases. I am grateful to George Damalas and Rebeccah Sheen of the LRU for co-ordinating this work that is of importance in keeping the judiciary well informed.

Case Law

Apart from country guidance cases and judicial review decisions 72 reported decisions have been added to determinations database during the period under review. Some of these decisions are noted below.

The Chamber has continued to determine a substantial number of Article 8 claims to remain, particularly where the immigration decision has an adverse impact on the interests of children. In

February 2012 the Chamber promulgated its determination in *Sanade and others (British children-Zambrano-Dereci)*[19] where comprehensive guidance was given on the interaction between ECHR and EU law in automatic deportation cases where deportation impacted on a British spouse and/or child. The impact of immigration action on children has been a particular topic for consideration over the past year. In *RS*[20] and *Nimako-Boateng* [21] the Chamber had the benefit of the participation of a family expert in the person of Lord Justice MacFarlane, and considered problems of the interface between family and immigration courts[22]. Other decisions concerning the impact of a child's welfare on immigration decision making include *MK* (best interests)[23] and *T (Entry Clearance s.55)*[24]. In addition to these judicial decisions, the Chamber has been developing contacts with judges who practice family law to improve communication and understanding of each others jurisdictions where issues overlap. I am particularly indebted to the Children's Committee of the Chamber currently chaired by Judge Jane Coker for progressing the work started.

In November 2011 the Court of Appeal decision in *Sapkota*[25] seemed likely to open up a new wave of challenges to the legality of Home Office decision making where a decision to refuse leave to remain was not combined with a removal decision made pursuant to the powers afforded under s.47 of the Immigration Asylum and Nationality Act 2006. In *Patel (consideration of Sapkota-unfairness) India*[26] the UT rejected the proposition that *Sapkota* meant that it was automatically always unlawful and unfair not to make two decisions at the same time. The unsuccessful appellant's appeal to the Court of Appeal was expedited and in June that Court decided that *Sapkota* had been decided *per incuriam* and the issue did not therefore arise[27].

A sequence of decisions has emphasised that the Chamber's jurisdiction includes consideration of whether a decision of the Secretary of State is not in accordance with the law because of procedural unfairness in one form or another: *Patel*[28], *Kabaghe*[29], *Naved*[30], *Basnet [2012]*[31] *Fiaz*[32].

Further decisions have been given on the terms of EU Directives. In *Papajorgji (EEA spouse-marriage of convenience) Greece*[33] the Chamber clarified the law and practice relating to marriages of

19 [2012] UKUT 48; [2012] Imm AR 597

20 [2012] UKUT 218

21 [2012] UKUT 216

22 Both decisions were recently approved by the Court of Appeal in Mohan [2012] EWCA Civ 1363.

23 [2011] UKUT 475; [2012] Imm AR 325

24 [2011] UKUT 483; [2012] Imm AR 346

25 [2011] EWCA Civ 1320; [2012] Imm AR 254

26 [2011] UKUT 484 (IAC)

27 Patel and others v SSHD [2012] EWCA Civ 741; [2012] Imm AR 898

28 [2011] UKUT 484

29 [2011] UKUT 473; [2012] Imm AR 312

30 [2012] UKUT 14 (IAC)

31 [2012] UKUT 113; [2012] Imm AR 673

32 [2012] UKUT 57; [2012] Imm AR 497

33 [2012] UKUT 38 (IAC); [2012] Imm AR 447

convenience and the burden of proof to establish that one existed in the EU context and in doing so drew attention to the European Commission's Guidance Note on Abuse of Rights. In September 2012 the Court of Justice answered the Chamber's reference in *Rahman*[34]. A reference was made to the Court of Justice in Alarape[35] concerning the scope of residence rights connected with the education of children of former workers.

Another issue arising under the Citizens Directive has been the question whether a period of imprisonment breaks a period of residence. The Chamber expressed the view that there was a need for reconsideration in *Jarusevicius (EEA Reg 21-effect of imprisonment)*[36]. In *Onuekwere (imprisonment-residence)*[37] and *MG (EU deportation) Article 28(3) imprisonment*[38] references were made to the Court of Justice on the issue. Shortly afterwards in August 2012 the Court of Appeal in *FV (Italy)*[39] accepted the Tribunal's invitation to reconsider earlier decisions and in doing so significantly clarified the law.

The Chamber informed the dialogue it now has with the Court of Appeal on points of difficulty that need urgent reconsideration at appellate level. Speedy resolution of difficult points likely to effect considerable numbers of appeals at FtT level enables both Chambers to pursue the over-riding objective for Tribunal justice of speedy, efficient and cost effective resolution of issues.

Two decisions on exclusion clauses have contributed to the growing jurisprudence on Article 1 (F) of the refugee Convention: *MT (Article 1F(a) – aiding and abetting) Zimbabwe*[40], *CM (Article 1F(a) – superior orders) Zimbabwe*[41].

Country Guidance

New country guidance decisions have been given in respect of Somalia, see *AMM and others*[42] where the Tribunal had to consider the recent Strasbourg decision in *Sufi and Elmi v United Kingdom*; Afghanistan, both with respect to unaccompanied children: *AA*[43] and the scope of

34 Case C-83/11 CJEU 2012

35 [2011] UKUT 413

36 [2012] UKUT 120 (IAC); [2012] Imm AR 760

37 [2012] UKUT 269

38 [2012] UKUT 268

39 [2012] EWCA Civ 1199

40 [2012] UKUT 15 (IAC); [2012] Imm AR 509

41 [2012] UKUT 236 (IAC)

42 [2011] UKUT 445; [2012] Imm AR 374

43 [2012] UKUT 16

Article 15 (c) protection: *AK*[44]; China family planning: *AX*[45]; homosexuals in Zimbabwe:[46]; Iraq requirements for documents to relocate: *MK*[47]; Albanian blood feuds: [48].

Two important country guidance cases decided in the previous reporting year have been remitted by the Court of Appeal for reconsideration. As several thousands claimants are likely to be affected by the outcomes, the need for efficiency and expedition at all stages of the process from early case management to final determination came to light. The Chamber considers that the CG system is a fair and efficient way of deciding these issues by ensuring authoritative assessment of the materials, but the utility of the system is undermined if listing appeals as guidance cases leads to excessive delays.

The Chamber's engagement with the Court of Appeal has led to the welcome decision that where permission to appeal is granted in a country guidance case, expedition will be granted and the judge granting permission will make it plain what aspects of the guidance are under review and whether this should lead to a general stay of removals falling within that category see *SG (Iraq)*[49].

International work

There has been continued engagement in the work of the IARLJ at international and European level, and one notable project reaching fruition has been the CREDO joint project on guidelines of credibility in asylum decision making. Judges of the Chamber have also participated in the work of European Asylum Support Office based in Malta, for example contributing to the production of new guidelines to inform better practice in age assessment disputes.

The Chamber has also been prominent in organising a forthcoming seminar in Strasbourg on the inter-relationship between the national courts and the two European Courts with respect to asylum and human rights claims.

Visitors

During the year we have hosted visits from European judiciary and academics from the United Kingdom and abroad with whom there has been an exchange of ideas and information.

44 [2012] 163

45 [2012] 97

46 [2011] 487

47 [2012] 126

48 [2012] 348

49 [2012] EWCA Civ 940

Training

Andrew Grubb has continued to provide sterling service for a further years as the lead training judge for the Chamber. He was also appointed to the Executive and Training Committees of the Judicial College by the Senior President.

Chamber judiciary have attended UT training days in March and December 2012, as well as at other events during the year along with First-tier Tribunal colleagues.

Salaried judges of the Chamber have led training sessions at these events and continue to respond to invitations to contribute to the ongoing programme of judicial training in the First-tier Tribunal.

The organisation of the Chamber

My office has been strengthened by the arrival of Elaine Walker, who also serves as the assistant to Principal Resident Judge Southern. As ever my thanks to Vicky Rushton, Jane Blakelock, Michelle Kastly and my clerk Gwilym Morris for the support they have given me and other judicial leaders in carrying out the significant work of the Chamber.

Conclusions

The work of the Chamber is wide ranging, intellectually engaging, and demanding both in terms of numbers and the complexity of some of the issues that come before us. It not infrequently brings decisions to the attention of the national media where public comment may be expressed in trenchant terms whilst not always acknowledging the legal framework in which we make decisions, particularly where human rights and asylum work are concerned. Doing justice in the immigration context is not and should not be a cloistered virtue. It is hoped that better search facilities will in due course make every decision of the Chamber reported or otherwise be accessible to the public. Controversy over the reach of human rights and European law, does not discourage or deter judges of the Chamber from performing the tasks their judicial oath requires them to perform. It is holding the fair balance between the claimant, his or her family and the state that informed and independent judicial decision making that is of such central importance.

I am very grateful to all judges of the Chamber, senior visiting or regularly located at Field House, salaried, fee paid, or part time for the great contribution they have made to the work of the Chamber in the year under review.

Lands Chamber:
Chamber President
George Bartlett QC (retired 31st December 2012)

The Lands Chamber has originating jurisdictions principally in the field of compensation for the compulsory purchase of land and other statutory land compensation, together with certain town and country planning matters and the discharge and modification of restrictive covenants. It is also the appellate tribunal from leasehold valuation tribunals (on leasehold enfranchisement valuation and a range of residential landlord and tenant matters), residential property tribunals (on housing standards matters) and the Valuation Tribunal for England (on business rates). In accordance with the proposals in Tribunals for Users (March 2001) and Transforming Tribunals (November 2007 and May 2008) a Property Chamber of the First-tier Tribunal is to be established. It will exercise the jurisdictions of the LVTs and RPTs as well as the rent jurisdictions of Rent Assessment Committees and Rent Tribunals and the jurisdictions of the Agricultural Land Tribunals and the Adjudicator to the Land Registry. All appeals, with the exception of those from the Adjudicator's jurisdictions, will come to the Lands Chamber. In addition first-instance cases of importance or complexity may be transferred up from the Property Chamber. Work for the setting up of the Property Chamber proceeded during 2012, and the new chamber is expected to come into existence in the summer.

Under the proposals in *Transforming Tribunals* the Lands Chamber will eventually become mainly appellate in function, with only the larger and more difficult cases being heard by it at first instance. It will in this way mirror the functions that the Tax and Chancery Chamber has in relation to tax. As the Property Chamber develops it is likely that steps will be taken to transfer down to it, from the Lands Chamber's originating jurisdictions, initially the smaller cases and later all such cases other than those of complexity or importance.

Certain minor changes in the Lands Chamber Rules are made necessary by the creation of the Property Chamber, and the opportunity has been taken to consult about the possibility of amending the Rules further so as to implement recommendations in the report, "Costs in Tribunals", of a group under the chairmanship of Warren J, which was published by the Senior President in 2011. Under these recommendations a standard no-costs regime would apply (with certain exceptions, notably in the case of unreasonable behaviour) in all Lands Chamber jurisdictions other than compensation for compulsory purchase and the discharge and modification of restrictive covenants.

The Property Chamber comes into existence without the incorporation of the jurisdictions of the Valuation Tribunal for England, which deals with appeals relating to business rates and council tax and from whom appeals lie to the Lands Chamber (on business rates) and the High Court (on council tax). It is Government policy that these jurisdictions should be transferred to the First-Tier

Tribunal, and indeed it is in my view unthinkable in the present age that appeals in relation to these forms of taxation, which together account for about 10% of the UK tax revenue, should continue to be dealt with by a tribunal controlled by the Government department that is responsible for their imposition.

By the time that this report is published I will have retired after 14 years as President of the Lands Tribunal and then the Lands Chamber. That period has witnessed the establishment of the new tribunals system, one of the most important developments ever in the sphere of civil justice in this country. We now have a coherent structure and proper procedural provisions that enable the hugely diverse range of tribunal jurisdictions to be appropriately exercised, by a judiciary appointed in the same way as court judges and for whom the Senior President of Tribunals is ultimately responsible. It has been a privilege to participate in this process of change. In my successor, Mr Justice Lindblom, the Lands Chamber will have a judge whose expertise in the fields of planning and compensation will ensure that the Chamber's specialist work is carried out to a high standard and that the jurisdictions of the Lands Chamber and the Property Chamber continue to evolve in ways that best serve their users.

Chapter 2
First-tier Tribunal Chamber Reports

Social Entitlement
Chamber President: His Honour Judge (Robert) Martin

The Social Entitlement Chamber comprises three jurisdictions, namely Asylum Support ('AST'), Criminal Injuries Compensation ('CIC') and Social Security and Child Support ('SSCS'). The Principal Judge of AST is Sehba Storey. The Principal Judge of CIC is Tony Summers. SSCS is managed by a Board of seven Regional Tribunal Judges chaired by the Chamber President. The jurisdiction of AST is UK-wide. The other two are GB-wide.

The Jurisdictional Landscape

In SSCS the most significant feature is the rise in workload, as shown in the following table.

SSCS Appeals Intake and Clearances

	Intake	Clearances
2008-09	242,825	245,500
2009-10	339,213	279,264
2010-11	418,416	379,856
2011-12	370,800	433,600
Forecast:		
2012-13	515,000	
2013-14	630,000	
2014-15	680,000	
2015-16	807,000	
2016-17	646,000	

Although there was a slight down-turn in the volume of appeals received in 2011-12, the explanation lies in a temporary constriction in benefits processing by DWP. In the first six months of 2012-13, 221,299 appeals were received, indicating that the underlying trend is once more markedly upwards. The principal driving force behind the rise in workload was initially the impact of the economic recession but, increasingly, is the implementation of the Government's programme of welfare reform. The Welfare to Work strategy involves the reassessment of entitlement to benefit of some 1.5m recipients of incapacity benefit over a three-year period from April 2011, as

incapacity benefit is replaced by employment and support allowance. From April 2013 the planned replacement of disability living allowance by a new benefit (the Personal Independence Payment) will entail the reassessment of some 1.7m recipients of disability living allowance, again over a three-year period. Also from April 2013, a new integrated benefit (Universal Credit) will be launched to replace half a dozen means-tested benefits. Up to 12m claimants are expected to move onto Universal Credit by 2017.

Forecasting the number of appeals that may result from these reforms is, understandably, far from an exact science. The proportion of claimants whose benefit will be removed or reduced on reassessment can only be roughly estimated: similarly, the propensity to appeal of those adversely affected can only be surmised. This can cause problems for judicial resource-planning because of the long lead-in time in the judicial appointments system. In its 2011 report *Right First Time*, the Administrative Justice and Tribunals Council examined the standards of decision-making by government departments and commented,

> *"We argue that public sector organisations need to take a step back from their traditional concentration on processes and performance, and instead focus on the overriding need to improve the quality of decisions."*

The Council noted that tribunals were well placed to draw attention to systemic failures in administrative decision-making.

In the face of the continuing unwillingness of DWP to be represented at SSCS Tribunal hearings, the Tribunal examined alternative methods of providing feedback that might assist in improving the standard of Departmental decisions[1]. Following joint discussions, the Tribunal introduced in July 2012 a scheme whereby DWP would receive from the Tribunal, in cases where the Tribunal overturned the Department's decision, summary reasons in a standardised format. The advantage of the formatted arrangement is that it allows the Department both to reflect upon overturned decisions in individual cases and to aggregate data across thousands of appealed decisions to identify any systemic shortcomings.

While there is interest across courts and tribunals in mediation as an alternative to dispute resolution through contested hearings, the scope for mediation in social security is limited by DWP's lack of power to compromise claims. The Tribunal has also observed a reduction in the proportion of appeals that resolve prior to the hearing. The percentage of appeals withdrawn by appellants or conceded by DWP has halved over the past year. The result is that 81% of the appeals received by the Tribunal proceed to a full hearing.

1 "Right First Time", Administrative Justice & Tribunals Council, June 2011 at p.8 The proportion of hearings attended by a Presenting Officer has fallen from 40% in 2000-01 to 6% in 2012.

To address the burgeoning caseload, the Tribunal has taken significant measures to increase its capacity. 2011 saw the recruitment of 143 fee-paid judges and 155 medically qualified members. In 2012 a further 92 medically qualified members have been appointed and an exercise to recruit another tranche of fee-paid judges through the Judicial Appointments Commission is under way. The SSCS jurisdiction presently has 96 salaried and 630 fee-paid judges, and seven salaried and 1,266 fee-paid members. The largest grouping of members is medical practitioners.

The number of days sat by the Tribunal in 2011-12 was 88,700 in 2011-12, a 20% increase over the preceding year.

Sittings on Saturdays have become a regular feature at the busier SSCS tribunal venues. The number of hearing-centres used for social security appeals has risen from 137 to 181. Maintaining local access to justice is an important principle in a jurisdiction that deals with some of the most vulnerable sections of society.

In 2011-12 the number of appeals cleared reached a record high at 433,600, producing a reduction of the live load by 25%. The output of SSCS amounted to 60% of all cases disposed of by tribunals.

In the Criminal Injuries Compensation jurisdiction there has been one major jurisdictional change over the past year, namely the steady progress in reducing the number of outstanding 'pre-tariff' cases. The majority of the workload in this jurisdiction comprises appeals against decisions of the Criminal Injuries Compensation Authority on claims brought by victims of violent crime under statutory, tariff-based schemes that were first introduced in 1996. There had, however, remained for some considerable while a relatively small number of claims brought under the earlier pre-tariff scheme. In August 2011 there were 141 such cases awaiting determination. The release by the Government of funds to the Authority to progress these claims allowed the Tribunal to move quickly to a final determination. By September 2012, all but 32 of the cases had been cleared.

Many of the pre-tariff cases involved applicants who had sustained catastrophic injuries as babies or in early childhood as a result of non-accidental injury or abuse. Typically, the awards, which are based on common-law principles, have been in the range of £2-4m. This concentration on high value cases has been very demanding on judicial resources (a Tribunal of three judges is convened) and it is to the credit of all involved that such progress has been accomplished.

At 2,500 the number of pre-tariff appeals received by CIC in 2011-12 represented a drop of 12% over the preceding year. This could reflect an unintended consequence of the administrative move by the Authority in favour of applications by telephone or on-line, which may have led to a reduction in the number of claims. Nonetheless, there are a considerable number of claims currently with the Authority dating back to the 1996 and 2001 schemes, which the Authority has indicated it

will be targeting in the coming 12 months.

The number of appeals cleared in 2011-12 was 2,900. There has been a steady increase in the proportion of appeals determined by a single judge without a hearing. The figure is now 34%. While this is a cost-effective use of judicial resources (and there are very few requests from the parties to have the decision reconsidered at a hearing), it does mean that those appeals which do proceed to a hearing before a full panel are the more complex, with voluminous papers that place an increased pre-reading burden on the judiciary.

The Criminal Injuries Compensation Scheme 2012 came into effect on 27th November 2012.

In the Asylum Support jurisdiction the longer-term downward trend in intake has continued, with 1,600 appeals being received in 2011-12. There were 1,800 clearances.

Frequent organisational changes within UKBA make it difficult to anticipate the volume of appeals. However, the widespread use of cross-ticketing within the Chamber has given a good deal of flexibility in the deployment of the judiciary. In consequence, potentially under-used AST judges are able to help out their more hard-pressed colleagues in SSCS.

AST has the tightest target-times across tribunals. It is successfully clearing 99% of appeals within 12 working days of receipt.

Increasing use has been made of video-linked hearings. While this use of technology has been standard practice for appeals from Northern Ireland, it has become more frequently used for vulnerable or detained appellants in GB who would face difficulty in travelling to the main hearing-centre at Anchorage House in East London. Language line continues to be used to enable such appellants to have access to duty legal advice ahead of the hearing through video-link with the Asylum Support Appeals Project. The Tribunal uses a network of 12 video-linked centres across the country.

Video-linking came into its own as the Tribunal faced the challenge of the Olympics and Paralympics, for Anchorage House is situated in east London at the heart of the Games. By extensive use of video-links and "mega-lists" (up to 8 hearings per court per day), AST succeeded in hearing well over 90% of its scheduled cases during the course of the Games.

A further innovation has been the electronic lodgement of appeal bundles by the Secretary of State, which has proved a more efficient system of working. In 2013 AST will move onto the GAPS case administration system used by several of the larger jurisdictions. This will offer greater facilities for management information and document production.

People and Places

In SSCS 3 Regional Tribunal Judges retired - Ken Kirkwood (Scotland), Jim Wood (Wales and the South-west) and David Wall (North-east). Between them they had over 50 years experience of tribunal work. Their valued contribution will be missed.

In CIC Judge Stephanie Cope moved to take up full-time appointment as a District Judge in the County Court.

CIC conducted its first recruitment, since becoming part of the First-tier Tribunal, of specialist members. Following a Judicial Appointments Commission competition ten new members have been appointed, having regard to their knowledge and experience of the problems faced by victims of violent crime.

There have been no changes in the complement of AST judges.

Interesting Cases

For AST this section is noteworthy for the lack of significant case-law development. The Senior President's report last year commented on the practice of the Secretary of State for the Home Department in dealing with applications for accommodation from persons on temporary admission to the UK. Section 4(1)(a) of the Immigration and Asylum Act 1999 confers a power on the Secretary of State to make full board accommodation available. The position of the Secretary of State is that she will only exercise her power in "exceptional circumstances" but has not published any guidance on what might constitute an exceptional circumstance. The absence of a published policy causes difficulties for claimants in not knowing the criteria by which their applications are assessed and for the Tribunal in carrying out its supervisory role within the system of administrative justice. The Tribunal has continued to point out these difficulties to UKBA but there is no clear commitment to remedy the situation. Meanwhile disputes are dealt with piecemeal on a case-by-case basis.

AST also continues to encounter appeals on the ground that the appellants have applications pending before the European Court of Human Rights for interim measures under Rule 39. Guidance has been provided in a number of lead cases dealt with by the Tribunal within the specific limits of its jurisdiction, which do not allow the Tribunal to consider the merits of the ECHR applications themselves.

AST has been called upon to consider the practical difficulties for appellants who are nationals of Iran, Palestine or Somalia in complying with a requirement to "take all reasonable steps to leave

the United Kingdom". For example, the closure of the Iranian Embassy in London has created substantial difficulties for Iranians seeking re-documentation.

In CIC the Court of Appeal in *Hutton v First-tier Tribunal & Criminal Injuries Compensation Authority* [2012] EWCA 806 offered guidance on the criteria to be applied when deciding whether the two-year time-limit in bringing a claim for compensation should be waived. In two linked CIC cases (*Ferrie* and *Biggins*) the Upper Tribunal was faced by the complexities that can arise in a GB wide jurisdiction. In one case, the claimant had suffered criminal injury in England but was residing in Scotland at the date of claim. In the other, the claimant resided in Scotland and had been injured there but the decision on her claim was taken by a CIC judge in England. On judicial review (there is no direct appeal to the Upper Tribunal in CIC cases), it was held that the decisions at First-tier could be challenged in either the Upper Tribunal or the Court of Session.

In SSCS the abundance of EU case-law on the free movement of labour continues to have an impact on UK domestic social security law. Many of the questions around the exportability of disability living allowance have now been settled. The care component of the allowance has been held to fall within the category of exportable sickness benefits, though the mobility component does not. The Upper Tribunal in *Secretary of State for Work and Pensions v LT* [2012] UKUT 282 (AAC) provided guidance on identifying the relevant competent state for paying benefit. The application of tests of residence and presence as conditions of entitlement to many benefits continues to be a source of litigation on the meaning of a "right to reside". In *Secretary of State for Work and Pensions v Czop and Punakova* (Joined cases C-147/11 and C-148/11)(CJEU, 6.9.12) the Court examined the circumstances in which the primary carer of a child in education might acquire a right to reside.

Health, Education & Social Care Chamber President: His Honour Judge Phillip Sycamore

The jurisdictional landscape

The four jurisdictions which constitute the Health, Education and Social Care Chamber (HESC)[2] remain as described in last year's report, however within those jurisdictions, new powers of appeal have been introduced and there have been changes to the Rules.

2 Mental Health (England jurisdiction)
Special Educational Needs and Disability (England jurisdiction)
Care Standards (England and Wales jurisdiction)
Primary Health Lists (England and Wales jurisdiction)

A new power of appeal was introduced to the Special Educational Needs and Disability (SEND) jurisdiction in cases of permanent exclusion of pupils from school where it is alleged to be the result of disability discrimination. Steps have been taken to ensure such appeals are dealt with on a rapid timetable which will produce the result of an appeal within six weeks of receipt of the claim. In April 2011, a new right of appeal was introduced allowing Dental practices to appeal decisions of the Care Quality Commission to the Care Standards jurisdiction, following on from this in April 2013, there will be a similar right of appeal against decisions of the Care Quality Commission by Doctors' practices.

The Care Standards jurisdiction has now concluded its involvement in Social Work appeals from the General Care Council, although some cases have still to be heard with the Health and Care Professionals Council as the new Respondent, following the abolition of the General Social Care Council and the adoption of its role in respect of Social Workers regulation by the Health and Care Professionals which has alternative appeal routes to the County and High Court.

Also, from April 2013, the Primary Health Lists jurisdiction will hear appeals against the decisions of the NHS National Commissioning Board involving the listing of Doctors, Dentists and Pharmacists, replacing the Primary Care trusts who are the present respondents to appeals. New Regulations and guidance for these cases will come into effect at the same time.

In the Mental Health jurisdiction, the marked increase in Community Treatment Order (CTO) applications and referrals was noted in last year's report. These arise from fast moving changes in the status of the patient under the Mental Health Act. Experience has shown that many patients on a CTO have little interest in participating in tribunal proceedings when their cases are referred to the tribunal. Accordingly, since 6 April 2012, Rule 35 of the HESC Rules[3] has been amended so that the tribunal can make a decision on a reference without an oral hearing where a patient is aged 18 or over, is a community patient and has either stated in writing that they do not wish to attend or be represented at a hearing, or the patient's representative has stated in writing that the patient does not wish to attend or be represented. Where the letter comes from the patient the tribunal seeks evidence that the patient has capacity to make that decision.

The change has involved an amendment to the Senior President's Practice Direction on the Contents of Reports whereby the patient's Responsible Clinician must address capacity in all referral cases where the patient is living in the community.

There is no desire to deprive a patient of an oral hearing and the rule has been drafted so that every patient who wishes to attend or be represented at a hearing will be dealt with as now, with a preliminary examination and full hearing. Even if the patient is content then the tribunal can still decide to hold a hearing if there are sensible reasons to do so.

3 http://www.justice.gov.uk/downloads/tribunals/general/hesc-rules-2008.pdf

The new procedures remove the stress for community patients having to attend unwanted medical examinations and the judicial hearings (often at their old hospital) while still allowing the tribunal to call for reports and review cases thoroughly.

Other significant changes to the Rules have clarified what information must be given in applications and references, copies of which will now be forwarded to the tribunal members together with the reports. At the same time, an opportunity was afforded to re-draft the Practice Direction[4] on the contents of reports, which allowed the tribunal to clarify the requirements in a manner in keeping with the more manageable format of the booklet *Reports in Mental Health Tribunals*, which was circulated some time ago.

Rule 32 has also been amended to remove the obligation on the Secretary of State to produce the reports in the case of a conditionally discharged patient. Instead, the requirement is now that the Secretary of State, on being notified of an application, must simply give the tribunal details of the patient's Responsible Clinician and Social Supervisor, and the tribunal then seeks and enforces production of reports directly. These changes should ensure a speedier resolution of such cases.

The Mental Health tribunal will be able to strike out cases where there is no jurisdiction, and without holding a hearing. Jurisdiction questions arise where, for example, the decision appealed against falls outside the statutory list, or the application was not made during the relevant period, or a reference is made prematurely In DP v Hywel DDA Health Board [2011] UKUT 381 (AAC) the Upper Tribunal held that there is no discretion to accept jurisdiction outside the scope of the Act.

Interesting cases

With regard to the Special Educational Needs and Disability jurisdiction, the Upper Tribunal has issued two decisions of importance to the growing number of Academies. In *ML v Tonbridge Grammar School [2012] UKUT 283 (AAC)* the UT decided that the Local Authority must stand in the position of the Responsible Body in cases where disability discrimination was alleged against a school which had later changed status into an Academy, with the Academy joined as a Second Respondent. This ensures that such cases will progress and a result will be known. In *SC v The Learning Trust (SEN) [2012] UKUT 214 (AAC)* the Upper Tribunal decided that Academies were in practice obliged to follow a decision of the First-tier Tribunal nominating them to accept a pupil with Special Educational Needs and parents could continue to nominate such schools as part of their appeal.

4 http://www.judiciary.gov.uk/Resources/JCO/Documents/Practice%20Directions/Tribunals/hesc-statements-in-mh-cases-062012.pdf

The Mental Health jurisdiction has seen a number of interesting cases this year. In particular, the Upper Tribunal considered at what point in considering the possible discharge of a restricted patient a tribunal is no longer allowed to adjourn but is, rather, obliged to defer a direction for a conditional discharge. It was held that the tribunal cannot exercise its power to defer a conditional discharge unless it formulates a direction, including the conditions for discharge that will take effect if the necessary arrangements can be made. Until it is able to make these judgments, the tribunal is free to adjourn (see *DC v Nottinghamshire Healthcare NHS Trust and the Secretary of State for Justice [2012] UKUT 92 (AAC).*

In *EC v Birmingham and Solihull Mental Health NHS Trust [2012] UKUT 178 (AAC)* the Upper Tribunal decided that, in restricted cases, the tribunal need not spend an inordinate amount of time considering whether or not to make a non-statutory recommendation to the Secretary of State. The tribunal judge said:

> *"I will not express any view as to the circumstances in which the First-tier Tribunal should or should not make extra-statutory recommendations in mental health cases save that, if some panels are routinely spending a great deal of time considering issues not necessary for the exercise of their statutory functions for no better reason than that a party has asked them to do so, I would deprecate that practice."*

In *AM v West London MH NHS Trust & Secretary of State for Justice[2012] UKUT 382 (AAC)*, when there was an appeal after the tribunal refused to adjourn for more information on aftercare (in the event that the patient was discharged), the judge said that although the social work evidence before the First-tier Tribunal may have been inadequate, that did not affect the tribunal's ability to deal with the statutory criteria, and the key issues in the case, fairly and justly. He added:

> *"I do not accept that it is essential for the tribunal to have specific information about aftercare in every case".*

Using the Review powers

The review provisions which allow the First-tier Tribunal, on receipt of an application for permission to appeal, to review its own decision are now firmly established and the salaried judges tasked with this work follow the guidance given by the Upper Tribunal in *R.(RB) v First-tier Tribunal (Review) [2010] UKUT 160 (AAC).*

Since 1 January 2012, from around 20,000 decisions issued, permission to appeal under Rule 46 was requested in just 1% of cases, and even fewer requests to set aside were received under Rule 45. In around half of these cases, the original decision remained. The most common reason for setting aside a tribunal decision related to inadequate reasons rather than a clear error of law. In addition, fewer than ten decisions had to be set aside on the tribunal's own initiative. The majority of the tribunal's review decisions were given within 14 days of the application being received. Common errors are collated to better inform the tribunal's training programmes, but the tribunal has not continued the practice of preparing a digest of such decisions.

Innovations

In the Mental Health jurisdiction, it is intended to build on the pilot scheme in SEND to use the skills of legal advisors from local magistrates' courts to deal with standard box work requests in the mental health jurisdiction at the Leicester office. The title "Registrar" is likely to be adopted and the aim is to achieve consistency in orders and directions and to respond quickly to routine requests and queries. In addition the duty judge scheme, whereby salaried tribunal judges work in situ with the staff in Leicester, will continue - given the substantial efficiencies and case-management benefits that have been realised.

This year, a further seven mental health salaried tribunal judges have been authorised to sit on the Restricted Patients Panel, taking the complement to 20. This allows our judges to take some of the burden from the Circuit Judges and Recorders already authorised to hear restricted cases, which should ensure speedier listing.

As mentioned above and in last year's report, the use of Registrars to deal with routine applications in SEND has been so successful that their numbers have been increased to ensure that there is permanent coverage throughout the year, and on a trial basis the Registrars will undertake active case management of cases close to hearing to ensure that any outstanding issues are identified. It is anticipated that will also have an effect on the very late settlement of cases.

A joint LEAN (organisational efficiency review) has been undertaken with Stockton and Essex Local Authorities with the aim of improving the end to end structure, timetable and user satisfaction of appeals to SEND. Steps will be taken to disseminate the lessons learned as far as possible in the next year, indications from all were that a shorter timetable for appeals was preferred and the jurisdiction is considering reducing the timetable for appeals from 22 to 12 weeks to accommodate this. A pilot scheme to increase the take up of mediation by requiring parents to receive information from independent mediators appointed in their case has led to the take up of

mediation increasing from 3%, where no information is given, to 6% when the Tribunal encourages contact, and as high as 25% when an information session is directed. The Tribunal is considering how best to extend the reach of this pilot. In common with the previous two years, all secondary transfer cases are allocated a hearing before the end of the summer term to ensure that a decision is available before a child enters a new school. Last year, that was extended to all phase transfer appeals and all appellants were offered a hearing before the end of term. A number of experienced First-tier Tribunal Immigration and Asylum Chamber judges were assigned, trained in the jurisdiction and added to our strength to enable more efficiency during this period, and that scheme is likely to be extended.

Following consultation, a pilot is proposed in a limited number of cases, where the number of specialist members will be reduced from two to one. It is hoped that, as a result, there will be a more proportionate method of dealing with simpler cases.

In the Primary Health Lists jurisdiction, a new system of dealing with suspension cases has been introduced which speeds up administration, and all other cases now benefit from a telephone case management hearing, which, as in the Care Standards jurisdiction, is reducing the number of last minute adjournments and improving time estimates for hearings.

People and places

It is with great sadness that I report on 30 April 2012 our colleague Jonathan Gammon a salaried judge in the Mental Health jurisdiction, died in a tragic accident. He is greatly missed by all who knew and worked with him.

The Chamber's senior judicial leadership team, which I chair[5], has continued to provide support and leadership in their respective jurisdictions and have helped me to steer the Chamber over the year. I am grateful to my colleagues for their ideas, innovations and continued support.

The Chamber also continues to be well supported by its complement of 24 salaried Tribunal Judges (STJs), its full-time medical member, and its complement of fee paid judges, medical members and specialist members in all four jurisdictions.

The Chamber's use of assignment, ticketing and authorisation has continued to develop. In July,

5 Deputy Chamber President Judge John Aitken (SEND/CS/PHL)
Deputy Chamber President Judge Mark Hinchliffe (Mental Health)
Principal Judge John Wright (Mental Health)
Chief Medical Member Dr Joan Rutherford (Mental Health)

as noted above, I was very pleased to authorise the second tranche of Mental Health STJs to sit in Restricted Patients cases.

As mentioned previously, the Chamber provided a very successful example of the benefits of the use of the assignment process and flexible deployment of judicial resources between Chambers when ten First-tier Tribunal Immigration and Asylum Chamber judges, were assigned to HESC and ticketed to the SEND jurisdiction to provide additional resource during the busiest period for the jurisdiction between April and July. Mindful of the need to hear appeals before a child joins a new school in September, SEND now also lists a third of cases on a shortened timetable, and a pilot scheme will test whether all appeals could be heard on a shorter timetable.

With regard to other mainstream Judicial Appointments Commission (JAC) recruitment to the Chamber, October 2011 saw JAC competitions for 40 specialist non-legal and 40 specialist medical fee paid members to Mental Health. Induction took place in July 2012 for medical members and September 2012 for non-legal members.

A JAC competition for up to 40 Fee-paid Mental Health specialist non-legal members, was launched in January 2013 and a competition for 15 Mental Health fee-paid legal members, is expected to be launched in May 2013. Hopefully under the proposed new legislation in the Crime and Courts Bill recruitment of non legal members will be quicker.

A further cross-ticketing exercise was held in late 2012 enabling experienced judges to extend the range of their work across jurisdictions. In addition experienced specialist members with relevant mental health experience have been cross ticketed into the Mental Health jurisdiction. This type of cross-ticketing is particularly valuable to smaller jurisdictions, providing, as it does, an opportunity for those who may sit relatively infrequently to more regularly exercise judicial responsibilities.

The Tribunal centre at Pocock Street has been allocated for what in practice amounts to the exclusive use as a SEND hearing facility. This has led to an improvement in service by enabling consistency with regard to the venue and enabling cooperative working between judges and the administration. In January 2013, we were pleased to welcome Edward Timpson MP, Department for Education Parliamentary under Secretary of State for Children and Families to Pocock Street to observe a hearing and meet the lead SEND judge, Meleri Tudur, Deputy Chamber President Judge John Aitken and me for a brief discussion about the jurisdiction.

Administrative support

The administration teams in Leicester, where the Mental Health jurisdiction is located and in Darlington, where the SEND, Care Standards and Primary Health Lists jurisdictions are located, continues to achieve outstanding levels of success in meeting customer targets in all areas. They have become highly accomplished and professional teams under the leadership of Operational Managers Karen Early for Mental Health and Kelly Swan for SEND, Care Standards and Primary Health Lists.

War Pensions & Armed Forces Compensation

Chamber President: Hugh Stubbs

The most important development affecting the Chamber this year has been the Decision of the three Judge Panel of the Upper Tribunal in Secretary of State for Defence v Richard Cartwright (WP)[2012] UKUT 229(AAC) which decided how applications for a review should be treated with many cases leading to decisions to maintain an award. Such decisions are appealable. The Upper Tribunal also decided that there is a right of appeal against a refusal to review. About 50 appeals had been stayed pending the outcome of the Upper Tribunal's decision. Most of these concerned a refusal by the Secretary of State to review.

Overall numbers of appeals have remained fairly static. However appeals under the Armed Forces Compensation Scheme which applies to injuries received after 5 April 2005 are significantly increasing whilst the number of appeals under the War Pensions Scheme are reducing. I expect this change to continue but it will be a long time before the number of appeals becomes very small because under the War pensions Scheme there are no time limits for making claims and claimants can apply to review their awards at any time.

We held a successful conference in Cardiff for Judges and Members of the Chamber and colleagues from the Pensions Appeal Tribunals in Scotland and Northern Ireland. We were joined by two judges of the Upper Tribunal. Our training arrangements have been integrated for many years but a new feature this year was that three new Scottish Legal Members joined 10 new Service Members in this jurisdiction for new member training in the two days before the Conference. We are grateful to Dr Patricia Moultrie for her effective work as the Judicial Studies Coordinator for the three jurisdictions.

I was appointed in July 2012 in succession to Judge Andrew Bano who was responsible for making the changes needed to implement the Tribunal Procedure Rules 2008 and to guide the Tribunal in relation to the increasing number of appeals against decisions made under the Armed Forces Compensation Scheme. We record our thanks to him for this important work.

Immigration & Asylum

Chamber President: Michael Clements

The most noticeable statistical phenomenon in the First-tier Tribunal Immigration and Asylum Chamber since my report of last year has been a continuing decline in the numbers of appeals received. In 2010-11 there were 136,000 receipts; in 2011-12 112,500 a further decline is projected for 2012-13.

It is difficult to identify fully the causes of this downturn, but it can be at least partly accounted for by the introduction of a more rigorous regime of fees for the lodging of appeals, and by the removal of appeal rights in certain classes of case, notably those where family members living abroad have been refused visas to visit relatives who are resident in the UK.

There has been a dramatic reduction in the number of appeals by asylum seekers who have been refused protection in the UK as refugees; that is however a category of appeals which it is notably difficult to forecast because increases can be triggered by sudden humanitarian crises in other parts of the world.

Within the overall reduction in appeals entering the Tribunal, there are some noticeable increases in the types of claim being made. We have experienced a steadily increasing number of appeals by young men of working age who seek settlement in the UK under the Immigration (European Economic Area) Regulations 2006, as members of the extended families of EEA nationals. These appeals are often complex in terms of both fact and law, and frequently supplemented by submissions based on Article 8 of the European Human Rights Convention.

There is also a developing higher court jurisprudence relating to children which identifies their interests as a primary consideration in immigration decisions relating to families as a whole.

Human rights issues, particularly those concerning Article 8 of the European Convention, are therefore assuming ever greater importance in the work of the F-tT IAC, which is often in the position of making pioneering decisions in this field. This work necessarily involves the use of a

large amount of judicial discretion. It also makes considerable demands on judgecraft skills because, as in most jurisdictions, more and more litigants are self representing. In the IAC however, the litigant will, in addition to having no representative, routinely require an interpreter for the entire hearing. There have been severe difficulties following the recent change of provider for interpreter services to HMCTS, but that situation is gradually improving.

Permission to appeal from the First-tier Tribunal to the Upper Tribunal requires, in the first instance, permission from the First-tier. Applications for such permission were formerly dealt with by Upper Tribunal Judges sitting as First-tier Judges. Following a large scale selection and training programme, that function has, within the past year, been placed, as it should be, solely in the hands of judges of the First-tier Tribunal excepting only those occasions where operating convenience may require otherwise.

Fluctuations in workload in the future may not be confined to the Immigration and Asylum jurisdiction, and in that context I welcome the paper, issued by the office of the Senior President of Tribunals on 8th August 2012, to the effect that the assignment and cross-ticketing of judges among jurisdictions is to be developed. The effect of such development would be to enable a salaried or fee-paid judge, who has already been found qualified to carry out judicial work, to move among jurisdictions within his or her salary group, without having to enter the beginning of the process of appointment through a JAC competition. This would seem to be a wise use of judicial and financial resources.

It is important, in the interests both of job satisfaction and of developing a flexible judicial workforce, to encourage judges to be trained and to acquire experience in jurisdictions other than their main field of activity. I have recently been able to announce an increase in the number of days First-tier Tribunal Immigration and Asylum Chamber salaried judges can undertake work in other jurisdictions from twenty to thirty. These days will be in addition to training days in the alternative jurisdictions concerned.

In the past year a number of First-tier Tribunal Judges and Designated Judges have been trained, and have sat, in the Special Educational Needs and Disability jurisdiction of the Health, Education & Social Care Chamber. Many of our judges sit in the civil and criminal courts as well as in other tribunal jurisdictions. This is a mutually enriching experience, and promotes the growing integration of the tribunals with each other, and of the Courts with the tribunals.

Training always holds a central role in the work of the Chamber. In addition to the excellent full scale training days when judges from across the jurisdiction are able to get together to learn and to exchange ideas, the Chamber's team of trainers are currently working on the development of a programme of frequent and more routine local training which will be conducted by Designated Judges.

During the past year, one fee-paid and one salaried First-tier Judges have been appointed as salaried judges of the Upper Tribunal. Eight fee-paid and two salaried judges have become Upper Tribunal part-time judges. A total of eighteen new fee-paid judges have been appointed to the Fist-tier. We wish them all well.

A long standing anomaly has prevailed in the First-tier Tribunal Immigration and Asylum Chamber in that, unlike most other jurisdictions we do not routinely have electronic recording of our proceedings. Such a facility is increasingly important in assisting with the preparation and hearing of appeals. It is also an important safeguard in the hearing of complaints against judges, particularly when financial economies often mean that there is no court clerk or usher present during hearings. I am glad to say that, with the support of the senior judiciary, audio equipment is expected to be provided in all our hearing rooms in the near future.

In the light of the First-tier Tribunals changing landscape, a "root and branch" review of our work and organisation has recently been commenced by a panel of fourteen members comprising equal numbers of judges, and of civil service colleagues drawn from HMCTS administration. The purpose of this review is to consult as widely as possible and to engage in original thinking about all aspects of the Tribunal. The topics to be scrutinised include procedures for listing and the preparation of judicial decisions; the distribution of work among salaried and fee-paid judiciary; the deployment of judges across jurisdictions; the use of premises; and administrative procedures.

The panel is expected to report its findings to the Tribunals Judicial Executive Board within six to nine months. It is hoped that it will represent a welcome drawing together of judiciary and administration in common endeavour to serve the interests of justice. I look forward to being able to report next year as to the process and results of the review.

I would like to send the good wishes of the First-tier Tribunal (IAC) to Lord Carnwath, as he now is, in his new role as a Justice of the Supreme Court. As Senior President of Tribunals he has been steadfast in his support for all jurisdictions and the First-tier Tribunal in particular. His quiet devotion to the development of tribunal justice has been much appreciated. We look forward to working with Sir Jeremy Sullivan, whose well known experience in railway management should stand him in very good stead! We hope and expect that he will enjoy his time as Senior President in this very rewarding Jurisdiction.

Tax

Chamber President: Colin Bishopp

In one way or another, we have had a fairly eventful year. The Tax Chamber has featured on the front page of The Times twice, and we have had other press coverage too. We have said farewell to a few of our number, and have welcomed some newcomers. And we have received our first (but so far only) MPs' expenses appeal.

The front page reports reflect the increasing volume of tax avoidance scheme cases we are receiving. Tax avoidance has, of course, received a good deal of press attention recently, not least by reason of its use by celebrities, and there is much talk, not only in tax circles, about the expected introduction in the next Finance Bill of anti-avoidance provisions. Like much new legislation, particularly when large sums of money are at stake, it is likely to be tested and as a result I expect a significant increase in appeals of this type. Fortunately for the judges and members, the work is interesting, though often very demanding.

Less favourable (and, regrettably, inaccurate) press coverage focussed on the supposed backlog of cases in the Chamber, and upon a claim that it would take as long as 38 years for us to clear it. That claim significantly misrepresents the position. As I said in my report last year, about two-thirds of our case load is "stood over", or stayed, behind lead cases, some in the Tax Chamber, others in the Upper Tribunal or in the courts. Decisions in the lead cases are beginning to arrive and we can reasonably hope to make progress in disposing of the stayed cases in the near future. Some of the decisions we are awaiting will give clear answers, determinative of the appeals stayed behind them, which will be allowed or dismissed by agreement of the parties. The great majority of the stayed appeals are in this category. Other decisions may give guidance about the relevant law, but nevertheless leave in issue the application of that law to the facts as we find them. I am confident that we have the resources to deal with those cases. It may take some time yet before we have disposed of all the cases which are currently stayed, but my estimation is that the claim that we will need 38 years overstates the matter by a factor of at least ten.

I mentioned in last year's report the large number of so-called missing trader appeals we have. Steady progress has been made, and the number remaining to be heard has reduced significantly, though it remains substantial. Fortunately a number of recent decisions of the Court of Justice of the European Union have narrowed the relevant issues, and we may soon be seeing a more rapid disposal of the appeals. As before, we have been greatly helped by the willingness of other jurisdictions to lend to us the large courtrooms necessary for hearing such cases, and I express considerable gratitude to the judges and members of the Chamber for their willingness to hear appeals which are very demanding of time, and which require considerable attention to detail in

the preparation of the written decision.

During the course of 2011 we undertook a recruitment exercise which resulted in the appointment of three new salaried judges of the Tax and Chancery Chamber of the Upper Tribunal, and three new salaried judges of this Chamber. The overall increase was, however, only five, as one of the new Upper Tribunal judges, Roger Berner, was previously a judge of this Chamber. It has been the practice for Upper Tribunal judges to sit also in the First-tier Tribunal, and our salaried judge-power has therefore increased considerably, to a total, counting both Chambers, of 11 (not including the President of the Tax and Chancery Chamber). Included within that number is Judge Alison McKenna who has been assigned to this Chamber, as well as to some others (and she is also a Judicial Appointments Commissioner), though she spends most of her time with us. The calibre of the applicants for the salaried posts was extremely high, and we have been fortunate in securing very capable judges.

On the other hand, we have lost Theo Wallace (an Upper Tribunal judge who, like others, also sat in the First-tier Tribunal) after 20 years of service in this and the predecessor tribunals, and we shall soon lose the services of Sir Stephen Oliver QC, my predecessor as President, who has been sitting part-time since relinquishing the presidency. Both will be sorely missed.

In the coming months there will be much discussion about the future handling of Scottish tax appeals. The Scottish government has been granted some tax raising powers, and there will accordingly be some appeals relating to purely Scottish taxes (and some relating to taxes which apply only in the rest of the United Kingdom), and others which raise cross-border issues. I may have significant changes to report next year.

We have a first-rate team of judges and members, and are supported by a committed staff. I am confident we are in good shape for the future.

General Regulatory

Chamber President: Nicholas Warren

Jurisdictional Landscape

Last year's annual report explained the principles which the General Regulatory Chamber (GRC)

has adopted to deal with its very small but very diverse caseload. The development of the chamber continues.

Two distinct new rights of appeal have found their way to the chamber. The "Community Right to Bid" scheme allows communities to delay the sale of important local buildings. Owners of those buildings can appeal to the GRC if they are dissatisfied with a local authority's original decision to permit delay or with any later decision concerning compensation for resulting financial loss.

In the past year, examination boards have become liable to civil penalties imposed either by Ofqual or by Welsh Ministers for faulty performance. There is a right of appeal to the GRC.

The GRC's environment jurisdiction has also become responsible for new rights of appeal concerning the Green Deal Framework and Flood and Coastal Management.

Easily the most significant change, in terms of numbers concerns nitrate vulnerable zones (NVZs). Every four years the government identifies waters which are either polluted or at risk of being polluted from the discharge of nitrogen compounds. Agricultural land which drains into those waters is then the subject of restrictions as to its use. Approximately two-thirds of agricultural land came within the proposed designations and the GRC has received several hundred appeals. The Judicial Appointments Commission has, for the first time, recruited hydrologists to judicial office and cases have been listed to be heard by a judge and a hydrologist sitting together. Hydrologists will also be available to sit on flood management appeals.

Two important statutes with links to the GRC fell to be reviewed this year.

Lord Hodgson published his review of the Charities Act 2006. He recommended that the long list of appealable decisions in Schedule 6 of the Act should be repealed and that, in general, all decisions of the Charity Commission should be appealable. he report asks whether the tribunal is a low cost accessible forum for delivering justice. The answer is that, at first tier, the tribunal aims to be so. The *Leggatt* ideal is that in general it should not be necessary for parties to feel that they have to pay for legal representation. It is not easy, however, to build such a reputation on only a handful of cases a year; the government response to the suggestion of a wider jurisdiction is awaited.

The Freedom of Information Act 2005 also fell to be reviewed by the Ministry of Justice Select Committee. Their report does not discuss the jurisdiction's work directly but contains an interesting discussion of the use of Section 53 of the Act. This permits the government to override a tribunal decision. In the past, the veto has been used to protect cabinet minutes from disclosure. This year it was employed to block the disclosure of risk registers compiled as part of the NHS reforms.

I should record the demise of the Local Government Standards jurisdiction although it remains possible that one or two surviving appeals will trickle in.

The legislation which originally set up the tribunal has been repealed by the Localism Act. The cases it heard featured strong personalities and acute local political controversy and I pay tribute to the judges and members, under the leadership of David Laverick, for the sensible and experienced neutrality which characterised their work.

People and Places

In June 2012 Professor John Angel retired from his role as Principal Judge – Information Rights on reaching the age of 65. He will continue to act as a judge within the chamber from time to time. John was responsible for founding the original Information Tribunal and, as acting president, for the formation of the GRC in 2010. His colleagues hold him in great affection and I wish to thank him for his contribution and to wish him a happy semi-retirement.

Property

Chamber President Designate: Siobhan McGrath

It is intended that, subject to the final approval of Parliament, a Property Chamber of the First-tier Tribunal is to be established in summer 2013 to accommodate applications, appeals and references which are currently determined by the Residential Property Tribunal Service (RPTS), HM Adjudicator to the Land Registry (ALR) and the Agricultural Lands Tribunal (ALT). MoJ is now taking forward the legislation to enable the creation of the Property Chamber.

The establishment of the Chamber within the First-tier Tribunal will mark a significant milestone in the achievement of the Government's programme to develop a unified tribunals system.

It is proposed that the jurisdictions transferred into the Property Chamber will ultimately be organised into three divisions. The groups will be known as;

- Residential Property - replacing RPTS

- Land Registration - replacing ALR
- Agricultural Land - replacing ALT

There will be rights of appeal in most cases to the Upper Tribunal (Lands). However, in the case of HM Adjudicator to the Land Registry it has been agreed that some appeals will lie to the Tax and Chancery Chamber. In due course the Valuation Tribunal for England may also transfer to the Ministry of Justice and become part of the Property Chamber. This is being discussed by MoJ and the Department for Communities and Local Government.

Setting up the new Chamber

Several committees/boards have been set up to oversee the project to set up the PC. The First-tier Tribunal Project Board (FTTPB) is accountable for the success of the project and ensuring that the project remains on course to deliver to time and to cost. The Judicial Transfer Group (JTG) has supported the board and provided a judicial view on rules, practice directions and the structure of the chamber. The Business User Group (BUG) has been created to look at the rules and translate them into the jurisdictions' IT and administrative systems. The Tribunal Procedure Committee has separately been responsible for drafting a single set of procedural rules for the Property Chamber.

Structure

A consultation paper setting out the proposals in respect of the structure of the Chamber was issued to judicial office holders and panel members on 19 March 2012 and responses were received by 14 May. The Ministry of Justice (MoJ) considered the views and comments received and circulated their response on 29 October 2012. The response confirmed that the regional and judicial management structures will transfer across when the Chamber is established but will be subject to subsequent review at a time and with a remit to be decided by the Senior President of Tribunals and the Chamber President. On 31 October 2012, the MoJ issued the judicial office holders and panel members with their finalised terms and conditions.

In the interim period before the creation of the Chamber, the JAC carried out a recruitment exercise to fill the position of President of the Property Chamber President. It was publicly announced on 9 January 2013 that the Lord Chancellor had appointed Siobhan McGrath who has been Acting Chamber President since 2 August 2011. The President will be supported by the three

divisional heads and the current salaried and non-salaried judiciary and other members will map into the Chamber structure.

Rules

The Rules of the First-tier Tribunal and the Upper Tribunal are the responsibility of the Tribunal Procedure Committee (TPC). Each of the jurisdictions transferring into the Property Chamber currently has its own procedural rules and the TPC have been working with each of the jurisdictional heads, the FTPB and the JTG in creating a single set of Rules to ensure consistency across all the jurisdictions within the new Chamber. It is intended that the new Rules will allow current best practice to be adopted across the Chamber, with benefits of simplicity and transparency for users and greater flexibility in case management.

The Rules were sent out for public consultation and the deadline for responses was 6 September. The Rules will come into effect on the date the Chamber is created, although for some cases the old rules will apply for a transitional period.

Chamber Objectives

Once the rules and the structure has been agreed, there will be a number of ongoing objectives to be fulfilled before and after the Chamber is created. A Chamber Management Board has been established which is chaired by the Chamber President. It is envisaged that the Board will be supported by three committees covering Procedures, Membership and Training.

The Board held its first meeting in November and is currently establishing an appropriate judicial management structure for the operation of the chamber. It will be looking at the opportunities for ensuring consistency of approach across the three divisions and for establishing opportunities for the cross ticketing of members when required.

The Chamber is organising a national launch event for its judiciary, supported by regional events for all its members. These will incorporate training and briefing about the new procedural rules.

Caseload

The number of applications received and cases disposed by each jurisdiction entering the Property Chamber for the financial year 2011-12 is set out below.

	Cases Received	Cases Disposed
RPT	9,987	9,853
ALR	1,300	1,500
ALT *	47	27

*** Figures only available from December 2011 to 31 March 2012**

Chapter 3
Employment

Employment Appeal Tribunal

President: Mr Justice (Brian) Langstaff

There have been no significant developments in the work of the Employment Appeal Tribunal although the statutory landscape remains subject to sudden change and development. However, the trend for appeals received is upwards. A total of 2,172 appeals were lodged, an increase of 6% over those received in 2010/11. 2010/11 figure for appeals received showed an increase of 4.33%. The EAT disposed of 2,217 appeals over the last year, an increase of more than 10% on the previous year's disposals. Many appeals received, raise no arguable point of law, and the number dismissed at sift stage rose by 8.5% and constituted 47% (1,040) of the total disposals. The figures for appeals received, continue to demonstrate an increase, and the rate of increase shows no sign of tailing off.

561 appeals were disposed of at a full or preliminary hearing, an increase of 31% over the previous year's disposals. Of these, 39% were unfair dismissal cases – an increase of 11.62% on the previous year's numbers. However the largest increase was 37% for discrimination cases to constitute 20% of all disposals with both sex and race discrimination showing significant increases. At the moment there has not been the anticipated increase in age related claims. Many appeals now involve a number of distinct heads of claim: for instance, unfair dismissal, linked with discrimination, coupled with a claim for notice or holiday pay.

The tribunal itself moved premises in December. This was achieved with the minimum of disruption and was well planned and executed. The business of the tribunal was not significantly interrupted. Appellants are appreciative of the many new facilities such as a café, wi-fi and comfortable seating areas. I am grateful to my predecessor Sir Nicholas Underhill and the staff responsible for the facilities which we now enjoy. The hearing rooms are well equipped and fit for purpose; the designated area for judicial chambers works well; and disabled access has much improved.

It remains to be seen what the future may be. The tribunal has the challenge of the introduction of a fee regime which will inevitably impact on the work of the staff. It is too early to tell whether the number of appeals received will be affected. The use of lay members to sit alongside judicial members will reduce as the result of legislature change. No decision has yet been made whether the U.K. Employment Appeal Tribunal will be split into separate tribunals for Scotland, England

and Wales. I reiterate the words of my predecessor that the judges of this tribunal who include Lady Smith, Judge of the Court of Session in Scotland, that it is important to retain a single Appeal Tribunal for Great Britain.

Employment Tribunal (England & Wales)

President: David Latham

The jurisdictional landscape

The period of November 2011 to October 2012 has continued to be a hectic period for Employment Law and the Employment Tribunals. Having implemented the challenges of the changes brought about by most of the provisions of the Equality Act 2010 it became apparent that a few of the provisions were not to be implemented. However, there have been regular consultations, request for information and views, responses to consultation, statements of Government intent in respect of the Employment Law area, Statutory Instruments and draft legislation. This has resulted in The Reform and Regulatory Bill in Parliament. It is anticipated that that will receive the Royal Assent in April/May 2013 with implementation of many of the provisions coming within the next year or so thereafter. Much of the detail of the proposals including that for early pre-claim conciliation are yet to be worked through and published. They will be the subject of regulation.

A few changes were implemented in April 2012 by way of secondary legislation. These included the extension of the qualifying period for unfair dismissal claims from one year to two years (subject to transitional provisions), an alteration in the cases upon which Employment Judges would sit alone (which included unfair dismissal cases), and two amendments to the Rules. One of these was in respect of when Tribunals would take statements as read and a the other in relation to costs brought about principally by the decision of Her Majesty's Courts & Tribunals Service that expenses to witnesses and parties in Employment Tribunals would cease to be ordinarily paid from April 2012.

Ministers agreed that there should be a review of the Rules and further agreed that this should be judicially led. Accordingly, Mr Justice Underhill, former President of the Employment Appeal Tribunal, has led the review and, assisted by a small working group and a separate user advisory group, has resulted in recommendations being made to the Ministers upon which consultation is currently taking place. The closing date for the consultation was 23rd November 2012. It is hoped that once the Rules are finalised they will be implemented with effect from April 2013.

After consultation the Government announced that it intends to implement a scheme of fee charging in the Employment Tribunals, subject to a remission system. Details are currently being

worked on with a view to the implementation in the summer of 2013 but there is a considerable amount of preparatory work to be carried out including new/amended IT systems, further potential amendments to the Rules, and adjustments to the working practices of the Employment Tribunal system.

These new developments, as well as other recent Ministerial initiatives, will substantially change the landscape of Employment Law, Employment relations and the work of the Employment Tribunals probably both as to volume and its nature.

It is certainly the case that over recent years the complexity of the jurisdiction has been felt in the nature of the claims before the Tribunals and despite the adjustments to the practices in the Employment Tribunals the requirement for lengthy and complex hearings continues. However, although there have been one or two very large awards made (in the last year one of approximately £1,000,000 and one approximately £4,400,000), they are very much to the exception to the rule. The average award in the Employment Tribunals is less than £20,000 but the misconception as to the high level of awards made by Employment Tribunals continues.

Trends

Whilst the high volume of claims before the Employment Tribunals that arose from the recession, and particularly in the multiple claims, has abated, the intake of cases has not yet returned to pre-recessionary times. Economic times are difficult and that is reflected in the volume and nature of claims that come before the Employment Tribunals. This continues to cause pressure on the system. There was a further reduction in the intake volume of claims for the 12 month period ended 31st March 2012 with there being 59,200 single claims (a reduction of 2% on the previous year) and 127,000 multiple claims (a reduction of some 19% on the previous year). In the first 6 months of this financial year the total claims lodged with the Employment Tribunals was 111,614, an increase of 26.8% with single cases being 27,491 a reduction on the equivalent period in the previous financial year of 8.8% but an increase in multiples to 84,123, increase of 45.3% on the equivalent figure in the previous financial year. The current economic climate is still not clear and therefore a clear picture of the volume and complexity of cases before the Employment Tribunal is not yet available.

Workload

As with many Government budgets the Employment Tribunals has had reductions in its overall budget available for hearing cases, but the Tribunal was able to continue the number of cases

outstanding and disposed of more cases. In this current financial year there has been a reduction in the budget but it has been offset by the change in the Rules allowing Employment Judges to sit alone on unfair dismissal cases. This has meant that the budget available to the Tribunal has been more flexibly used and the continuing trend of disposal of single cases has been maintained. However, the caseload at the end of the first six months remains at 568,632 of which 544,296 are multiples claims. The vast majority of those multiples claims are those arising from Equal Pay cases and what are colloquially known as "the airline cases" which continues to receive repeat claims on a quarterly basis. These "airline cases" substantially distort the figures. Although the European Court of Justice has pronounced its decision, matters are awaiting further hearing in the Supreme Court when it is anticipated matters will start to be resolved.

In respect of the Equal Pay cases these provide a volume and complexity for the Employment Tribunals which has not previously been experienced. The majority of these cases are from the public sector including the National Health Service, Local Authorities, and Central Government departments. However, the number of Equal Pay cases arising from the private sector has not increased. Cases are being heard regularly in England and Wales and although there are additional cases being lodged each month the volume had reduced so that the overall the rate of disposal is greater than the receipt level of new claims.

Developments

The Employment Tribunals continue to adopt and change judicial practices. New Case Management provisions, agendas and processes have been implemented. New listing procedures in unfair dismissal cases have been adopted and are showing appropriate returns. Case Management and the administration of cases continues to be a central theme and focus. Parties continue to be encouraged to address matters on a Case Management basis in advance of the hearing and at Case Management Discussions and other hearings the parties are regularly focussed on the resolution of the dispute by way of alternative dispute resolution.

Judicial mediation

Judicial Mediation continues to be a popular facility offered by the Employment Tribunal to parties with regular support from the users. The savings in hearing days that arise from this facility continue to increase year on year with a continuing success rate in England and Wales of 70% or more. A concern exists however in that notwithstanding the Government's policy of encouraging parties to resolve their disputes without formal hearings the declared intention from

the Government is that there would be a fee for Judicial Mediation. The judicial concern is that that parties (and particularly Respondents who will be responsible for the fee) may not be prepared to enter into Judicial Mediation to resolve their disputes with the Claimant when they would still be at risk of a further fee if that was not successful and the matter had to proceed to a full hearing. Only time will tell whether that is a real cause for concern.

People and Places

One consequence of the changes that have been made by the Government in April 2012 was the removal of Non Legal Members from sitting on most of the unfair dismissal and related cases. Whilst Judges have been sitting alone on some small money claims for a number of years this was a new departure although signalled by the Government in advance. These changes reduce the sitting opportunities for Non Legal Members. The full effect of these changes is yet to be fully analysed.

Since the last Senior President Annual Report two Regional Employment Judges have retired (both have been reappointed as Fee Paid Employment Judges). John Macmillan and Ian Lamb retired on 31st March 2012. Two new Regional Employment Judges were appointed with effect from 1st April 2012, Paul Swann succeeded John Macmillan in the East Midlands' Region and Richard Byrne who was appointed to the newly created region of East Anglia.

That new Region was created as a result of the reorganisation of the Regions in England and Wales and came into effect on1st April 2012. The Employment Tribunal for England & Wales still comprises 12 regions but the revised boundaries are the consequence of the Southampton region being divided and one part assigned to the South West Region and one to the London and North West Region. The London East Region was reduced in size and part of it assigned to the newly created East Anglia Region. The southern part of the East Midlands Region was also assigned to the new East Anglia Region which is based in the Huntingdon court centre, these premises having been made available to the Employment Tribunal.

In addition to the creation of the new region, there have been adjustments to the postcode allocations to some Regions in order to rebalance some of the workload between the Regions with a view to improving service to the public. These arrangements were both judicial and administrative and made jointly on an agreed basis. There is a longer term proposal to centralise administration in each of the Regions that currently do not have such a centralised facility.

During the period since the last Senior President's report there have been no other appointments of Employment Judges although in September 2012 a new competition for the appointment of Salaried Judges (15 full time equivalent) was announced with a closing date in mid October and

anticipated in the next financial year. There is a further competition planned for the recruitment of Fee Paid Employment Judges (up to 60) which is anticipated as commencing in February 2013 with appointments due at the end of 2013.

The joining of the Courts and Tribunals by way of the creation of Her Majesty's Courts and Tribunals Services with effect from 1st April 2011 continues to develop. This offers greater opportunities for the use of Courts and Tribunals facilities in a wider range of venues but yet centralising many of the facilities which it is hoped will improve the service provided. Administrative arrangements continue to settle in.

Future Developments

There is a great deal of change in the Government's agenda in respect of Employment Law and Employment tribunals as well as the influence of European law. That coupled with unpredictable work volumes makes for a difficult and changeable future for the Employment Tribunals.

Employment Tribunal (Scotland)

President: Shona Simon

Last year it was noted that the Employment Tribunal system and employment law had been the subject of considerable scrutiny and change with proposals for further change in the pipeline. That has continued to be the case over the past year; some of the changes proposed last year are now much closer to implementation but, as a cursory review of government policy announcements and consultation documents would reveal, new proposals have emerged in the interim which are likely to lead to further significant changes being made to substantive and procedural law and to the ET system.

The publication of the government's response to its consultation document on charging fees in the Employment Tribunal and the Employment Appeal Tribunal has generated a good deal of interest on the part of Employment Judges, HMCTS staff and users of the Employment Tribunal system. Now that the government has set out, at a strategic level, the path which it wishes to follow in terms of implementing a fee charging and remission system within the Employment Tribunal a great deal of hard work is being undertaken to develop the practical procedures and IT support systems which will be required in order to achieve the government's stated objective. Clearly it will also be important to ensure that users of the system are kept up to date with arrangements

being made for the practical implementation of the policy and what will be expected of them (whether they be representatives or individuals) once fee charging is implemented. A detailed communications policy is already being developed. As with all significant change there is a risk that communication failures lead to misunderstandings. In the area of fee charging, for example, it will be particularly important to ensure not only that users of the system understand that fees are to be charged but also that it is widely known that there is a remission system which will apply to those who are assessed as entitled to benefit from it. The government's stated intention is to introduce fees by the summer of 2013 so it is likely that much judicial and administrative effort will be taken up in the intervening period to ensure effective practical implementation, bearing in mind the need to ensure access to justice is maintained.

While the implementation of the fees policy might be said to be administratively driven, with some judicial input, the reverse is the case in connection with the Underhill Review Group which has been hard at work between December 2011 and May 2012. This group was formed in response to the government's decision to ask Mr Justice Underhill (the previous President of the Employment Appeal Tribunal) to "lead a further review of the Employment Tribunal Rules". In making recommendations Mr Justice Underhill was asked to have specific regard to the cost effectiveness of the system and to ensuring so far as possible that:

- cases could be managed proportionately to the issues before the tribunal with the saving of expense considered throughout;

- proceedings could be handled quickly and efficiently with an emphasis on resolution of cases otherwise than through judicial determination; and that

- cases which appeared to have little or no reasonable prospect of success could be dealt with "robustly" with a view to fairness for the parties and to the tribunal and its resources.

The Rules Review Group, which included both ET Presidents and two highly experienced ET representatives, was also asked to ensure that the rules were simple and simply expressed, that they assisted in ensuring that proceedings had as much certainty as possible so that like cases could be treated alike and that they could be exercised in a consistent manner, "so far as appropriate", across Great Britain. Clearly, if the words "so far as appropriate" had not appeared in the terms of reference concerns might have arisen about whether there was a risk that certain practices followed by the Employment Tribunals in Scotland (which are modelled on Scottish civil court procedure) might risk being subsumed by Employment Tribunal practice in England & Wales (which, not surprisingly, tends to follow English Civil Court practice). However, in carrying out its work the Review Group has been mindful of the fact that legal traditions and practices do differ north and south of the border and that it was necessary to ensure that the distinct legal cultures and traditions

in each jurisdiction were respected.

At the time of writing the Department for Business, Innovation & Skills (BIS), which retains the policy lead for the Employment Tribunal Rules of Procedure is consulting on the revised rules prepared by the Underhill Review Group. While drafting the rules Mr Justice Underhill consulted with an expert user group which consisted of individuals having expert knowledge of the system, whether that be from the point of view of employers or employees. Clearly, that type of engagement during the formulation of the draft rules was of considerable assistance in developing a procedural code likely to be of assistance to the users of the system but nonetheless the formal consultation process will provide a valuable opportunity for organisations and individuals to put forward their views on whether what is proposed will improve the operation of the Employment Tribunal system and enhance the effective management of cases. The government hopes that it may be possible to bring the new rules into force by April 2013.

The introduction of fee charging and new Rules of Procedure will present significant challenges to the employment jurisdiction. If one adds to that the introduction of early (pre-claim) conciliation and the possibility that a new role of ET legal officer will be created, with powers to make interlocutory decisions and determine straight forward claims (both provisions appearing in the Enterprise & Regulatory Reform Bill which is currently progressing through parliament) a fuller picture emerges of the extent of the change currently facing the employment jurisdiction. This is to say nothing of the various substantive employment law changes planned by the government. As things stand the need to effectively manage change remains an ongoing challenge for judicial and administrative leaders within the system.

Cases/trends

Contrary to what might be expected, and indeed what is sometimes suggested, the number of claims being made to the Employment Tribunal in Scotland has declined over the last year. That is not to say there is no pressure in the system; the impact of significant case intakes in previous years is still being felt, including the high volume of claims for equal pay for work of equal value. More than 50,000 claims of this type have been made in Scotland over recent years and there have been several important appeals to the Inner House of the Court of Session and the Supreme Court from Scotland over the past year. As one might expect, appeals do slow the progress of cases at first instance level but now that a number of technical legal matters have been decided at higher level considerable progress is being made in dealing with this case load.

As at the mid year point for 2012 Employment Tribunals in Scotland are achieving the

administrative target of 75% or more of cases being heard on their merits within 26 weeks of being lodged. Employment Judges are to be commended for issuing 85% of Judgments within 27 days of the hearing concluding. In considering that figure account needs to be taken of the fact that cases in the Employment Tribunal can be extremely complex lasting many days or even weeks and the written decisions can in turn take a great deal of time and effort to produce given the nature of the issues which require to be considered.

With effect from April 2012 it became possible for Employment Judges to sit alone in unfair dismissal cases. This course has been followed in around half of the unfair dismissal cases listed in Scotland since April. While parties have been given the chance to make representations as to the constitution of the panel in such cases very few have utilised this opportunity.

So far as individual cases of interest are concerned the decision of the Supreme Court in the case of *Ravat v Halliburton Manufacturing & Services Ltd [2012] UKSC1* is of particular note. The case focuses on the employment status of individuals who are resident in Great Britain and employed by a British company but who travel to and from home to work overseas. In this case the employee was employed by Halliburton Manufacturing & Services Ltd which is a UK company based at Dyce, near Aberdeen. Mr Ravat complained that he was unfairly dismissed. At the time of his dismissal he was working in Libya. The question for the Employment Tribunal was whether it had jurisdiction to consider his complaint. At the Employment Tribunal level it was held that the tribunal did have jurisdiction. That decision was set aside by the Employment Appeal Tribunal but the EAT decision was reversed (by a majority) by the Inner House of the Court of Session. On appeal to the Supreme Court the original decision of the Employment Tribunal was upheld.

In *Hewage v Grampian Health Board [2012] UKSC37* it had been held by the Employment Tribunal that an employee had been unlawfully discriminated against on grounds of both sex and race. That decision was reversed by a majority in the Employment Appeal Tribunal but the decision of the Employment Tribunal was restored by the Inner House of the Court of Session (with certain matters remitted for further consideration by the tribunal). On further appeal by the Health Board to the Supreme Court the decision of the Employment Tribunal was upheld. *Hewage* gives further guidance on the issue of appropriate comparators in discrimination law claims, emphasising that the question of whether situations are comparable is a question of fact and degree for the tribunal. Guidance was also given on the approach to be taken in connection with the shifting of the burden of proof in discrimination cases.

The ill-fated dispute resolution scheme (now repealed) which was set out in the Employment Act 2002 and associated Regulations in 2004 is still giving rise to appeal points. The application of that regime has been considered by the Inner House of the Court of Session in the last year in the equal pay cases of *Aitchison & others v South Ayrshire Council [2011] CSIH72* (now under further appeal

to the Supreme Court) and *Avery & others v Perth & Kinross Council [2012] CSIH1.* Undoubtedly it would not have been countenanced at the time the primary legislation was passed that the regime it introduced would still be giving rise to complex appeal points ten years later and that thousands of cases would require to be sisted (stayed) in the meantime.

Judicial Mediation

Judicial Mediation has continued to be provided by specially trained Employment Judges in complex cases likely to last 3 days or more. Though the number of cases dealt with through mediation is relatively small the success rate is over 70% and recent months have seen a heightened interest from the user community in using the judicial mediation service. There has undoubtedly been an increased focus on mediation as a method of resolving disputes over the last year. For example, there was a major conference run by the Scottish Mediation Network, and supported by the Scottish Government, which looked at the role of mediation and resolving disputes in Scotland. A presentation was given there about the Employment Tribunal Judicial Mediation Scheme; this gave the scheme a higher profile than it had in the past. The feedback from users in connection with judicial mediation is outstandingly good. What is unclear is whether the fee of £600 which the government has indicated will be payable for judicial mediation will have any impact upon uptake of this facility.

Innovations

The office of Employment Tribunals in Aberdeen covers a vast landmass, including Highlands & Islands. Its case load, unsurprisingly, involves a good deal of oil industry related work. Witnesses and parties, given the nature of that industry, can often be based abroad or located on rigs. In short, travelling to the Employment Tribunal office in Aberdeen can be extremely difficult and involve a good deal of time for some users of the system. For this reason, amongst others, agreement has been reached to install video conferencing facilities in the Employment Tribunal office in Aberdeen. The judiciary welcome this innovation and hope that it will enhance the service that is provided to users. The necessary equipment is expected to be installed in January 2013.

Our evening sitting initiative has continued over the past year in Glasgow, with sittings taking place from 17.30 to 19.30 on two evenings a week. This continues to be an effective means of freeing the day list for longer, more complex cases. The scheme also remains popular with employers and employees who do not need to take time away from their workplace during the day to attend a hearing.

People and Places

2012 saw the retirement of two fee paid Employment Judges in Scotland and the emigration of one to Australia. On one view of it, in light of the number of retirements in the last two years and forthcoming retirements, a case might be made for recruiting more fee paid Employment Judges in Scotland. However, given that it is impossible to predict what impact the introduction of fees will have on the caseload of Employment Tribunals it is not envisaged that there will be any further recruitment in the short term.

Employment Tribunals in Scotland continue to operate from five fixed locations (Glasgow, Edinburgh, Aberdeen, Dundee and Inverness) with Sheriff Courts being used in other locations as and when required. One of the issues which has had a relatively high profile over the past year is that of judicial security. A review has been undertaken with a view to ensuring that all reasonable steps are taken to protect Employment Judges, tribunal members and staff as they carry out their duties.

It remains the case that from time to time there is significant pressure on accommodation resources. We continue to rely upon using additional accommodation in other tribunals close by to the Glasgow and Edinburgh Employment Tribunal offices and from time to time use is made of available office space to create makeshift hearing rooms.

In any working environment change (and there is plenty of that in the Employment Tribunal system) brings uncertainty and raises questions and concerns in the mind of those at the front line in terms of service delivery. Employment Judges, members and administrative staff in Scotland have continued to work conscientiously and to an extremely high standard throughout the past year. In doing so they have shown remarkable resilience and dedication in continuing to deliver a high standard of service in an ever changing environment.

Chapter 4:
Cross-border issues

Northern Ireland

Dr Kenneth Mullan

Chief Social Security Commissioner for Northern Ireland

On 9 December 2011 the Civil Policy and Legislation Division of the Department for Justice for Northern Ireland (DOJ) published a document entitled *Tribunal Reform Discussion Paper on the Future Administration and Structure of Tribunals in Northern Ireland*[1]. Informally, the Discussion Paper has been described as a 'Pre-Consultation Document'.

The background to the Discussion Paper has been described in previous Annual Reports of the Senior President. The Northern Ireland Executive, at its meeting on the 18 November 2010, agreed to the transfer of statutory responsibility for the administration of tribunals currently sponsored by a number of NI Departments to the Department of Justice (DOJ).

On 21 February 2011 the First Minister and Deputy First Minister made the Departments (Transfer of Functions) Order (Northern Ireland) 2011[2] which gives effect to the transfer. The Order was affirmed by resolution of the Assembly on 14 March 2011.

This Order transferred seven[3] separate tribunals to the DOJ (through the NI Courts and Tribunals Service) from 1 April 2011.The Charities Tribunal and NI Valuation Tribunal also transferred to the DOJ on 1 April but they are not included in the Transfer of Functions Order as there are no statutory functions to transfer.

Given the time constraints of the legislative programme and Budget 2010, officials were unable to reach agreement on the budgets to transfer in respect of The Appeal Tribunals; the Rent Assessment Panel (DSD) and the Industrial Tribunals and Fair Employment Tribunal (DEL). It is planned that

1 http://www.dojni.gov.uk/index/public-consultations/archive-consultations/tribunal-reform-consultation-on-the-future-administration-and-structure-of-tribunals-in-northern-ireland.htm

2 S.R. 2011 No. 44

3 Mental Health Review Tribunal (DHSSPS); Care Tribunal (DHSSPS); Tribunal under Schedule 11 of the HSS (NI) Order 1972 (DHSSPS); Special Educational Needs and Disability Tribunal (DE); Lands Tribunal (DFP); Traffic Penalty Tribunal (DRD); and Health & Safety Tribunal (DETI)

these tribunals will statutorily transfer to DOJ at a later date, to be agreed.

The NI Courts and Tribunals Service now has statutory responsibility for 12 tribunals. It also has administrative responsibility for a further two tribunals which are managed on behalf of the Department for Social Development. There are currently 116 members of staff from NICTS and DSD working in tribunals.

The 2011 Discussion Paper notes that while '… it is proposed to continue to build on the unified platform through the integration of further tribunals to the NICTS, the Department also intends to ensure that the opportunities of the centralisation achieved thus far are realised, and is developing proposals for the reform of structures and systems. Reform is aimed at improving existing arrangements for those tribunals within the remit of the Department of Justice but it is intended that, insofar as is possible, proposals will be future proofed to ensure they are also appropriate for tribunals which subsequently come within the remit of the Department.[4]' The overall aim of the reform agenda was stated to be ensuring that tribunal users had access to a system of redress with the characteristics of flexibility, efficiency, transparency, independence, impartiality and simplification[5].

Four possible approaches to achieving the stated aims are suggested[6]:

(i) Maintaining the Status Quo – by preserving the system developed thus far but undertaking no further reform;

(ii) Continuing to create a Unified Administration – by bringing those tribunals which continue to be sponsored by other bodies within the remit of the NICTS, but stopping short of creating an aligned or integrated system;

(iii) Creating an Aligned System – by maintaining the range of individual tribunals under the control of the unified administration of the NICTS while aligning practices, procedures, and appointment and training arrangements to ensure consistency of approach; and

(iv) Establishing an Integrated System – by creating an integrated tribunal structure with unified practices and procedures and with jurisdiction to hear all, or certain categories of, appeal.

4 At paragraph 1.4

5 At paragraph 1.5

6 At paragraph 1.6

The policy background, the jurisdictional framework, process and procedure, tribunal membership and oversight are described in more detail in 5 further chapters in the Discussion Paper. The Discussion paper also alludes to the requirement to consider proposals for the reform of devolved tribunals in Northern Ireland in the context of future developments with respect to those United Kingdom wide tribunals which extend to Northern Ireland[7].

The Discussion Paper sought responses on a number of suggested questions. Responses were submitted by, amongst others, Coghlin LJ on behalf of the Northern Ireland Tribunal Presidents Group, the Chief Social Security Commissioner for Northern Ireland on behalf of the Social Security Commissioners, other Tribunal Presidents and representative organisations including the Law Centre (Northern Ireland).

The Discussion Paper indicates that the aim was to publish a summary of the views expressed by consultees on the Department website within three months of the end of the consultation period. Further it was noted that the responses to the Discussion Paper would inform proposals to be the subject of a public consultation exercise early in 2012. It is clear that both of those deadlines have slipped. There has been no publication of a summary of expressed views and informal indications are that the public consultation exercise has been deferred until late 2012/early 2013.

Judges of the Upper Tribunal (Administrative Appeals Chamber) continue to monitor proposals for tribunal reform in Scotland, Wales and Northern Ireland through the geographical Working Group.

Scotland

Shona Simon

From the perspective of Scottish reserved tribunals there have been very few developments worthy of note in the past year so far as the governance and judicial leadership arrangements are concerned as between England and Wales on the one hand and Scotland on the other. Following the announcement that the courts and tribunals' judiciary in England & Wales were to be united into a single "judicial family", under the leadership of the Lord Chief Justice, it was expected that consideration would be given to the position of reserved tribunals operating in Scotland, given the court system in Scotland (including its judicial leadership) is completely separate from that in England and Wales. It was expected that the Ministry of Justice would issue a consultation document dealing both with issues arising from the merger of the courts and tribunals' judiciary in England and Wales and the options available for the governance and judicial leadership of reserved

7 At paragraph 2.24

tribunals in Scotland. It is now approximately two years since that consultation document was first promised but it has yet to emerge.

As things stand the governance arrangements for reserved tribunals operating in Scotland might be described as less than ideal. At the time when the HMCTS Board was established it was made clear that it would not have direct governance responsibility for Scottish reserved tribunal matters. Instead the Senior President, together with the Chief Executive of HMCTS on the administrative side, would remain directly responsible for ensuring effective performance and for providing appropriate leadership and support. It is part of their role to ensure that Scottish interests and needs are considered and addressed within the decision making and governance structure. This was a provisional arrangement, put in place pending further consideration being given to the devolution of administrative and judicial responsibility for reserved tribunals. The fact that the devolution option has not been progressed further may mean at some point in the not too distant future it will become necessary to review whether the arrangements for the governance of reserved tribunals remain appropriate in all the circumstances.

In an effort to ensure that reserved tribunal issues could be identified and relayed to the Senior President and HMCTS Chief Executive, the Scottish Reserved Tribunals Group, under the joint chairmanship of Lady Smith (a judge of the Court of Session and the Employment Appeal Tribunal) and a Senior Civil Servant, was formed. That group, made up of senior reserved tribunal judiciary and senior Scottish HMCTS administrators has continued to meet over the course of this year. Through this mechanism issues of concern to the reserved tribunals can be highlighted to the HMCTS Board and decisions of the HMCTS Board which may have an impact on the reserved tribunals can be relayed in the opposite direction.

While there are no developments to report so far as the MOJ consultation document on tribunal and court reform is concerned, the same cannot be said of the Scottish Government's position. On 23rd March 2012 it issued a consultation document entitled *Tribunal Reform in Scotland – a vision for the future* and thereafter a consultation response document entitled *The Scottish Government's proposals for a new tribunal system for Scotland*. Amongst other things the Scottish Government is proposing that judicial leadership for the devolved tribunals' judiciary will be provided by the Lord President of the Court of Session (currently Lord Gill) and that there will also be a Scottish President of Tribunals who will fulfil a similar role to that of the Senior President of Tribunals. It has also proposed that a chamber structure not unlike that which operates in England and Wales will also be introduced. A Scottish tribunals' bill is currently being prepared for consideration by the Scottish Parliament in 2013.

While the Scottish Government goes to considerable lengths to make it clear that its proposals do not encompass the reserved tribunals, in respect of which legislative and administrative competence

remains with Westminster, the hope is expressed that what it is planning will be such that, should responsibility for the reserved tribunals devolve in due course, it would be relatively straightforward for them to be encompassed within the Scottish tribunal system.

Last year the hope was expressed that by means of consultation documents issued by MOJ and separately by the Scottish Government the position of reserved tribunals would be clarified. It was also stated that "the worst of all worlds would be to have continuing uncertainty". Unfortunately the position now is, indeed, one of continuing uncertainty.

On a brighter note both the reserved tribunals operating in Scotland and the devolved tribunals are represented on the Scottish Judicial Council, which is chaired by the Lord President. The Council and its sub committees are involved in developing and considering judicial policies on matters such as the use of information technology, judicial welfare and fitness for office, international relations and the like. While these policies are principally focused on the courts judiciary at the moment, increasingly, with an eye to the future, the position of tribunals is being considered and the tribunals' perspective is certainly now being considered to a greater extent than it may have been in the past. This is a development which is greatly welcomed by both reserved and devolved tribunals' judiciary in Scotland.

Wales

Libby Arfon-Jones

The Tribunals landscape in Wales remains complex. Indeed with consultation underway on Welsh devolution in respect of justice by the Constitutional and Legislative Affairs Committee of the National Assembly for Wales and by the Welsh Government, there is considerable uncertainty. The Silk Commission is also conducting a review on this topic; its report is expected by the end of 2013.

The Welsh Tribunals Contact Group (WTCG) continued to meet throughout 2012, submitting its own response to the Welsh Government's consultation on a separate legal jurisdiction for Wales.

The reserved Tribunals operating in Wales, as part of Her Majesty's Courts, Tribunals Service (HMCTS), benefit from the provision of training by the Judicial College. The Judicial College has a Wales Training Committee chaired by Mr Justice Roderick Evans.

The provision of training for legal and non-legal members of devolved Tribunals in Wales, however, remains a matter of concern. This is a key issue which will be considered by the WTCG.

The Administrative Justice and Tribunals Unit of the Welsh Government is making sustained progress in administering many of the devolved Tribunals.

Whilst clearly a matter for government, it is unfortunate that, at a time of potential change and consequent uncertainty, the Administrative Justice Tribunals Council (AJTC) is also facing an uncertain future. Its Welsh Committee has been a robust voice in calling for greater independence from the executive for devolved Tribunals in Wales and speaking out for the needs of users.

The independence of the judiciary from government remains the key issue in Wales.

Chapter 5
Committees and working groups

Tribunal Procedure Committee

Mr Justice (Brian) Langstaff

I was delighted to be appointed Chair of the Tribunal Procedure Committee (TPC), by the Senior President in April of last year. I am very grateful to Mr Justice Paul Walker, who has now returned full-time to sitting, for his tireless and effective leadership during the preceding two years.

The TPC had a full programme of work during 2012. In addition to keeping all eight Tribunal Procedure Rules under constant review, we have made three sets of amendment rules; run three detailed public consultation exercises; and begun work on two major sets of new rules to be introduced in the First-tier Tribunal during 2013.

We responded quickly to a decision made by the Court of Appeal in respect of decisions in judicial review proceedings before the Immigration and Asylum Chamber of the Upper Tribunal. The Upper Tribunal rules have been amended UK-wide by the Tribunal Procedure (Upper Tribunal) (Amendment) Rules 2012 to allow an application for permission to appeal to the Court of Appeal to be made to the Upper Tribunal immediately at the hearing. The Tribunal Procedure (Amendment) Rules 2012 made changes to the First-tier Tribunal rules in the General Regulatory Chamber and the Health, Education and Social Care Chamber to facilitate amendments to the time limit for applying to be joined as a party to a reference in a charity case, and those concerning hearings in mental health cases, respectively. Finally, the Tribunal Procedure (Amendment No. 2) Rules 2012 made changes to the rules in the Health, Education and Social Care Chamber to facilitate a provision of the Education Act 2011 to hear disability discrimination claims relating to permanent exclusions from schools, and to reduce the time for responses. They also amended the Upper Tribunal rules to provide for appeals arising out of new arrangements for licensing of operators of goods vehicles in Northern Ireland.

As required by the Tribunals, Courts and Enforcement Act 2007, consultation continues to be foremost in our minds and a vital part of our rule making process. We have historically had good response rates to our consultations, and drafting suggestions and issues raised by consultees are greatly appreciated. During 2012 we have consulted on amendments to First-tier Tribunal rules in the Social Entitlement Chamber for appeals against most social security and child support decisions to be lodged with the tribunal rather than the decision maker, and for those decision-makers

to respond within a specified time. To inform the forthcoming First-tier Tribunal (Property Chamber) Rules 2013, a draft was consulted on over the summer of 2012; followed shortly afterwards by the proposed consequential amendments to the Upper Tribunal (Lands Chamber) Rules.

A key part of the TPC's work is to consider the many new appeal rights and consequential technical amendments, such as nomenclature, brought about by other government departments and legislative change. This year has been no exception with almost 40 new appeal rights considered including for example the Green Deal, Drink Drive Rehabilitation Schemes, Flood and Water Management Act appeals, Nitrate Vulnerable Zones and Community Right to Bid. For each one, the Committee considers whether to include questions or issues in government consultation papers, reviews the draft regulations and ultimately decides any requisite rule changes.

As always the volume of work continues to be very substantial and the TPC has been subject to considerable time pressures. I am exceedingly grateful to the Committee members for their unwavering commitment and energy, and for the help given to us during such periods by our colleagues. We have been the recipients of specialist input and expertise from First-tier and Upper Tribunal judges including Siobhan McGrath (Residential Property Tribunal Service and the Property Chamber President Designate), Peter Lane (Upper Tribunal Immigration and Asylum Chamber) and Mungo Deans (First-tier Tribunal Immigration and Asylum Chamber). I am very grateful to all the other judges who helped us over the year and to supporting lawyers and civil servants who have also given much of their time.

This year will be just as busy; in the summer we see the launch of the new Property Chamber in the First-tier Tribunal and the brand new rules to support it. The Property Chamber will accommodate applications, appeals and references which are presently determined by the Residential Property Tribunal Service, Leasehold Valuation Tribunals, Rent Tribunals, Rent Assessment Committees, Agricultural Land Tribunals and the Adjudicator to HM Land Registry. We will also be dealing with the consequential amendments to the Upper Tribunal (Lands Chamber) Rules to enable appeals from cases heard in the Property Chamber to be dealt with.

In the autumn we aim to introduce a new set of rules in the First-tier Immigration and Asylum Chamber; the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2013. These are will replace the existing Asylum and Immigration (Procedure) Rules 2005 and will be consulted on early this year. We will also turn our attention to the forthcoming transfer of judicial review work from the High Court to the Upper Tribunal. Part of the Crime and Courts Bill due to receive Royal assent this year, this will initially deal with immigration judicial reviews enabling applications for, or permission to seek, judicial reviews in immigration, asylum and nationality cases.

A further priority for the TPC will be responding to the Costs in Tribunals report through considering, consulting and introducing appropriate rule amendments in both the First-tier and the Upper Tribunals. Some such changes are already in train as part of our first amending SI for 2013. These include a power to order interim payments; that detailed assessments should include the costs of the assessment; and that wasted costs orders includes the costs of the application for the wasted costs order. The Amendment Rules 2013 are due to come into force on 1 April 2013 and will also include the changes for direct lodgement and time limits in most social security and child support decisions that we consulted on previously.

Our work for the period April 2012 to March 2013 will be described in more detail in our forthcoming Annual Report 2012/13 due to be published in May of this year. Previous reports can be found on our page of the Justice website.

Tribunals Judicial Executive Board

TJEB is chaired by the Senior President and membership comprises the Chamber Presidents and President of the Employment Tribunals and the Employment Appeals Tribunal. The chairs of the supporting sub-groups also attend. Lady Anne Smith has continued to attend as the Lord President's nominee for tribunals issues in Scotland. The Senior President is pleased to note that she will continue to contribute on cross-border issues following her deserved promotion to the Inner House.

For the period of this report, TJEB continued to be preceded by the TJEB Liaison meeting. This meeting focused on cross-jurisdictional operational issues with regular agenda items including performance and finance. Proposals for the devolution of tribunals, planning for the impact of the Olympics on tribunals business and issues arising from the interpreter contract were also discussed at this meeting.

TJEB has continued to consider a range of both policy and practical issues. Judicial HR has become a standing item and senior Judicial Office officials attend to provide updates on matters such as the Reasonable Adjustments Policy and the Equality and Diversity Policy. The issue of judicial security has also been an item for discussion and Mr Justice Irwin, chair of the Security Sub-Committee of the Judges' Council, attended the July meeting to talk about the work of that Committee and proposals to appoint regional security lead judges to act as a focal point for any salaried judiciary with security concerns.

At the meeting on 19th October, the Senior President invited views on the options for the future of

TJEB. The current set up of meetings had been appropriate when the two-tier structure was being set up. The Senior President's view was that now that the system was more established the time was right to review the current structure of meetings. Following consideration of the paper setting out various options and a further discussion at the meeting on 14th December it was agreed that TJEB would continue in its current form but would meet four times a year in place of the previous five. The TJEB Liaison meeting would no longer meet but its performance and finance elements would be taken over by the Judicial Activity Group whose meetings will now be timed to take place two weeks in advance of TJEB. Kevin Sadler and his team will continue to represent the administration at these meetings.

Judicial Activity Group

His Honour Judge Phillip Sycamore

The Tribunals Judicial Activity Group has a core membership of the presidents of the four largest First-tier Tribunal Chambers/jurisdictions: Employment; Health, Education and Social Care, Immigration and Asylum; and Social Entitlement, the Director and Deputy Director HMCTS Civil, Family and Tribunals and the Senior President's head of office and policy advisor. It invites and welcomes others to attend meetings for specific debate. The group meets prior to TJEB only when required, to provide a more focussed steer for the main meeting on issues such as best practice and consistency across chambers and judicial resource allocation and deployment.

Discussion has centred on the changes and impact of the Crime and Courts Bill in Tribunals including changes in the Lord Chancellor's role in the recruitment of Tribunals specialist non-legal members and the potential for the greater flexible deployment of Tribunals judges to sit in Courts just as s6 TCEA currently provides for Courts judges to be deployed to sit in Tribunals.

Flexible deployment via the assignment process as provided by Schedule 4 part 2 TCEA has also been discussed and reviewed by the group as the use of assignment is now considered during the annual judicial forecasting process within HMCTS.

The Judicial College

Professor Jeremy Cooper

The Judicial College has now been in existence for over a year[1]. Training for judges and specialist

1 The Judicial College was established in April 2011

members in tribunals[2] is planned and delivered within individual jurisdictions, but remains under the general oversight of the Tribunals Committee of the Judicial College.

The Committee was established as part of new governance arrangements for the Judicial College and met for the first time in February 2012. It is chaired by Judge Nicholas Warren, President of the General Regulatory Chamber, and its members are the Judicial Training Leads from each of the Chambers/Pillars as follows:

David Brown	Residential Property Tribunal Service
Paula Gray	Social Entitlement Chamber
Andrew Grubb	Upper Tribunal
Robert Holdsworth	Health, Education and Social Care Chamber
John McCarthy	Immigration and Asylum Chamber
David Reed	Employment Tribunal (England and Wales)
Greg Sinfield	Tax Chamber
Hugh Stubbs	War Pensions and Armed Forces Compensation
Susan Walker	Employment Tribunal (Scotland)

Professor Jeremy Cooper was formally appointed as Director of Training for Tribunals in July 2012 and is de facto a member of the Committee. Sheridan Greenland, the Executive Director of the Judicial College, is also a member of the Committee.

The College's main governing body is the College Board, chaired by Lady Justice Hallett. Jeremy Cooper, Nicholas Warren and Andrew Grubb are members of this Board and represent the interests of tribunals training, whenever the Board considers and implements overall policies for the College. In December 2011 the Board published its first three-year strategy[3].

Responsibility for determining what judicial training is required within tribunal jurisdictions rests

2 Training covers all HMCTS tribunal activity in England, Wales and Scotland, and where appropriate Northern Ireland.

3 The strategy is available on http://www.judiciary.gov.uk/training-support/judicial-college/Strategy.

with Chamber and Pillar Presidents as it is seen as part of their personal stewardship of the quality of justice delivered within their respective jurisdictions. All those who are responsible for the design and delivery of training on their behalf are also *de facto* members of the College. The philosophy of the College is to encourage trainers to work closely together in a collaborative and mutually beneficial way in the delivery of their training programmes. This reflects the overriding object of the College which is to provide training of the highest professional standard for judicial office-holders which:

(1) satisfies the business requirements of judicial leaders;

(2) promotes so far as practicable the professional development of judicial office holders;

(3) strengthens the capacity of judicial office holders to discharge their judicial functions effectively; and

(4) enhances public confidence in the justice system.

Between April 2011 and March 2012, 55 residential and 330 non residential courses were delivered across HMCTS tribunals. Courses vary in length from evening seminars and one-day events, to courses lasting two days or more. The total number of judicial office holder training days provided was over 13,700, and the number of individuals trained was just over 11,000[4].

Chambers/Pillars continue to provide jurisdiction specific training as is reflected in the College's overriding objective to provide training of the highest professional standard for judicial office holders in the three core elements of judicial training, namely:

(1) substantive law, evidence and procedure and, where appropriate, subject expertise;

(2) the acquisition and improvement of judicial skills including, where appropriate, leadership and management skills; and

(3) the social context within which judging occurs.

Although the great majority of training provided for tribunal judges and members is delivered within the individual jurisdictions in line with the requirements of Chamber Presidents, there are some areas of skills and expertise that should be common to all judicial office-holders across all jurisdictions. The College Board believes that there should be space within the College's overall

4 The discrepancy between the two figures is accounted for by the fact that many judicial office-holders attended more than one training event.

training programmes to deliver some more imaginative, generic types of training that cut across the jurisdictional divide. Accordingly, the College is now developing a cross-jurisdictional training course which will be piloted on two occasions in early 2013. Courts and tribunals judges are working together to develop the course. The aim of the course is to enable experienced judges to improve their judicial skills by practising them and learning from judges who sit in other jurisdictions. The pilots will be evaluated fully and modified in the light of the evaluation, and the courses will be included in the College's training programme for 2013-14.

The College's education and development advisers (professional educationalists employed specifically for this purpose) have been working closely with course directors on a range of further cross-jurisdictional initiatives including developing a benchmark programme for training of trainers, and they have designed, in consultation with the Tribunals Committee, a common process for course evaluation across the College. In addition they have over the past year in collaboration with judicial training leads in the Mental Health and Immigration and Asylum jurisdictions, designed and delivered a new course focused on the art of course design and delivery, which was very well received. The participants were all experienced judicial trainers. The course will be repeated on several occasions throughout 2012 and 2013 and offered across all jurisdictions. A further course will be available as an introduction to training methods and techniques, including work on group dynamics, for all new college trainers. The education and development advisers also designed and delivered a course specifically for judges with management responsibilities, in the Immigration and Asylum Chamber, on the topic of stress management.

E-learning seems a highly appropriate method for the delivery of some forms of judicial training. It allows for real-time updating and electronic circulation of training materials; it allows officeholders to complete their training requirements at times that suit their individual needs, thereby removing the high travel costs associated with face-to-face events; it is responsive and rapid. A number of e-learning pilots are now in various stages of development in the College, and the College will shortly be launching its own learning management system (LMS) capable of delivering a wide range of electronic training programmes. It will be accessible both from home computers and judicial laptops through the judicial intranet. The LMS is, however, intended to complement rather than to replace existing jurisdictional websites.

In addition to two jurisdictional committees (the Tribunals Committee as mentioned above and the Courts Committee), the College's Diversity and Development Committee is playing a key role in bringing together the range of college-wide initiatives planned for the coming years. Chaired by Lady Justice Hallett, this committee will closely scrutinise college training programmes to ensure they are sensitive to the importance of diversity training. It also has responsibility for the college's cross jurisdictional functions including where appropriate the development of common induction training, leadership and management training, training the trainer programmes, developing systems

to encourage sharing of best practice, and the promotion of new learning and teaching methods.

Two bespoke DVDs have been recently produced within the College to be used internally for multiple purposes in tribunal training. The first DVD explores various ways in which diversity and fair treatment issues can be woven into substantive training modules. The second, produced by a team of doctors and judges based in the mental health jurisdiction of the Health, Education & Social Care Chamber, examines ways of reducing risks of violence in the hearing room. The DVD could be of benefit to other tribunal jurisdictions, where panels may also be exposed to potential safety risks with little offered to them by way of additional protection or security. Several other filmed training materials are also in the pipeline.

During the year, the College organised a one-day seminar on the theme 'Putting the User First: the Tribunal Experience'. The seminar was attended by around 30 senior tribunal judicial office-holders (judges and members) from a wide range of jurisdictions. It was designed to return to the core origins of the concept of the tribunal in the United Kingdom as developed by Sir Andrew Leggatt some 12 years ago and to explore the evidence base for the assertion that tribunals 'put the user first'. A publication is likely to emerge in the course of the coming year arising from this seminar.

It is part of the College strategy that it will 'promote awareness of the College's work among judicial office-holders and in the wider community'. Tribunals have more than 25 separate jurisdictions, all within the College remit. They each provide a range of training programmes as appropriate to their jurisdictional set of requirements. While the principle of jurisdictional autonomy in the design and delivery of training materials is established as the most appropriate method to provide training in tribunals, the College also aims to disseminate and share best practice. An example of this is the work in progress on developing a workbook of generic training modules covering a range of judgecraft areas, showcasing best practice including modules on such issues as reason writing, team working, fact-finding, questioning techniques, and assessing credibility.

A key component of the College strategy is to develop a parallel academic programme to allow judicial office-holders to widen their intellectual horizons in the company of distinguished speakers and teachers on themes related to their work. To this end, the College is organising a series of four lectures to be delivered in London, Cardiff, Manchester and Oxford in the course of 2013, on the theme 'Being a Judge in the Modern World'. The Lord Chief Justice, Lord Judge, Supreme Court Justice Lord Carnwath, the Director of Liberty Shami Chakrabarti and Lord Justice Leveson have each agreed to deliver one of the lectures. The lectures will be open to all judicial office-holders.

Communications Committee of the Judges' Council

Alison McKenna

The Tribunals Judiciary Communications Group has been subsumed into the Judges' Council Communications Committee. Judge Alison McKenna represents the Senior President on that Committee, reporting back to TJEB. This year the Committee has produced updated media guidance for Court and Tribunal judges, which is published on the judicial intranet. It continues to liaise with MOJ and HMRC about the specialist tribunals' content on the intranet.

Tribunals Judicial Publications Group

Robert Martin

The object of the Group, which comprises judicial representatives from each chamber and pillar and specialists from the Ministry of Justice's Library and Information Services is to promote ways of improving the efficient supply and distribution of publications, on-line services and other reference materials for judicial use. The Group plays a key role in the budgetary process by collating and reviewing expenditure. IT is currently examining the feasibility and cost-effectiveness of supplying judicial reference materials via tablets and laptops. The diversity of tribunals in composition, location and culture invariably makes a single, standardised approach inappropriate.

Tribunals Judicial Medical Advisory Group

Robert Martin

This Group advises the Senior President on matters relating to medically qualified members of the First-tier Tribunal. The Tribunal has over 1,200 medical practitioners spread across seven jurisdictions. All but nine medical members are fee-paid. Many continue to work in clinical practice. Others do not undertake professional activities outside their tribunal work. Those medical members who need a licence to practise for the purpose of their clinical work or who wish to hold a licence to practise will be required to undergo a process of revalidation to a standard approved by the General Medical Council. Those jurisdictions which have medical members have, for some while, operated appraisal schemes which combine the principles of good medical practice and

judicial competences. The Group is currently examining ways in which the Tribunal can support those medical members, who will be seeking revalidation, by developing the appraisal schemes, so that they can provide an effective contribution to the process of revalidation.

Tribunals Judicial Diversity Group

Sehba Storey

In last year's report we highlighted several areas of concern for tribunal judiciary which we believed were hindering progress in creating a more diverse judiciary. These included:

- The absence of a clear career path for tribunal judges;
- Lack of adequate pathways for deployment of tribunal judges in the courts; and,
- Effective use of the assignment process.

During the past 12 months the Tribunals Judicial Diversity Group (TJDG) has worked collectively in a number of ways to promote constitutional reform and Implementation of changes likely to improve career development for tribunal judiciary.

In May 2011, the House of Lords Constitution Committee (the HLCC) commenced its enquiry into the judicial appointments process for courts and tribunals of England and Wales and Northern Ireland and the United Kingdom Supreme Court. The HLCC examined a range of questions including whether the process of appointment was based on merit and whether submissions on a range of issues and the Chair of the TJDG responded on behalf of tribunal judges.

The TJDG put forward the following three key recommendations to the HLCC:

1. That the JAC make greater use of sifts, of appraisals and references from senior judges and judicial managers with direct knowledge of applicants in preference to qualifying tests;
2. That greater use be made of assignment within tribunals; and,
3. That s9 SCA be amended to enable tribunal judiciary to be deployed in the courts on part with circuit judges and recorders.

'Appointments and Diversity – A Judiciary for the 21st Century'

In November 2011 the Government published its consultation *Appointments and Diversity – A Judiciary for the 21st Century* setting out proposals for changes to the statutory frameworks for judicial appointments. In response to the consultation, the TJDG made a number of recommendations including the following of direct relevance to tribunal judiciary:

- We oppose the proposal to limit fee-paid appointments to three terms of five years;
- We support the use of section 159 of the Equality Act (EA) at the end of the judicial appointment process to assist in distinguishing between tow or more candidates that are essentially equally qualified;
- That tribunals must be adequately and proportionately represented on the JAC Commission;
- The Constitutional Reform Act 2005 (CRA) should be amended to provide for the removal from the JAC's remit, those selection exercises not requiring a legal qualification;
- Consideration should be given to extending the eligibility criterion for judicial appointments to academic lawyers and other non-practising lawyers.

The House of Lords Constitution Committee Report

The HLCC published its report on 28th March 2012. Whilst acknowledging that a more diverse judiciary would increase public confidence in the justice system, somewhat surprisingly, they concluded that "….no fundamental changes should be made". They did, however, recognise a great many of the concerns shared amongst the tribunals judiciary, namely that:

a) The experience of tribunal judiciary is not fully taken into account when applying for appointment to the courts judiciary;

b) There was a need to remove internal barriers to career progression in particular from the First-tier Tribunal to the courts;

c) There was a need for greater use of deployment from the tribunals judiciary to the courts judiciary;

d) There was a need for a cultural change so that all those involved in appointments and

deployment are willing to recognise and promote talented judges and enable them to progress to senior levels of the judiciary;

e) 'merit' related to many different skills and experiences which different individuals can bring to bear on the work of the judiciary;

f) That appraisal records should be made available to judicial referees and once appraisals are more firmly established and accepted, consideration should be given to the possibility of placing records before appointment panels; and

g) A more flexible career structure would benefit the diversity of the judiciary as a whole.

Following the consultation, and having considered the conclusions of the HLCC the Ministry of Justice published a response to their consultation on 11 May 2012 and proposed to take forward within the Crime and Courts Bill, "….a package of measures to reform elements of the judicial appointments process and to encourage greater diversity within the judiciary". In so far as these relate to concerns expressed by the TJDG the measures include the following:

- Amendment to s9 SCA to allow for the deployment of senior tribunal judiciary in the courts and to make the selection process for these appointments to be determined and applied by the JAC.

- The introduction of part-time working at the High Court and above;

- The application of the positive action provisions to judicial appointments;

- Amendment to the CRA to allow for a power to remove certain offices from the remit of a JAC selection exercise; and

- A pledge to abandon the proposal to limit fee paid judicial appointments to three terms of five years.

Our proposals that appraisal reports be put to greater use by the JAC in pre-selection procedures and that consideration be given to extending the eligibility criterion for judicial appointments to academic lawyers and other non-practising lawyers did not meet with favour. It is hoped that these proposals will be raised by the Senior President with the Judicial Diversity Task Force.

Onward and Forward

2011-12 has been a busy and productive year for the TJDG. We are pleased with the Government's draft proposals contained in the Crime and Courts Bill albeit that they do not go as far as we had hoped. During 2012-13 we look forward to all those appointments and deployment of tribunal judiciary, working towards the cultural change called for by the HLCC by applying existing ticketing and assignment processes to those tribunal judges currently in post. In doing so, we will not only demonstrate that we practise what we preach but we will at the same time substantially improve job satisfaction amongst the tribunals judiciary.

Tribunals Judicial IT Group

Andrew Bano

The Tribunals IT Group continues to provide a forum for tribunal judges to discuss IT issues with the Ministry of Justice Information Communication Technology organisation and with other judges. During the period under review the Group has discussed with MoJ officials how best to provide IT support for the judiciary and work has also continued to develop an internet based method of conducting tribunal hearings by video-conferencing. The Group is also monitoring a pilot project to investigate the feasibility of providing judges with reference material electronically, rather than in paper form.

The most significant IT development affecting the judiciary as a whole is the work which is currently under way to investigate whether judges' IT facilities can be provided through a dedicated secure web-based network instead of through the government network, as at present. The proposed system would provide judges with a single point of access for all their IT requirements and very much improved ease of working.

Judge Andrew Bano has now retired as Chairman of the Group and has been succeeded by Judge Judith Gleeson.

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