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SENIOR PRESIDENT  
OF TRIBUNALS

The Senior President of Tribunals'  
Annual Report:  
*Tribunals Transformed*

February 2010



# The Senior President of Tribunals’ Annual Report: *Tribunals Transformed*



The Senior President, Sir Robert Carnwath CVO, speaking  
at the 2009 AJTC Conference

This information is also available on the Tribunals Service website: [www.tribunals.gov.uk](http://www.tribunals.gov.uk)



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# A tribunals chronology

## 1957

The Franks report recognised that statutory tribunals were an integral part of the machinery of justice in the state.

## March 2001

Sir Andrew Leggatt's review: *Tribunals for Users* called for a more unified tribunals structure supported by an independent Tribunals Service.

## July 2004

White Paper: *Transforming Public Services: Complaints, Redress and Tribunals*.  
Lord Justice Carnwath appointed "Shadow" Senior President of Tribunals.

## April 2006

Formation of the Tribunals Service to administer all the tribunals within the then-Lord Chancellor's Department.

## July 2007

Tribunals, Courts and Enforcement Act 2007 received Royal Assent.

## November 2007

Establishment of Administrative Justice and Tribunals Council.  
Lord Justice Carnwath appointed as first Senior President of Tribunals.  
*Transforming Tribunals: Consultation on implementation of Part 1 of TCEA*.

## May 2008

Government published response to consultation on *Transforming Tribunals*.  
Tribunals Procedure Committee (TPC) established – chaired by Lord Justice Elias (then Mr Justice Elias, President of the EAT).

## June/July 2008

Chamber Presidents of Social Entitlement and Health, Education and Social Care Chambers appointed.  
Consultation Paper Immigration and Asylum: *Fair decisions, Faster Justice* proposed transfer of immigration and asylum jurisdictions to First-tier and Upper Tribunals.

## November 2008

3 November ("T-Day"): Phase 1 Implementation:

- First-tier Tribunal – Three Chambers created (Social Entitlement; Health, Education and Social Care; and War Pensions and Armed Forces Compensation);
- Upper Tribunal – Administrative Appeals Chamber;
- Existing tribunal judicial offices transferred to the new chambers;
- Swearing-in of transferred-in judges and members begins.

## April 2009

1st April: Phase 2 implementation:

- Abolition of General Commissioners for Income Tax;
- First-tier – Tax Chamber created;
- Upper Tribunal – Finance and Tax Chamber created.

## May 2009

Government published response to immigration and asylum consultation and confirmed intention to transfer immigration and asylum jurisdictions into First-tier and Upper Tribunals.



## **June 2009**

Upper Tribunal – Lands Chamber, took over functions of Lands Tribunal.

Presidents for Lands Chamber and War Pensions and Armed Forces Compensation Chamber appointed.

## **August 2009**

Deputy Chamber Presidents appointed to Health, Education and Social Care Chamber.

Senior President announced a review of tribunals training.

## **September 2009**

First-tier - General Regulatory Chamber phase 1

- Charity, Estate Agents, Consumer Credit and Transport transferred.

Upper Tribunal – Finance and Tax Chamber renamed Tax and Chancery Chamber.

## **November 2009**

Mr Justice Nicholas Blake appointed as President of the Asylum and Immigration Chamber, Upper Tribunal (from February 2010).

## **January 2010**

First-tier - General Regulatory Chamber phase 2

- Gambling, Claims Management, Information, Immigration Services, Adjudication Panel for England transferred in
- Family Health Services Appeal Authority transferred into Health, Education and Social Care Chamber.

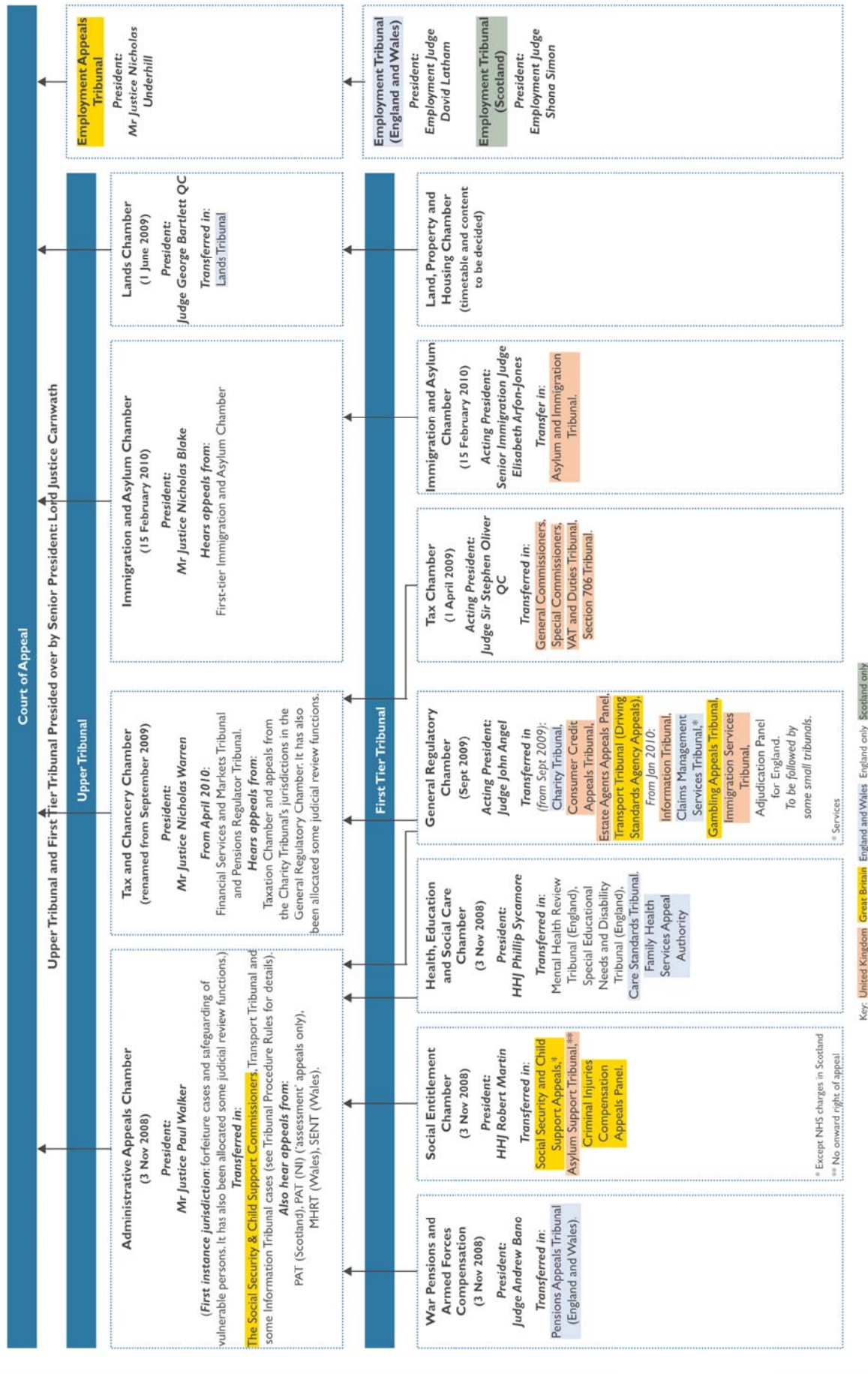
## **February 2010**

Establishment of Immigration and Asylum Chambers in First-tier Tribunal and Upper Tribunal.

## **April 2010**

Financial Services and Markets Tribunal and the Pensions Regulatory tribunals to transfer into the Tax and Chancery Chamber in the Upper Tribunal.

# Tribunals structure chart





# Foreword

This is my first annual report as Senior President. It marks the first anniversary of the establishment of the first parts of the new tribunal system on 3 November 2008. However it is written at a time when the new system is still under construction, as is apparent from the chronology. It is therefore a story of work in progress.

This is not intended as a formal report under section 43 of the Tribunals, Courts and Enforcement Act 2007. Under that section the Senior President is required to report annually to the Lord Chancellor, in relation to relevant tribunal cases, on matters that he wishes to bring to the Lord Chancellor's attention and matters on which the Lord Chancellor has asked him to report. It is to be noted that this duty is concerned with reporting specifically about "cases", rather than the functioning of the new system in general. We are not yet in a position to report systematically on cases in the different chambers, but I hope that by next year we shall have established a common format for such reports. For the time-being, the Lord Chancellor has not made any formal request for reporting under the section.

However, section 43 is in part intended to continue the provision under which the President of the Social Security Tribunals reported annually on departmental decision-making within that sector. That practice is continuing by delegation under this section. In recent evidence to the Select Committee for Work and Pensions, the President of the Social Entitlement Chamber (Robert Martin) pointed out that in spite of the annual reports, the percentage of the Department's decisions overturned in the tribunal has remained largely unchanged. He suggested that departmental internal review processes would only work if they brought about genuine reconsideration and a new approach: "The approach should be not to say, "Would I have made the same decision as before?" but rather, "Could I defend this decision in front of a tribunal?"

I see little purpose in extending the tribunal presidents' reports on departmental decision-making unless and until there is a responsive culture in the receiving departments and machinery to give it effect. My own duty under section 43 of the TCEA was deliberately left in rather open form because we were uncertain as to the practicability or value of extending the duty more generally until we are sure that it will be useful. We need to look now again at how we can make this work.

At the same time as this report the Tribunals Service is also publishing statistics of tribunal decision-making in a new form. Historically some useful statistics, supplied by the various tribunal administrations, have been included in the Council on Tribunals annual reports. With the setting up of the new unified system it is more appropriate for these to be published by the Tribunals Service itself. These statistics give a foretaste of the official statistics series which the Tribunals Service intend to begin publishing quarterly in 2010<sup>a</sup>.

These statistics demonstrate the increase in workloads facing the Tribunals Service in a number of jurisdictions during this current financial year, notably the Employment Tribunals and Social Security. A large pro-



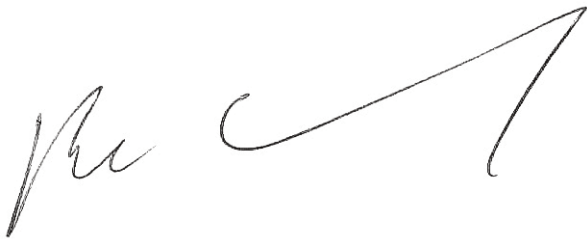
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a. <http://www.tribunals.gov.uk/Tribunals/Publications/publications.htm>

portion of these additional cases result from the current economic climate although the introduction of the Employment Support Allowance has brought about a surge in Social Security appeals. Administrators are doing all they can to concentrate resources on getting cases heard and maximising the numbers of tribunal sitting days; judges and members are working with them to ensure that cases pass through the appeal system as efficiently as possible – whether that be by looking at existing processes or ways in which to resolve disputes without formal hearings.

Accordingly my first report seeks to review the story so far, drawing together the main threads of the tribunals' reform story from the comprehensive report of Sir Andrew Leggatt in 2001 Tribunals for Users, through the various stages of implementation to the present. I hope that as such, it will be a useful reference point to the past for all those interested in the world of tribunals, and will mark the starting point to the next stage in development.

There is also further information about my role as Senior President including links to speeches and articles on the Tribunals Service internet: <http://www.tribunals.gov.uk/Tribunals/About/president.htm>

A handwritten signature in black ink, appearing to read 'R. Carnwath', written in a cursive style.

**Sir Robert Carnwath CVO**  
**Senior President of Tribunals**  
**February 2010**



# Chapter 1: Tribunal Reform – Five Years On: a reflection from the Senior President

1. In July 2004 the Government published a White Paper, adopting in principle the main recommendations of the Leggatt Report on Tribunals. On the same day was announced my own appointment as “Shadow” Senior President of Tribunals, to provide the judicial lead for the development of the reform proposals, in anticipation of the establishment of a statutory post of Senior President. The Tribunals, Courts and Enforcement Act 2007 (TCEA) received Royal Assent in July 2007. In November 2007 I was appointed to the statutory post of Senior President under section 2 of the TCEA. On 3rd November 2008 the new tribunal system was established. The publication of my first Annual Report is an appropriate time to review my own experiences of five years of involvement in the reform project.

## From Franks to Leggatt

2. Tribunals in one form or another have existed for centuries, established for different purposes and without any common format or traditions. It was not until 1957 that the Franks’ report on administrative tribunals and enquiries set the modern trend, which, in the words of Professor Wade, was to recognise that “... *statutory tribunals are an integral part of the machinery of justice in the state, and not merely administrative devices for disposing of claims and arguments conveniently*”.<sup>1</sup>

3. However, the problems of piecemeal development and lack of coherence remained uncorrected. Some 40 years later, the Leggatt report observed:

*“The present collection of tribunals has grown up in an almost entirely haphazard way. Individual tribunals were set up, and usually administered by departments, as they developed new statutory schemes and procedures. The result is a collection of tribunals, mostly administered by departments, with wide variations of practice and approach, and almost no coherence. The current arrangements seem to us to have been developed to meet the needs and convenience of the departments and other bodies which run tribunals, rather than the needs of the user.”*

4. By the time of the Leggatt review there were some 60 or more different jurisdictions, established at different times in response to particular perceived needs, but many now “moribund”. The active ones covered subjects as diverse as social security, employment, asylum, tax, land registration and mental health. They were handling well over half a million cases a year, and using the skills of several thousand full-time or part-time tribunal members. The report outlined the problem and the proposed approach to a solution:

*“In the 44 years since tribunals were last reviewed, their numbers have increased considerably and their work has become more complex. Together they constitute a substantial part of the system of justice in England and Wales. But too often their methods are old-fashioned and they are daunting to users. Their training and IT are under-resourced. Because they are many and disparate, there is a considerable waste of resources in managing them, and they achieve no economies of scale. Most importantly, they are not independent of the departments that sponsor them. The object of this review is to recommend a system that is independent, coherent, professional, cost-effective and user-friendly. Together tribunals must form a system and provide a service fit for the users for whom they were intended.”<sup>2</sup>*

Accordingly, the report made two main recommendations: first, the creation of a new independent tribunal service to take over the management of the tribunals from their sponsoring departments, and secondly the creation of a composite, two-tier tribunal structure, under the leadership of a senior judge. In this way, it

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1. Wade and Forsyth, *Administrative Law* 9th Ed p 906

2. *Ibid* para 1

was hoped, tribunals would acquire:

*“...a collective standing to match that of the Court System and a collective power to fulfil the needs of users in the way that was originally intended.”<sup>3</sup>*

5. The White Paper in July 2004<sup>4</sup> accepted the general thrust of the Leggatt recommendations, and set out proposals for implementation. In some respects the White Paper went further than Leggatt. The reform of the tribunal system was seen as but one part of the commitment across government to the better handling of complaints and proportionate dispute resolution. The unified tribunals system would:

*“... become a new type of organisation, not just a federation of existing tribunals. It will have a straightforward mission: to resolve disputes in the best way possible and to stimulate improved decision-making so that disputes do not happen as a result of poor decision making.*

*“... we need to go further and to re-engineer processes radically so that just solutions can be found without formal hearings at all. We expect this new organisation to innovate. The leadership of the new organisation will have the responsibility to ensure that it does.”<sup>5</sup>*

6. The Council of Tribunals would be replaced by a new Administrative Justice Council, which would not only have a supervisory role over all types of tribunals, but become “an advisory body for the whole administrative justice sector”, concerned to ensure that “the relationships between the courts, tribunals, ombudsmen and other ADR routes satisfactorily reflect the needs of users”.<sup>6</sup>

### Constitutional upheaval

7. In the meantime, the Leggatt proposals had been overtaken by other more fundamental changes to the justice system. In June 2003, the Prime Minister announced a radical programme of reform to achieve institutional separation between the government and the judiciary. This was to involve the abolition of the historic role of the Lord Chancellor as head of the judiciary, and the transfer of most of his judicial leadership functions (in England and Wales) to the Lord Chief Justice. Other proposed changes included the creation of a new Supreme Court and a new Judicial Appointments Commission. That led in January 2004 to an agreement between the Lord Chancellor and the Lord Chief Justice, known as “the Concordat”, which sought to define on a principled basis the respective functions of the two offices. In due course its main proposals were embodied in the Constitutional Reform Act 2005 (CRA), which came into force generally on 1st April 2006.

8. Central to the new settlement was a guarantee of judicial independence (section 3), and as its counterpart, the pivotal role of the Lord Chief Justice as “*President of the Courts of England and Wales*”.<sup>7</sup> His statutory responsibility was defined by section 7 in three parts: (a) for “*representing the views of the judiciary... to Parliament*”; (b) for “*the welfare, training and guidance*” of the judiciary within resources made available by the Lord Chancellor; and (c) for the “*deployment of the judiciary and the allocation of work*”. He was also given overall responsibility for judicial discipline, under a new arrangement involving the establishment of a Judicial Complaints Office and a Judicial Complaints Ombudsman. Another major change was the creation of a new Judicial Appointments Commission, the composition of which, as agreed in the Concordat, was designed to achieve a precise balance between judicial, professional and lay elements. Baroness Usha Prashar became the first Chair of the Commission. Save for judicial discipline and the new judicial appointments system, the new arrangements did not apply to tribunals.

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3. Ibid para 8

4. White Paper. 'Transforming Public Services: Complaints, Redress and Tribunals', July 2004.

5. Ibid para 6.1-4, 19.

6. Ibid para 11.12

7 There were equivalent structural changes in Northern Ireland, but in Scotland, where justice was a devolved matter, the changes were at this stage more limited see the Judiciary and Courts (Scotland) Act 2008.

9. Writing in October 2005<sup>8</sup> I said:

*“I think it is fair to observe that, at those historic negotiation sessions of Lord Woolf and Lord Falconer..., when the Concordat was being hammered out, tribunals were probably not at the forefront of their minds. Conversely, when Sir Andrew Leggatt was preparing his report, he had no idea that a major constitutional change was in the offing. Consequently there is something of a conceptual gap. For example, the authors of the Concordat may not have had in mind that tribunal appointments would in numbers form probably the largest part of the JAC’s work – and probably the most complex, in the variety of jurisdictions involved and the different skills required (not just legal). There is the additional complication that some of them have jurisdictions extending beyond England and Wales...”*

10. I also noted that an important issue left unresolved by the Concordat and the CRA was the relationship of the Lord Chief Justice and the tribunal judiciary.

*“...the crucial sections 3 (guarantee of judicial independence), and 7 (responsibility of the Lord Chief Justice) at present define the judiciary in terms which are limited to the court judges. Schedule 14, which contains the list of tribunal offices, only applies to judicial appointments. Thus at the moment the tribunal judiciary are not included within the LCJ’s responsibilities for welfare and training, or for representing their views to Parliament. Who then is responsible? The CRA seems to leave tribunals in limbo. For the time-being, in the absence of any specific statutory provision, I assume that those responsibilities rest with the Lord Chancellor, or the relevant Departmental Minister.*

*“Under the Tribunals Bill, this needs to be sorted out. The Bill will provide the Senior President with a distinct, UK-wide, constitutional role. In England & Wales he or she will be answerable to the Lord Chief Justice, in Scotland the Lord President and in Northern Ireland the Lord Chief Justice. But my own view is that the office of Senior President should be seen, not as a separate source of power, but as a link between the tribunals and those leaders of the judiciary as a whole... the Lord Chief Justice’s more general responsibilities for representing the judiciary, and for their welfare and conduct, should extend to the judiciary as a whole, including the tribunals...”*

11. In a speech in Sydney in April 2006<sup>9</sup>, I described the resulting position as “patchy”:

*“Thus the “judiciary”, of which the Lord Chief Justice is head, is defined in a way which does not include tribunal judiciary. On the other hand, the “judicial office-holders”, to which the new JAC will be recommending appointments, will include most of the tribunal judges and panellists. (Indeed they will form the largest part of its work.) Similarly, tribunal judges are included in the new arrangements for judicial discipline under the Judicial Complaints Office. However, detailed rules have been agreed under the Act which will enable the bulk of ordinary complaints to be dealt with (as now) by the tribunal presidents, so that only the most serious complaints will be referred up to the Lord Chief’s office. Meanwhile, the fundamental question of who, as between the Lord Chief Justice and the Lord Chancellor, is ultimately responsible for the tribunal judiciary has not in terms been addressed...”*

12. It had been hoped that these issues would be addressed in the Tribunals Bill, a draft of which was published in 2005. However the Bill did not in the event find a place in the Government’s programme for that year. To fill the gap it was agreed that there should be a Memorandum of Understanding governing the relationship of the Senior President with Lord Chancellor and the chief justices. By spring 2006 a draft had been agreed in principle. In that document, the Lord Chancellor, on behalf of the Government, accepted that the statutory guarantee of judicial independence under the CRA would be treated as extending to the tribunal judiciary, but confirmed that:

*“...tribunals are, and should remain as, a distinctive part of the justice system, separate from the*

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8. Speech to Judicial Conference 17.10.05

9. Constitutional Revolution in the English Courts: Sydney, April 2006



*courts judiciary, with a special responsibility to provide speedy, expert and accessible justice in specialist areas of the law.”*

The Senior President, as representative of the Chief Justices, was given the task of providing strategic leadership for the tribunals judiciary, and working in partnership with the tribunal presidents, and the Chief Executive of the new Tribunals Service, to develop and improve the tribunal system. The Memorandum also confirmed the responsibility of the Senior President for overseeing training of the tribunal judiciary, in co-operation with the Judicial Studies Board.

13. By summer 2006 it had been overtaken by further discussions on the Tribunals Bill, for which it was now hoped to find a place in the Queen’s Speech later that year. The issue of the relationship between the Senior President and the chief justices remained unresolved. It was complicated by the need to provide for the different devolution settlements in Scotland and Northern Ireland, particularly in the former where the CRA had as yet no counterpart.

14. As indicated in the speeches already quoted, my own assumption had been that the Senior President would be under the general leadership of the chief justices in each of the three jurisdictions, an assumption which I understood them to share. However that was not acceptable to the then Lord Chancellor, Lord Falconer, who, while accepting the need for independence from government, saw the tribunal system as a distinct part of the judicial system, under an autonomous judicial leader. He was willing to accept a statutory requirement of co-operation, but not one of subservience.

### **Tribunals under the 2007 Act**

15. The Tribunals, Courts and Enforcement Bill was deposited in Parliament in November 2006 and became law in July 2007. The tribunal parts of the Bill passed both Houses without major controversy, and with all party support. The only significant area of concern was the conditions governing the transfer of judicial review powers to the Upper Tribunal, and the status of the judges who would be exercising these transferred powers. During its passage through Parliament, with the agreement of the Lord Chief Justice, the Bill was amended to provide that the judge presiding in a judicial review case in the Upper Tribunal should be a High Court judge (or equivalent in Scotland or Northern Ireland) or by a person agreed by the Senior President and the respective chief justice. TCEA became law in July 2007.

16. Section 1 of the Bill, headed “*Independence of tribunal judiciary*” was a key provision, which established that tribunal judges and members were to be treated as part of the judicial family, subject to the same guarantees of independence as their court colleagues. Section 2, in line with Lord Falconer’s wishes, established the office of Senior President of Tribunals as an autonomous position. Further sections impose mutual duties of co-operation between the Senior President and the chief justices, on issues of training, welfare and guidance (now embodied in section 47 of the TCEA).

### **Developing the new Tribunals structure**

17. Neither Leggatt nor the White Paper had proposed specific titles for the two new tribunals. The White Paper had even suggested that the word “tribunal” might be regarded as unduly formal and as discouraging access to justice. It invited suggestions for alternative titles<sup>10</sup>, but none was forthcoming. The names First-tier Tribunal and Upper Tribunal emerged initially as working-titles in the course of Tribunal Presidents’ Group discussions<sup>11</sup>. They had the advantage of expressing reasonably clearly and simply the respective functions of the two institutions. The TCEA adopted these names when it created two new tribunals: the First-tier Tribunal and the Upper Tribunal.

18. It was clear that the two new tribunals would need to be subdivided in some way in order to protect specialisations and allow for a manageable judicial leadership structure. Leggatt had proposed nine ‘divisions’ in the lower tribunal. This was not accepted by the Government.<sup>12</sup> Instead the statute provided an

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10. Transforming Public Services: Complaints, Redress and Tribunals para 6.95

11. These names were initially proposed by George Bartlett QC, President of the Lands Tribunal, and survived for lack of any preferable suggestions.

12. Transforming Public Services: Complaints, Redress and Tribunals para 6.38

entirely unspecific provision for the creation of ‘chambers’ each led by a President. It was agreed at an early stage that chamber content would be decided by subject-matter or skill requirements rather than geography.

19. The chamber structure which emerged was largely judge-driven, having been based initially on a systematic analysis prepared by Mark Rowland (then a Social Security Commissioner). Particular considerations were, on the one hand, the need for a relatively simple and manageable structure, but, on the other, the importance of protecting specialisation and continuity of service. The proposed structure was subject to public consultation in the autumn 2007 paper, *Transforming Tribunals*<sup>13</sup>, and with one major exception<sup>14</sup>, proved relatively uncontroversial.

20. The Employment Tribunals (ET) and the Employment Appeal Tribunal (EAT) were to continue as separate entities, but also subject to the overall leadership of the Senior President. The Asylum and Immigration Tribunal was initially intended to remain as a separate single-tier tribunal, again under the leadership of the Senior President, but proposals were later developed to bring the jurisdiction within the new two-tier structure.

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13. *Transforming Tribunals: Implementing Part 1 of the Tribunals, Courts and Enforcement Act 2007 CP 30/07*

14. The exception was the Pensions Appeal Tribunal. This important jurisdiction concerned appeals relating to armed forces compensation and pensions. It had a distinctive form of panel, consisting of a lawyer sitting with two members, one medical and one military. While there was no intention to change the format, it was not considered large enough to justify a separate chamber. Under the *Transforming Tribunals* proposals, the “Social Entitlement Chamber” would have brought together the larger Social Security and Child Support jurisdictions, with the smaller Criminal Injuries Compensation, Asylum Support, and Pensions Appeals jurisdictions. I was confident that within this larger structure it would be possible, by appropriate orders and practice directions, to preserve the identity and format of the smaller jurisdictions. However, there were significant objections to this aspect of the proposals. Although the original proposals for the chamber content were confirmed by Government in its response to the *Transforming Tribunals* consultation of May 2009, opposition developed over the summer particularly in the House of Lords, leading to the Government’s agreement to the creation of a separate War Pensions and Armed Forces Compensation Chamber.

# Chapter 2: Tribunals today: the statutory structures

## The Senior President

21. The office of Senior President in the TCEA is a novel constitutional entity as an autonomous judicial office with UK wide responsibilities. In my First Implementation Review<sup>15</sup> I noted:

*“The office of Senior President of Tribunals is entirely new. The Tribunals, Courts and Enforcement (“TCE”) Act builds on the precedent set by the Constitutional Reform Act 2005 (“CRA”) by confirming the independence of the tribunal judiciary, and by giving the principal judicial leadership powers to one judicial office-holder with very extensive powers to delegate ...*

*Unlike the functions of the Lord Chief Justice under the CRA, which are confined to England and Wales, the Senior President’s responsibilities may extend to all or part of the United Kingdom, depending on the statutory extent of the each jurisdiction. Furthermore, the office of Senior President is free-standing, as respects his functions under the TCEA. In particular, he is not formally subject to the authority of either the Lord Chancellor or of the chief justices. The TCEA requires the Senior President and the chief justices to co-operate on matters of training, welfare and guidance. More generally, I expect to take my lead from the chief justices, as heads of the judiciary in their respective parts of the UK, on matters of common interest, so far as is consistent with my own statutory responsibilities...*

*As the senior tribunal judge and as a serving member of the Court of Appeal, I regard it as important that I should sit regularly in both capacities. Recent decisions of the House of Lords have emphasised the important role of the expert appellate tribunals in developing the law and practice in their specialist fields<sup>16</sup>. The establishment of the new Upper Tribunal, as the normal route of appeal for most cases within the tribunal system, provides an unprecedented opportunity to build on the existing case-law of the different jurisdictions and to develop a more coherent approach to the many common themes of tribunal justice.”*

22. My appointment as Senior President was made by the Lord Chancellor with the concurrence of the Lord Chief Justice for England and Wales, and his counterparts in Scotland and Northern Ireland.

23. The statutory functions of the Senior President are modelled in many respects on those of the Lord Chief Justice under the CRA. They confer wide-ranging responsibility for judicial leadership, including training, welfare and guidance of the tribunal judiciary, and for representing their views to Parliament and to ministers. The Senior President has power to delegate his functions to other judicial officers. A key provision is section 2, which can be seen as defining the distinctive characteristics of tribunals. Under it the Senior President is required, in exercising his functions, to have regard to the need for tribunals to be accessible; for proceedings to be handled quickly and efficiently; for members to be “experts in the subject-matter of, or the law to be applied in, cases in which they decide matters” and for developing “*innovative methods of resolving disputes*” of the type that come before tribunals. The Senior President also exercises a number of functions delegated from the Lord Chief Justice for England and Wales. These are primarily in relation to judicial discipline, detailed below, but also cover the Lord Chief Justice’s functions in relation to medical retirements and extensions of service under the Judicial Pensions and Retirement Act 1993.

24. The Senior President has a wide power of delegation under section 8 of the TCEA. To date I have generally delegated to Chamber Presidents those functions that regulate the day to day running of the chamber, for example, the function of choosing particular judges and members to decide cases. Outside of these formal delegations certain tribunal judges take the lead on particular issues on my behalf.

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15. [http://www.tribunals.gov.uk/Tribunals/Documents/News/\[30june\]SPImplementationClean7b.pdf](http://www.tribunals.gov.uk/Tribunals/Documents/News/[30june]SPImplementationClean7b.pdf) para 7

16. See eg *Hinchy v Secretary of State* [2005] UKHL 16, [2005] 1 WLR 967 paras 29-30; *Gillies(AP) v Secretary of State* [2006] UKHL2 para 36; *AH(Sudan) v Secretary of State* [2007] UKHL 49 [2007] 3 WLR 832 para 30.“

25. The CRA gave the Lord Chancellor and the Lord Chief Justice joint responsibility for considering and determining complaints of misconduct by judicial office holders in England and Wales. As Senior President, I act as the Lord Chief Justice’s delegate in relation to complaints of judicial misconduct by tribunal judges for whom he is responsible (although the Lord Chief Justice acts personally where a tribunal member is to be removed or reprimanded).

### **The Upper Tribunal**

26. The creation of the Upper Tribunal is probably the most significant innovation in the tribunal system. The need to rationalise the hotchpotch of appeal routes from administrative tribunals has been highlighted by a number of reports, including the Law Commission report on Administrative Law, the Woolf Report on Civil Justice, and the Leggatt report. The previous arrangements were illogical and incoherent, reflecting the piecemeal historical development of the tribunal system. Appeals routes from first instance tribunals in England and Wales varied between specialist tribunals, the High Court (Administrative Court or Chancery Division), and the Court of Appeal. In some cases there was no statutory right of appeal, but judicial review provided an alternative remedy in the Administrative Court; or judicial review was used to fill the gaps in a restricted statutory scheme. There were similar variations in the form and nature of the appeal, for example: whether on law only, or on law and fact; whether leave was required; and whether the procedure was primarily oral or written.

27. The Upper Tribunal allows not only the rationalisation of procedures, but also the establishment of a strong and dedicated appellate body at the head of the new system. Its authority derives from its specialist skills, and its status as a superior court of record, with judicial review powers, presided over by a Senior President. Over time the Upper Tribunal should come to play a central, innovative and defining role in the new system, enjoying a position in the judicial hierarchy at least equivalent to that of the Administrative Court in England and Wales. As a result of the TCEA there is new flexibility to deploy courts judges to tribunals where there is a need for their expertise and the Upper Tribunal is already benefiting from the participation of senior judges from the courts in all parts of the United Kingdom.

28. Appeal from the Upper Tribunal is to the Court of Appeal with permission. The Lord Chancellor has exercised his power to prescribe that such appeals in England and Wales will only be permitted in cases of general importance or for other special reason (as for second appeals from the courts).

29. The Upper Tribunal has worked alongside the existing dedicated appeal systems for asylum and immigration and for employment although, when the transfer of the AIT takes place, an additional Upper Tribunal chamber will hear onward appeals from a first-tier immigration and asylum chamber. The EAT will continue as a separate pillar of the new structure, presided over by a High Court judge, but under my general supervision as the Senior President. The close relationship with the High Court and access to the expertise of experienced judges has been maintained in the leadership of the Upper Tribunal.

30. In the Upper Tribunal the Lord Chief Justice has agreed to the appointment of High Court judges as Chamber Presidents in the Administrative Appeals, Finance and Tax, and Immigration and Asylum Chambers. Mr Justice (Gary) Hickinbottom was the first president of the AAC and he was succeeded in Spring 2009 by Mr Justice (Paul) Walker. Mr Justice (Nicholas) Warren has become President of the Tax and Chancery Chamber and Mr Justice (Nicholas) Blake will be President of the newly formed Immigration and Asylum Chamber. In the Lands Chamber the JAC competition led to the appointment of George Bartlett, who had been President of the Lands Tribunal, to lead the Chamber.

### **The Upper Tribunal: Chambers**

31. The Government’s original proposals for the Upper Tribunal<sup>17</sup> were slightly modified in the light of stakeholder comments and operational needs. The Administrative Appeals Chamber (AAC) was formed as planned in November 2008 with the Social Security Commissioners transferring into the Chamber as Upper Tribunal Judges. The AAC is the largest chamber in terms of both its workload and numbers of

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17. In Transforming Tribunals CP 30/07 para 180 to 185 and the Senior President’s First Implementation review [http://www.justice.gov.uk/consultations/docs/tt\\_consultation\\_281107.pdf](http://www.justice.gov.uk/consultations/docs/tt_consultation_281107.pdf)

judges. The main part of its work came from the jurisdictions of the Social Security and Child Support Commissioners, but it also provides the normal route for appeal from decisions of the four administrative chambers of the First-tier (Social Entitlement; War Pensions and Armed Forces Compensation; General Regulatory<sup>18</sup> and Health, Education and Social Care).

32. In addition to statutory appeals the AAC has also taken on judicial review work from those jurisdictions (on a case by case basis) as well as judicial reviews in Criminal Injuries where there is no onward right of appeal.

33. The original proposals for a Land and Property chamber were modified to create a Lands Chamber in the Upper Tribunal by simply taking over the jurisdictions of the Lands Tribunal. That enabled the jurisdiction to continue its work with minimal change, while having access to a much wider pool of judges from the courts and the Upper Tribunal. The Lands Tribunal had in recent years relied on the use of circuit judges with suitable experience from the court system, deployed by agreement with Presiding Judges, to help deal with a fluctuating case-load. Since the CRA this had not been possible as only those judges and members appointed to the tribunal were permitted to hear cases. The TCEA now enables court judges to sit in the Lands Chamber as requested.

34. The Finance and Tax Chamber was modified to expand its jurisdiction to cover other tribunal appeals which, like tax appeals, were previously allocated to the Chancery Division of the High Court. It was renamed the Tax and Chancery Chamber<sup>19</sup>. From 1st October 2009 appeals from the charities jurisdiction (which transferred into the General Regulatory Chamber on the same date) are to this chamber. This modification was intended to provide better continuity for the jurisdictions and provide users with confidence that the relevant expertise would be available at appellate level.

35. The judges of the Upper Tribunal Tax and Chancery Chamber include the former Special Commissioners of Tax, and judges from the Chancery Division in the High Court (as well as their counterparts in Scotland and Northern Ireland) who may sit by request in the Upper Tribunal<sup>20</sup>.

### **The First-tier Tribunal**

36. In the First-tier Tribunal the current chambers and presidents are:

- Social Entitlement Chamber: His Honour Judge Robert Martin
- Health, Education and Social Care Chamber: His Honour Judge Phillip Sycamore
- War Pensions and Armed Forces Compensation Chamber: Judge Andrew Bano
- Tax Chamber: His Honour Sir Stephen Oliver QC (Acting President)
- General Regulatory: Judge John Angel (Acting President)

37. The TCEA makes provision for the appointment of Deputy Chamber Presidents through a JAC competition. Two deputies have been appointed to the Health, Education and Social Care Chamber: Mark Hinchliffe to take the lead in the jurisdictions of Mental Health, and John Aitken for Special Educational Needs and Care Standards.

38. Leadership structures within chambers as far as possible maintain those that existed previously. Some of the larger tribunals (such as the Social Security and Child Support Appeal Tribunal and the Employment Tribunals) have regional judicial structures, although the geographical units upon which these are based differ from one other (and also differ from the Tribunals Service regions and areas). These regional

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18. Save for appeals from the charity jurisdiction which are directed to the Tax and Chancery Chamber

19. The title “Tax and Chancery” reflects its UK wide jurisdiction. Although the term “Chancery” is normally understood in England and Wales as encompassing tax cases, it is not so understood in Scotland, where the Chamber also has jurisdiction.

20. TCEA section 6



posts have been retained for the time-being.

39. Where formal statutory titles have not been replaced in the new system, they have been substituted by non-statutory titles. Thus Presidents of former tribunals have become “Principal Judges” of the equivalent jurisdictions in the new chambers. The title “Principal Judge” was introduced by me in my First Implementation Review<sup>21</sup> which also noted that holders of that role would also become judges of the Upper Tribunal. That was intended to ensure that their specialist expertise would be available in the Upper Tribunal when needed and appropriate.

### The First-tier Tribunal: Chambers

40. The first three chambers came into being on 3rd November 2008: Social Entitlement; War Pensions and Armed Forces Compensation; and Health, Education and Social Care.

41. On 1st April 2009 the tax and duties jurisdictions were transferred into the new system at both levels. This was the most complex element of the tribunals programme, combining transfer into the new structures with wholesale reform of the existing four tribunals for direct and indirect taxation, as well as the introduction of a new internal review process in Her Majesty’s Revenue and Customs. The establishment of the new First-tier Chamber brought to an end the work of the former General Commissioners of Tax and their clerks, who had played such an important part in the administration of tax appeals for more than 200 years.



Henry Russell OBE, Jack Ladeveze and Roger Fellows, all former Chairman of the National Association of General Commissioners, at the reception to mark the end of the 200-year-old tax appeal system in April 2009

42. The original timetable for the commencement of the General Regulatory Chamber of the First-tier Tribunal was revised to a phased approach with transfers in October 2009<sup>22</sup> and January 2010. The work of this chamber is likely to expand with the implementation of the Regulatory Enforcement and Sanctions Act 2008.

43. The Government also made proposals for a Land, Property and Housing Chamber. Only two of these jurisdictions, the Lands Tribunal and the Adjudicator to the Her Majesty’s Land Registry, are currently administered by the Tribunals Service. As explained above the Lands Tribunal was transferred to the Upper

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21. para 27

22. those jurisdictions are Charity Tribunal, the Consumer Credit Appeal Tribunal and the Estate Agents Appeal Panel, and the Transport Tribunal

Tribunal to address its urgent judicial resource needs. Further planning for this chamber, including its precise content, timing and onward appeal routes, is currently under discussion.

44. The next major step in the creation of the new tribunal system is the incorporation of the work of the Asylum and Immigration Tribunal into the new structure, by the creation of new chambers at each level. This change was announced by the Government on 8 May 2009. In recognition of the shift in workload the new chambers will be known as the ‘Immigration and Asylum’ chambers. As well as providing a stronger and more logical structure for this important jurisdiction it should also relieve the pressure on the High Court and Court of Appeal, by limiting duplication, and restricting onward appeals to cases of real importance. Major stakeholders are being closely involved in the changes, implemented in February 2010.

### **The path to the creation of the new Immigration and Asylum Chambers – Senior Immigration Judge Peter Lane**

45. The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 comes into force on 15 February 2010, abolishing the Asylum and Immigration Tribunal and transferring its functions to the First-tier Tribunal. Also on that day, the Upper Tribunal assumes jurisdiction in respect of appeals against decisions of the First-tier Tribunal in immigration and asylum cases. What was a single-tier jurisdiction thus becomes a two-tier one, in common with other tribunal jurisdictions.

This is perhaps an appropriate moment to reflect on how the decision came about to bring the AIT wholly within the scheme of the TCEA. By 2007, the volume of immigration and asylum work in the Administrative Court was causing serious concern, particularly as regards the number of applications to that Court for reconsideration of AIT decisions, following initial refusal by that tribunal under section 103A of the Nationality, Immigration and Asylum Act 2002. A small working group, jointly chaired by Richards LJ and Lin Homer, was formed in order to examine (amongst other things) how best to handle applications that sought to challenge first-instance decisions of immigration judges.

The working group concluded that there would be advantages in replacing the system of reconsideration of single tier decisions with a two-tier appellate process, whereby initial judicial decisions in immigration and asylum cases could be appealed (with permission) to the Upper Tribunal. As well as having the benefit of placing ultimate responsibility for permission applications with a specialist Tribunal, (which would nevertheless be able to call on High Court input, where appropriate), the creation of a two-tier system was seen to have the advantage of enabling initially legally erroneous decisions to be re-made in the Upper Tribunal, thereby leading to a reduction in the immigration and asylum workload of the Court of Appeal, which had also increased to levels that were causing concern.

The Government welcomed the working group’s recommendations, which it saw as leading to a more efficient but nevertheless fair and expert system. In August 2008 a consultation paper was published, inviting responses on the proposal to transfer the jurisdiction of the AIT in the manner just described. Following what was seen as a generally favourable response, the Government announced in May 2009 that the necessary legislation would be brought forward.

The Transfer Order is a key part of that legislative package; but other legislation also creates dedicated Immigration and Asylum Chambers in both the First-tier Tribunal and the Upper Tribunal, and provides the necessary procedure rules for both tiers.

### **Procedure**

46. The TCEA provides for a Tribunal Procedure Committee (TPC)<sup>23</sup>, with judicial and practitioner membership, to make Tribunal Procedure Rules (TPR) for the two new tribunals. It was intended that the TPC would be able to take a more coherent approach to the development of tribunal procedure and that, where feasible, tribunal procedure rules should be consistent in their drafting and underlying rationale. This has been borne out: new sets of procedural rules have been produced for all the new chambers, with

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23. <http://www.tribunals.gov.uk/Tribunals/Rules/tribunalprocedurecommittee.htm>

consistent overriding objectives, a common duty to assist the tribunal, and covering matters such as delegation of functions to staff.

47. Parallel with the rules, my own office has overseen the production of Practice Directions and Statements, made in my name or those of the Chamber Presidents, to bring together the essential parts of the diverse practice statements which formerly governed procedures in the different tribunals. I am particularly grateful to my former legal secretary, Clare Radcliffe, for co-ordinating this work and to the tribunal presidents for their full co-operation. Sir Patrick Elias (formerly President of the EAT and now Lord Justice Elias) took on the role of Chairman of the TPC from its inception. The work undertaken by him, the Committee members and the lawyers and civil servants who support it has been remarkable in terms of its quantity, quality and the time within which so much has been achieved.

**Tribunal Procedure Committee - the Right Honourable Lord Justice Patrick Elias**

The Tribunal Procedure Committee is charged with formulating procedural rules for tribunals which have become, or are becoming, part of the new structure created by the TCEA. Section 22(2) of the TCEA confers the relevant power. Section 22(4) states that the Committee’s rule making powers should be exercised with a view to ensuring:

- that, in proceedings before the First-tier Tribunals and Upper Tribunal, justice is done,
- that the tribunal system is accessible and fair,
- that proceedings before the First-tier Tribunal or Upper Tribunal are handled quickly and efficiently,
- that the rules are both simple and simply expressed, and
- that the rules where appropriate confer on members of the First-tier Tribunal or Upper Tribunal, responsibility for ensuring that proceedings before the tribunal are handled quickly and efficiently.

We have tried to hold fast to these objectives and in order to achieve them we have been guided by the following principles: to make the rules as simple and streamlined as possible; to avoid unnecessarily technical language; to enable tribunals to continue to operate tried and tested procedures which have been shown to work well; and to adopt common rules across tribunals wherever possible, so that rules specific to a chamber or a tribunal are permitted only where there is a clear and demonstrated need for them.

We have not drawn much on the CPR. Where we have done so, it is more to identify potential problems rather than to provide solutions. Much of the jurisprudence of the Tribunals is citizen against the State rather than party party litigation (although of course the Tax and Lands Chambers have such disputes), and often the litigant is in person. The need to keep the rules short and simple, and for them to be expressed in language the clients can readily understand, is of paramount importance.

Consultation is a fundamental part of the rule making process. Those involved in the day to day work of particular tribunals are often best placed to assess the potential impact of rule changes. We have consulted widely with respect to every set of rules and benefited considerably from the responses to those consultations; they have helped eradicate errors, identified problems in the initial drafts, and suggested improvements. Even where proposed amendments have not been adopted, they have frequently generated important debates in the Committee which have helped sharpen the drafting process.

The committee meets regularly and has a wide representation. There are appointees of the Lord Chancellor (from the Administrative Justice and Tribunals Council as well as those with experience of practice or advice in tribunals), the Senior President of Tribunals, the Lord President and the Lord Chief Justice. Amongst our members there is expertise in almost all the jurisdictions we have had to



consider, and on the few occasions where that is lacking, we have temporarily drafted an expert from a particular area to sit as a member of the committee for the purpose of assisting us with the particular set of rules. Debate is lively and discussion robust. Not all decisions are unanimous, but consensus is usually achieved.

Inevitably experience will demonstrate difficulties with the operation of the rules, or gaps in their coverage, or simply rules which ought to have been drafted better first time around! There has been considerable pressure to produce the rules within the time frame given to us, and we recognise that we are sometimes making judgments which will prove to be wrong. However, an important safeguard is that the Committee's remit is to keep rules under review. Periodic amendments can be – and are being – made to try to remedy deficiencies and to ensure that the rules work as smoothly and fairly as possible and that best practice is maintained and, where appropriate, applied throughout the system.

# Chapter 3: Developing tribunal law and jurisprudence

## Judicial review

48. One of the more controversial aspects of the Tribunals, Courts and Enforcement Bill was the potential it afforded for the transfer of judicial review cases from the High Court and Court of Session to the Upper Tribunal. The purpose of the provision is to allow the Upper Tribunal to hear judicial review cases where it has the specialist knowledge required.

49. The Lord Chief Justice made a direction transferring two categories of judicial review. These are judicial reviews of (i) decisions of the First-tier Tribunal in Criminal Injury Compensation cases and (ii) any challenges to decisions of the First-tier Tribunal under Tribunal Procedure Rules where there is no right of appeal<sup>24</sup>. The Lord President has also transferred judicial reviews of procedural decisions of the First-tier Tribunal from the Court of Session<sup>25</sup>. Further information on the experience of transferred judicial review will be found in Chapter 6 in the review of the Administrative Appeals Chamber.

50. The Borders, Citizenship and Immigration Act 2009 has also subsequently provided that “fresh claim” judicial review can be transferred to the Upper Tribunal, subject to direction by the relevant chief justices which requires the agreement of the Lord Chancellor.

51. At the same time, the provision of a general right of appeal to the Upper Tribunal from the First-tier Tribunal has had the effect of redirecting a number of cases that would previously have been reviewable only by judicial review in the High Court (or the equivalent in the Court of Session). For example, judicial review challenges to decisions of what was the Mental Health Review Tribunal are now generally heard in the Upper Tribunal on appeal from the Health, Education and Social Care Chamber.

## Reviewing First-tier decisions

52. The Tribunals, Courts and Enforcement Act 2007 and the rules have enabled decisions to be reviewed so that errors can be remedied without the need for further appeal or judicial review. These changes are of tangible value to our users and to the tax payer. This has proved of particular value in the mental health jurisdiction in which speedy decisions are very important.

In mental health prior to implementation of the TCEA there was no route of appeal other than judicial review where the total annual numbers of applications was round about 30 a year. However, the review provisions have proven to be a quick and cost effective route to correcting decisions and reducing the stress that long waits for hearings can cause.

**Example 1:** Panel adjourns case for four months having made finding of fact that a restricted patient ‘had a minimum of 12 months work before discharge could be considered’. Secretary of State writes to tribunal seeking leave to appeal this decision as it was unlawful to adjourn to monitor progress. Regional Tribunal Judge reviews decision on papers, sets it aside and orders a new hearing before a different panel. Panel takes place in February, with no discharge. In the past the Secretary of State would have had to apply to High Court to obtain exactly the same outcome after a much longer interlude and at greater cost to all sides.

**Example 2:** Application by restricted patient, convicted of arson with intent, heard by the Restricted Patient Panel on 18 November 2008 when the patient was conditionally discharged into the commu-

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24. <http://www.tribunals.gov.uk/Tribunals/Documents/Rules/>

25. [DirectionClassesofCasesSpecifiedundersection18\(6\).pdf](http://www.opsi.gov.uk/legislation/scotland/ssi2008/ssi_20080357_en_1)

[http://www.opsi.gov.uk/legislation/scotland/ssi2008/ssi\\_20080357\\_en\\_1](http://www.opsi.gov.uk/legislation/scotland/ssi2008/ssi_20080357_en_1) This does not allow judicial review for substantive error of law: Currie, Re Judicial Review [2009] ScotCS CSOH\_145

nity. The discharge was deferred. On 22 December, the Secretary of State for Justice applied under rule 46 for permission to appeal on the grounds that the condition as to residence in the community amounted to a continuation of deprivation of liberty and was, therefore, unlawful. It was also claimed that the Tribunal had failed to give adequate and intelligible reasons. On 13 January 2009, the Tribunal's decision was set-aside on the grounds as claimed and remitted for hearing before a freshly constituted Tribunal. Case reheard on 4 March 2009 following up-dated hospital reports and further comments from the Secretary of State. Patient not discharged.

Under the old judicial review regime, the Tribunal would have instructed Treasury Solicitors to represent it and it is likely the matters would have been referred to counsel, at not inconsiderable expense to the taxpayer. It is likely that both claims would have been conceded but the patient would have entered as an Interested Party. Permission applications would have been necessary and it is likely that the matters would have gone to a full hearing requiring the Tribunal to be represented. The other parties to the claim would also be involved in heavy costs met by the Legal Aid fund. On average these matters could take up to six months to a decision.

**Example 3** in the Special Educational Needs and Disability jurisdiction – the chairman of the tribunal had not determined whether or not the school proposed by the local authority was suitable for the child's needs. If it was not suitable then the panel was able to name the school wanted by the parents without further consideration. If it was suitable, case law (Court of Appeal) requires comparative costs to be considered. This usually means that the parents lose their chosen school as efficient use of resources means that the Local Authority provision is cheaper. By failing to consider suitability there was a gaping hole in the decision.

The old review procedures would not have covered the case as there would have been no reason for the Chair to realise her error. If there had been a statutory appeal to the High Court, experience showed that there would have been about a four month delay from lodging the appeal to the hearing in the High Court. This decision was quashed on 16 April, case managed on the 22 and re-heard on 29 April. The saving in time (and stress) and cost is self-evident.

### Using the new rules

53. Prior to their transfer into the new structures many jurisdictions had out of date and much amended rules which were often difficult for users and their representatives to follow. We now have uniform rules across the chambers, with variations to take account of different jurisdictional needs where appropriate. This standardisation will allow for more efficient administration making it easier to train judges and staff across a number of jurisdictions. Other changes of direct benefit to users were also made.

In Social Security and Child Support Appeals the new Procedure Rules removed the administrative power of 'strike out'. Instead of an enquiry form issued by the department, now the Tribunals Service issues a welcoming information leaflet, followed up by a reminder letter and an offer of telephone contact. If the appellant does not respond, the file is referred to a judge to decide how the case should be moved forward to a fair conclusion.

In many referrals the judge is able to take an early view of the merits of the case and move it straight to a hearing or go down the path of dismissing the appeal as having no reasonable prospects of success.

Under the old rules, each year 70,000 appeals were automatically struck out by the Tribunals Service when the completed enquiry form failed to arrive in time. Each year 20,000 of those appeals were reinstated on the application of appellants who explained that they had never actually received the form from the department or not understood its significance or had been waiting for an appointment with an advice agency to get help. The other 50,000 appeals were simply closed down, having never passed through judicial hands and regardless of their prospects of success. Bearing in mind that surveys have shown that one-half of Social Security appellants lack the confidence to deal with official forms, the enquiry form strike-out process proved a substantial hindrance to justice.

After the first few months of operation of the new procedure, an analysis of the results has shown that some 1,200 appellants a year who, under the old system, would have had their appeals automatically struck out are now, under the new system, having their appeals upheld by the tribunal.

An unanticipated effect of these procedural changes is that, besides upholding appellants' rights, they appear to have made appellants more mindful of their responsibilities. Under the old system an appellant who decided not to pursue his or her appeal (perhaps having taken advice since lodging the appeal and discovered that the case had no prospects) might take the option of simply ignoring the proceedings. Since the new Rules came into operation, there has been a doubling of the number of appellants who take the step of writing back to the Tribunals Service formally withdrawing their appeal, thereby avoiding waste of tribunal resources.

**Example 1:** Miss B had asked for her income support claim to be backdated three weeks because she had been away from home dealing with a family emergency. She appealed. It took the Department for Work and Pensions nine months to forward her appeal to the Tribunals Service. The case was flagged up when Miss B did not respond to the Tribunal Service's correspondence within three weeks. The judge found on the papers that DWP had applied the law incorrectly and allowed the appeal.

**Example 2:** Ms C a widow suffering from depression had been found a new flat by her family support worker. Her depression was such that she often locked herself away in her flat, refusing to speak to anyone. She was late claiming housing benefit and in arrears with her rent. Her appeal was referred to the judge when she did not respond to the Tribunals Service. The judge allowed her appeal on the papers.

# Chapter 4: Tribunal judiciary: judges and members

54. Bringing together the individual tribunals into the new tribunal structures has created a large pool of judges and members. Just before the transformation process started there were (within the tribunals transferring into the new structures) over 7,000 tribunal appointments, the majority of which (over 4,400) were fee-paid or unpaid non-legal appointments. There were also over 2,250 fee-paid judge appointments<sup>26</sup>. In addition there are 447 salaried judges and four salaried non-legal members.



Images from the Senior President's annual conference in May 2009, held at the NEC Birmingham



55. Our inherited records have been brought together from several sources. My office will be taking for-

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26. However the number of fee paid office holders was fewer than this suggests as it was not unusual for tribunal appointees to hold more than one appointment.



ward an exercise this year to check these records with each judicial office holder. Provisional figures from the Judicial Database show that, at December 2009, there were 5,133 judicial office holders in tribunals, of which 37 per cent are female and slightly over ten per cent from black and minority ethnic groups. The reduction in overall figures is largely due to the abolition of the General Commissioners for Income Tax in April 2009.

### Judicial Independence

56. Over the past 50 years, since the Franks Report, tribunals have developed in different ways. All independent but some embedded within the administration of the departments against whose decisions they hear appeals; some with judges and/or members appointed by the various Secretaries of State and some peopled entirely with judges from the courts.

57. Section 1 of the TCEA enshrined in statute the parallel guarantee of independence for tribunal judges and members by extending Section 3 of the CRA (guarantee of continued judicial independence) to them.

58. The TCEA also conferred the title of judge on legally qualified members of tribunals. In my first Implementation Review<sup>27</sup> I set out my views on the use of judicial titles. As expected the title of judge has not changed the way in which tribunal judges behave or the way hearings are conducted.

59. The TCEA also required judges and members to take the judicial oath and oath of allegiance. Since November 2008 every possible opportunity has been used to swear in judges and members at seminars, conferences and training events. When the new tribunals opened for business on 3rd November 2008 the Lord Chief Justice sat with me as I handed down my first practice direction and swore in over 50 Upper Tribunal Judges. At the latest count over 4,000 have taken the judicial oaths.

60. Whilst the practical challenge of organising oath taking has been enormous<sup>28</sup>, what has been particularly striking is the strength of emotion that judges and members have expressed on taking the judicial oaths – one described the occasion as only slightly less nerve wracking and emotional than getting married.

#### **Henry Russell OBE (a non-legal member of the Tax Chamber) writes:**

I swore my first judicial oath over 20 years ago on being appointed a General Commissioner of Income Tax, and my second on April 1 this year after being appointed a non-legal member of the First-tier Tax Chamber. Both are memorable occasions. The latter was all the more significant because of my involvement in tax appeals reform for ten years or more, and so it was the culmination of much hard work by many people in preparing for the new tribunal.

Taking the judicial oath makes a big impression because it implies both trust and duty, and that is humbling. Being appointed to judicial office means that you have been trusted with the responsibility of applying the law fairly and impartially by an open and transparent process, and reaching a decision which may have a major effect on one or both parties to the appeal. Duty follows on from that, because you immediately realise that you are under a duty to do all of those things.

The judicial oath is short but reading out the judicial oath is not an easy task because you are overawed by its importance. I have heard a number of tribunal members swear the oath. All did it with the full respect and humility it deserves.

61. The Government also included a statutory salary protection for tribunal members, which mirrors provisions for court judges, in the draft Constitutional Renewal Bill published on 25 March 2008. This is now clause 36 of the Constitutional Reform and Governance Bill introduced in the House of Commons on 20 July 2009 and which has currently reached Commons Committee stage having passed Second Reading on 20 October. Extending salary protection, the title of judge and the provision for taking the judicial oaths place tribunals very firmly in the judicial family.

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27. para 36 to 39

28. All of those who have not taken these oaths previously are required to take them under the TCEA

## Non- legal members

62. The 2004 White Paper acknowledged the distinctive contribution of non-legal members to the tribunal system, but saw the need to review their precise role. Baroness Ashton instigated a review, the conclusions of which were included in the *Transforming Tribunals* consultation paper of November 2007. That generally followed the Leggatt approach, and confirmed the basic principle that there should be no purely lay category, but that “*all judges and members should have their place at the hearing table by virtue of their expertise*”. It accepted that relevant expertise could come in many forms, not necessarily defined by a professional qualification.

63. The TCEA reflected the same approach by requiring the Senior President to have regard to the need for expertise in the subject matter of the disputes before tribunals. So far my own general approach, as expressed in preparing composition orders, has been to maintain existing practices unless and until there is good reason to change and then only after consultation.

64. However, I think we will need to keep under review the role of non-legal members in the different jurisdictions, both to make sure that they are adding value to the process and are used to the best advantage, and to ensure that we are able to recruit new members with the skills and experience we need for those tasks. This is proving to be particular problem in relation to medical members, and I have been discussing with the JAC how we can increase the number of doctors applying for judicial office.

65. One important, although not the sole, factor is the level of pay. We have not been helped by the long period of waiting for the Government’s response to the Senior Salaries Review Body’s recommendations on harmonising remuneration, and by the very negative conclusion in relation to non-legal members. I have expressed my concern about the Government’s rejection of the SSRBs’ proposals for bringing order to the arrangements for NLM fees across the system. I do not believe this issue will go away. We are already reviewing the position in relation to medical members. We will need to watch carefully the affect on recruitment and on morale.

## Representative organisations

66. In many of the jurisdictions which were brought together in the Tribunals Service there were existing judicial and member representative organisations. There are many issues that they have in common but equally there are those that are specific to their individual jurisdictions.

### **Derek Searby - Forum of Tribunal Organisations:**

The Forum evolved from a meeting in 2006, chaired by HH Sir Michael Harris (then acting as deputy Senior President) aimed at bringing together the various organisations representing salaried judges whose jurisdictions were transferring into the Department of Constitutional Affairs. Those present were the Chairman of the Association of District Chairmen of the Appeals Service and the Presidents of the Council of Employment Tribunal Chairmen, the Council of Immigration Judges and the Council of Social Security and Child Support Commissioners. The vision for the future was of an overarching body representing the interests of all the tribunal judiciary, I was asked (as Chairman of the Association of District Chairmen) to take this forward.

At the same time the Senior President had also secured an agreement with the Lord Chief Justice which allowed three representatives of the tribunals’ judiciary to sit on the Judges’ Council. One of those seats was reserved for the senior tribunals’ judiciary and is filled by Stephen Oliver whilst the remaining two are filled by representatives of the forum.

The Forum has now expanded to include the non-legal members’ representative organisations so that every formal representative organisation is now involved. I continue to chair the meetings and provide administrative support. The Forum has not evolved to a point where a formal constitution is required. Its immediate aim is to connect with those who do not belong to organisations either by encouraging them to form them or have the existing groups include others within their chambers or salary groups.

They have so far agreed:

1. That the tribunals members of the Judges' Council will continue to act as such even after terms of office with their own organisations come to an end.
2. The current Presidents or Chairmen of the represented organisations, or their deputies are automatically to be delegates to the Forum.
3. The principal meetings will coincide with the dates of the Judges' Council to enable full reportage from the previous sittings and feed-back for the next.
4. The Forum should provide an interface between the tribunal judiciary and the Judges' Council.
5. The forum shall provide an interface between the represented organisations and the Senior President on matters of common interest.

### **Judicial Salaries and Fees**

67. Bringing together tribunals from across Government into MoJ has highlighted the disparities between terms and conditions of service and remuneration that apply. MoJ has now published revised terms and conditions for both fee-paid and salaried judges which will come into operation from April 2010 but remuneration remains to be brought into alignment. Without that alignment it is difficult to see how ticketing and assignment can operate to best advantage.

68. In the summer of 2008 my Senior President's end of year message looked forward to an early announcement on the recommendations made in the SSRB's report of tribunals' judiciary remuneration. The Government's response to SSRB was, in the event, much delayed and announced by way of Bridget Prentice's Written Ministerial Statement almost a year later on in 16th July 2009<sup>29</sup>. Whilst that statement set out a way forward for the harmonisation of judges' remuneration there is no such path set out for non-legal members.

### **A judicial career**

69. Professor Dame Hazel Genn undertook research for the Judicial Executive Board on barriers to application for senior judicial office in the courts<sup>30</sup>. It is interesting to note that a number of those barriers are not so relevant to the tribunals' world. For example:

- tribunals do not ask for office holders to make themselves available for long blocks of time and fee-paid posts can be more easily combined with other commitments (whether work or family);
- tribunal cases tend to be shorter;
- the variety and specialism of the jurisdictions allows office holders greater control over the types of areas in which they serve rather than being thrown into the thick of a district or circuit judge jurisdiction; and
- the inquisitorial nature of many of the tribunals and, in some jurisdictions, their relative informality may be more appealing to those from non-barrister backgrounds.

### **Assignment and cross-ticketing**

70. The flexibility of the structures of the new system allows new jurisdictions to be added to chambers

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29. [http://www.tribunals.gov.uk/Tribunals/Documents/Publications/Written\\_Ministerial\\_Statement\\_16July2009.pdf](http://www.tribunals.gov.uk/Tribunals/Documents/Publications/Written_Ministerial_Statement_16July2009.pdf)

30. The attractiveness of senior judicial appointment to highly qualified practitioners" – Report to the Judicial Executive Board - was produced by Professor Dame Hazel Genn DBE, QC and published on the Judicial Website 7th January 2009.



or for new chambers to be created<sup>31</sup> (as can be seen with the transfer of the Asylum and Immigration Tribunal to the new structures). This is a rather simpler process than the legislation and administration required for setting up a new tribunal with its associated need for judges and members to be appointed.

71. So far, tribunals have benefited from the transfer of existing experienced judges and members with their jurisdictions which has created a large judicial pool to use to best advantage – for judges, members and users. Judges and members should have the opportunity to serve across jurisdictions where there is a need for that and they have the skills and experience (whether existing or acquired through additional training) to do so. That should result in more local and quicker access to hearings for users (although much depends on the volume of appeals coming through the system and how much judge/member time can be afforded). However, judges and members cannot be experts in every jurisdiction and the expertise that has developed over the years in single, or limited, jurisdiction tribunals must be maintained.

72. The legislation allows judges to be assigned to additional chambers and to ticket them to hear cases in other jurisdictions within their chamber<sup>32</sup>. I have issued a statement on my assignment policy<sup>33</sup> and that is supplemented by guidance on the process for assignment. Both this policy and process will ensure that expertise is guaranteed for users whilst giving judges and members the opportunity to expand their knowledge and develop their tribunal career. In the First-tier Tax Chamber, 19 fee-paid judges and 12 fee-paid members have been cross assigned from other chambers/tribunals to meet the needs of the new chamber and to complement members and judges recruited through open competition. Robert Martin outlines (in his report on the Social Entitlement Chamber in Chapter 6) how he has used ticketing within his chamber to address shortfalls in judicial resources.

### **Working with the Courts Judiciary**

73. Although the Senior President is established as a separate statutory office, I have a close working relationship with the Lord Chief Justice (and his counterparts in the other jurisdictions) and with the courts judiciary on matters of common interest. Courts and tribunals should be seen as interdependent parts of a single system of justice with no clear separation of personnel between the two. For many years judges from the courts have sat regularly in a number of tribunal jurisdictions<sup>34</sup>. The TCEA formalised this practice by making certain categories of court judges ex-officio members of the First-tier and Upper Tribunals.

74. This working relationship is reflected in a number of formal and informal arrangements – currently under review – for example:

- my regular informal meetings with the Lord Chief Justice and other senior judges;
- my attendance at meetings of the Judicial Executive Board whenever necessary, for the purpose of discussing issues of relevance to tribunals; and
- the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland have appointed senior court judges to represent the interests of tribunal judges (of both devolved and non-devolved jurisdictions), and to chair a Tribunal Judges Forum in each country.

75. In addition, the tribunal judiciary is represented on the Judges’ Council. Stephen Oliver leads the three tribunal delegates and also chairs their Tribunals Standing Committee (which includes a non-legal member). Tribunal judges are also represented on some of the Judges’ Council specialist sub-committees.

#### **Stephen Oliver – the Judges’ Council:**

I see the main function of the tribunal representatives on the Judges’ Council and its committees as an exercise in communication by increasing the “court” judiciary’s awareness of tribunals and of the

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31. TCEA section 7(1) and (9)

32. Assignment provisions are found in the TCEA: Upper Tribunal Sch 4 para 11 and First-tier Sch 4 para 12

33. <http://www.tribunals.gov.uk/Tribunals/Documents/News/assignmentpolicysignedsep16.pdf>

34. See the Lord Chief Justice’s Annual Review of the Administration of Justice in the Courts:

<http://www.judiciary.gov.uk/docs/lcj-review-2009.pdf>

impact of the Tribunals Courts and Enforcement Act. It is a process of drawing attention to common interests and to the work being done within the tribunals' organisation.

Roughly half of the proceedings of the Judges' Council cover matters of mutual interest to both tribunal and court judiciary. Typically these cover judicial welfare, security, communications, performance and efficiency and library provision. There are other areas where a closer relationship could be of mutual benefit to both bodies of judiciary. I have in mind the use of the HMCS estate and relationships with overseas judiciary. There are others, such as encouraging judiciary not to use their judicial titles in private correspondence for security reasons that on first impression had no relevance to us until we suddenly realised that we were all judges now.

The Judges' Council concerns itself with the interests of the judiciary in all sectors. Since 2004 its membership has widened from representatives of the court judiciary alone to include three tribunal representatives. It meets four times a year to discuss and make recommendations on topics referred to it by its Executive Committee. I have been the tribunal member of the Executive Committee since 2007 and have chaired the Standing Committee on Tribunals.

The tribunal delegates constitute one out of seven of the representatives on the Judges' Council and the Executive Committee. The Executive Committee sets the agendas. It meets eight times a year and tends to be led by concerns of the court judiciary. It is chaired by a Lord Justice and has representatives of the Court of Appeal, the High Court, the circuit and the district judiciary and the magistracy.

The Standing Committee on Tribunals is to be joined by a non-legal member drawn from the tribunals. While there is not much that the Judges Council can do for Tribunals that is not done more effectively by the tribunals' own organisations, the Standing Committee has the capacity to increase the influence of the tribunal judiciary (legal and non-legal) on matters affecting the entire judiciary. It has been a step, but by no means the last step, in uniting the interests of both court and tribunal judiciary and in promoting the standing of the latter.

The tribunals judiciary, legal and non-legal, should persevere with the Judges' Council and use its facilities for making their presence and their interests more widely known. It is a useful bridge between court and tribunal judges and, to mix the metaphors, a Trojan horse bringing the tribunal judiciary into the existing judicial family.

# Chapter 5: The tribunal system in practice: a joint enterprise

76. The tribunal reform project has been unusual, perhaps unique, among major legal reform programmes, in the extent of active involvement of judges at every stage. It has also benefited from consistently friendly but respectful working relationships between judges, ministers, and administrators, with generally all-party support, and with other vital stakeholders.

77. Sir Andrew Leggatt himself, as a former Court of Appeal judge, gave a strong judicial lead to the project from the start. In the period leading up to the 2004 White Paper, Lord Justice Brooke was given responsibility by the Lord Chief Justice for co-ordinating and leading the judicial contribution. He established the Tribunal Presidents' Group (TPG), which brought together the jurisdictional leaders of all the tribunals expected to be affected by the changes, working with the civil servants responsible for drafting the paper and advising Ministers. Under his active direction, the TPG played an important part in the formulation of the policies of the White Paper, and in building a sense of common purpose between the various tribunals.

78. In a note prepared for the first meeting of the TPG, chaired by me in October 2004, I summarised my view of the relationship between judges and administrators:

*“Partnership: I start from the general position that judges should judge and administrators should administer. However, I recognise that judges are increasingly expected to provide leadership and guidance on judicial issues outside court sittings. The boundaries between the tasks of judging and administration are blurred. There is no clear division, and no ready-made formula for defining the best working relationship between them. The White Paper describes it as a ‘partnership’ which is imprecise but as good a term as any...”*

*“However, the primary responsibility for delivering the White Paper reforms lies with the Chief Executive, reporting to the Lord Chancellor. My job, reporting to the Lord Chief Justice (or his counterparts in Scotland and Northern Ireland), is to ensure that this is done with the greatest benefit to – and certainly without detracting from – the quality and independence of the judicial service.”*

79. One of the first tasks undertaken by me as Shadow Senior President was to take part in the interviews for the first Chief Executive of the new Tribunals Service, leading to the appointment of Peter Handcock. He led the reform programme until May 2008, when he was promoted to be Director General of the new Access to Justice Group of the Ministry of Justice, where he has maintained overall responsibility for the tribunal project. From the start there was a close working relationship between the Senior President and Chief Executive with few disagreements on points of substance. That has continued under his successors in the Tribunals Service, Jeanne Spinks and now Kevin Sadler.

80. Following the enactment of the TCEA, the Government's proposals for the new system were published in the November 2007 Consultation Paper *Transforming Tribunals*. As the paper explains, I and the other tribunal judicial leaders were closely involved in the discussions leading to the formulation of those proposals. We also had a series of awaydays for senior judges and members of the Tribunals Service, which were chaired jointly by myself and Peter Handcock. These allowed full discussion of all aspects of the reform programme as it developed. With a few significant exceptions, those proposals have provided the template for implementation over the last year.

81. To assist joint working with the administration in practice issues, I decided to appoint a (non-statutory) Deputy Senior President to share my responsibilities, particularly on operational matters. This role was filled first by Judge Michael Harris, then President of the Social Security Appeal Tribunals, and following his retirement, by Judge Gary Hickinbottom, Chief Social Security Commissioner. Both had the advantage of very direct experience of the practical operation of tribunals. Following Gary Hickinbottom's

elevation to the High Court in January 2009 and the appointment of two High Court judges (Paul Walker and Nicholas Warren) to lead the new Chambers of the Upper Tribunal, I decided to dispense with the position of Deputy Senior President from Easter 2009, and appoint instead a Senior Tribunal Liaison Judge (HHJ Phillip Sycamore) sharing other responsibilities formerly undertaken by the deputy Senior President amongst TJEB members.

**Gary Hickinbottom, Deputy Senior President, writes:**

I was Deputy Senior President for 18 months to Easter 2009. In addition to stepping in for the Senior President when he could not be in two places at once, during that period my role focused on two areas, both with an operational bias.

First, heavily assisted by others, I led the judicial input into the tribunal reform process. In addition to being a member of the Tribunals Reform Programme Board, I was on a number of basically administrative groups charged with implementation, notably the TCEA Implementation Board and groups under that board covering current implementation, future scope and of course the Upper Tribunal. Regular and frequent as those meetings were, the vast majority of the work on the programme was of course done outside the formal groups. As DSP, I was, I hope, a useful sounding board for all sorts of implementation issues raised by the administrators that could not obviously be sounded out elsewhere - for example, the issues raised by the fact that the programme was being implemented in three different legal jurisdictions provoked innumerable daily questions - and I spent a substantial amount of time talking with presidents and members of tribunals, and others interested in the system, both to inform them of progress and elicit their views. That “conduit” aspect of the role was important. The Senior President was particularly concerned with the constitutional, strategic and visionary aspects of the reform of tribunals: as DSP, I regarded it as my job to ensure so far as possible that that vision was put into practice. Second, I took the lead on on-going operational issues, as they spanned across different tribunals. That required keeping up to date with strategic developments, but the work was again largely designed to ensure that the strategy was implemented. In addition to being heavily involved in judicial groups (chairs of the appointments and communications groups), I therefore had considerable regular contact with the administration in respect of these issues. For example, once a month, I had a meeting with the JAC to discuss the recruitment programme, and practical issues raised by it. I also had a monthly meeting with the Tribunal Service Chief Executive to which others were invited, and which eventually evolved into effectively a joint judicial/administrative group. Those meetings were effective in identifying issues that could usefully be discussed and progressed between the judiciary and the administration, and focussed particularly on performance of the system, resources and budgets: and, as well as informing the agendas for the regular plenary meetings of the tribunal judges and administration, they managed to clear much of the ground for those meetings. I was heavily involved in regular budgetary exercises, and the response to the SSRB and T&C reviews.

I hastily add that, although I was a focus for operations issues, there were large areas that were very effectively covered by others and out of which I kept. Obvious examples were those judges involved with the tribunal rules, eventually in the TPC under the chairmanship of Patrick Elias: and those, such as Robert Martin, who majored in judicial input into the Hearing Centre and Support Centre projects. Even where I did tread, I was vitally assisted by input from other judges.

The various functions I performed as DSP have now been broken up, and are dealt with by various different groups as well as individuals. Now that the new institutions are set up, I am sure that that is the right way forward. However, during the period of transition and feet-finding - when the new tribunals and governance structures were in the process of being set up, whilst at the same time there were administrative developments resulting from the newly formed Tribunal Service and the hearing centre and administrative support centre projects - I think it was beneficial to have one person who, even if I did not know everything that was going on (and I didn't nor did I pretend that I possibly could!), at least had the facility to take an overview of the often fast-moving developments that were often interrelated from an operational point of view. Insofar as the role was successful for the period I was in it, that was entirely due to the support I received from the Senior President and those in his office, and the many other tribunal judges and administrators, who all worked tirelessly to ensure that we had the appropriate resources and environment to develop the vision that we had for tribunals.



## Supporting the Senior President

82. A major concern in relation to the establishment of the new service was to ensure that there was adequate administrative support for the Senior President and other judicial leaders. I agreed at an early stage with Peter Handcock that support for the Senior President should be provided by a dedicated Senior President's Office within the Tribunals Service, rather than by the creation of a separate organisation, as had been done for the Lord Chief Justice.

83. The Senior President's Office performs much the same functions as the office supporting the LCJ and heads of Division, but there is a significant difference: the small team in the office remain staff of the Tribunals Service (*see Appendix 3*). However there is a clear agreement and understanding between the Senior President and the Chief Executive that all staff who serve judges owe their exclusive loyalty to the judges and members.

84. The team is currently led by Paul Stockton (the director who also sits as a member of the Tribunals Senior Executive Team (TSET), the senior administrative management group); my Private Secretary, Ann Gaffney, who undertakes, with her staff, all the normal support functions for a senior office holder as well as providing the secretariat for all the TJEB sub groups; my legal secretary and a Policy Adviser. Administrators within the office are also the first point of contact with operations in the TS as well as other Private Offices and JAC, JSB etc<sup>35</sup>. Chamber Presidents are also supported by administrators.

85. In practice this arrangement has worked well with a continuing close connection with the TS Chief Executives office and the operational arm of the Tribunals Service.

## The Tribunals Judicial Executive Board (TJEB)

86. Through out the preparation period the TPG continued to meet quarterly and remained a valuable forum for consultation and the exchange of ideas within the broader tribunals' judiciary. However, with the passage and implementation of the TCEA (and the creation of the chambers structure), the function of TPG as a planning and decision making forum was diminished. It became necessary to form a smaller policy group which could meet more regularly and engage directly with the administrators on policy and operational issues.

87. I formed the TJEB, initially, from the leaders of the four largest tribunals with representatives from the smaller ones. The TJEB membership has evolved with the formation of the chambers to include representation from all the chambers and tribunals within my responsibilities. Meetings are supported by the Senior President's Office, and normally attended by the Chief Executive or his representative and other senior officials.

88. TPG continued as a discussion and communications forum with the wider tribunal family until March 2009. Alternative arrangements have been put in place to ensure that contact is maintained with tribunals and jurisdictions outside the new system. As well as ensuring that these tribunals are represented at my annual Senior President's Conference (the second was held in May 2009) there is an extended TJEB meeting at least once a year, in which tribunal leaders from outside the new system will be able to participate.

## TJEB Sub-groups

89. The TJEB is supported by a number of sub-groups for: Appointments and assignment; Training, Medical Advisory; Publications; Communications; Welfare and Appraisal. The terms of reference are set out in Appendix 2 and their chairmen report on their activity in Appendix 3. This arrangement of groups is non-statutory and has been adapted to meet changing needs over time.

90. Some of the chamber presidents also chair TJEB sub-groups and those sub group chairman (whether chamber presidents or not) are TJEB members. The link between TJEB and the sub-groups is vital to ensuring good communications vertically between the sub-groups and TJEB as well as horizontally

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35. TJO's business plan is found at annex E of the Senior President's Third Implementation review <http://www.tribunals.gov.uk/Tribunals/Documents/Publications/SeniorPres3rdReview.pdf>

between the sub-groups.

### **TSET/TJEB joint meetings**

91. In due course a pattern emerged of joint meetings of TJEB and TSET. These bi-monthly meetings are chaired jointly by me and the Chief Executive and bring together the senior judges and administrators to discuss and resolve issues of joint interest. The Senior Tribunals Liaison Judge (HHJ Phillip Sycamore) plays a large role in these joint meetings in setting the agenda with the Chief Executive. This is not a decision making body (decision-making remains with the respective judicial and administrative executive boards) but the group does seek to identify and reach a consensus on operational issues of joint interest and, where appropriate, make recommendations to the executive boards.

92. This group’s discussions range over a wide area including: discussing administrative and judicial priorities to feed into the planning cycle; reviewing judicial resource forecasts, discussing national operational strategy and policy and providing comment and advice to the Tribunals Service from the judicial perspective on new initiatives (for example, multi-jurisdictional clerking arrangements and hearing centre protocols).

93. These senior level meetings are further supplemented by the involvement of judges in Tribunals Service led programmes and projects. To ensure that there is the right judicial representation on boards, TSET/TJEB have agreed that representation on projects which affect all of the tribunal system is confirmed only after consultation with Phillip Sycamore, as Senior Tribunals Liaison Judge. Smaller projects affecting only one or a small number of chambers/tribunals can be decided by the relevant President(s).

## **Working with key partners**

### **Administrative Justice and Tribunals Council**

94. The former Council on Tribunals established itself as an important and valued partner in promoting effective tribunal justice, acting among other things as a direct link between the tribunals and their users, and an unrivalled source of information about tribunal activities. The Council hosted meetings of the former TPG, which were attended by the former chairman. The Council also played an active role in overseeing the arrangements for setting up the Tribunals Service and has continued to monitor developments closely as more tribunals are transferred to the new unified system.

95. The Tribunals, Courts and Enforcement Act 2007 (TCEA) established the Administrative Justice and Tribunals Council (AJTC) as the successor body to the Council on Tribunals with the statutory remit to:

- Keep the overall administrative justice system under review
- Keep under review the constitution and working of specified tribunals, including the First-tier and Upper Tribunals
- Keep under review the constitution and working of specified statutory inquiries

96. Schedule 7 of the TCEA for the first time defines administrative justice to encompass “*the overall system by which decisions of an administrative or executive nature are made in relation to particular persons*”, including the procedures, the law, and systems for resolving disputes. Thus, the AJTC’s role is not just about the final stage of dispute resolution, but covers the whole process from initial decision until final resolution at whatever level. The AJTC is represented on the Tribunal Procedure Committee, established by the TCEA.

97. The AJTC Chairman attends, as an observer, meetings of the Tribunals Service Management Board. In turn, the Senior President of Tribunals, or his nominee, has been invited to attend the AJTC’s monthly meetings as an observer. The AJTC also provides regular feedback to the Senior President from its members’ visits to tribunal hearings for those tribunals within the Tribunals Service.

98. The AJTC also supports two tribunal advisory groups:



- Mental Health Advisory Group

The AJTC facilitates and chairs the Mental Health Advisory Group, which was initially set up in 2007 to provide advice on the mental health review tribunal’s action plan for improvement, following less than satisfactory feedback from a stakeholder survey in 2006. At the group’s second meeting it was agreed that it should take over as the key mental health stakeholder group.

- War Pensions and Armed Forces Compensation Appeals Advisory Steering Group

The AJTC Chairman chairs an advisory steering group for war pensions and armed forces compensation appeals, which was established in 2008 by the Lord Chancellor. The group comprises representatives of the main charities who represent appellants at appeal hearings and the tribunal judiciary and administrators, including the tribunals in Scotland and Northern Ireland.

**Judicial Studies Board**

99. The JSB has its own Tribunals Committee, chaired by a High Court judge (currently Mr Justice Langstaff), a Tribunals Training Director (Mark Hinchliffe) and supporting staff. The chair of the Judicial Training Group of TJEB sits on the Tribunals Committee of the JSB.

100. There were already well-developed links between the Tribunals Committee and individual tribunal jurisdictions but these were further strengthened by the major evaluation exercise of tribunals training that JSB undertook at the Senior President’s request. Between 2006 and 2008 JSB provided an overview of the content, health and general quality of the judicial training programmes. The reports were generally very encouraging and confirmed the existence of a wide range of excellent practices, good course management and delivery, and much innovation. The evaluation team in their final overview report made five generic recommendations for reforms to improve overall training delivery:

- Jurisdictions must ensure they bid in a timely fashion for sufficient funds to enable them to meet their training requirements
- All tribunal judges and members should be subject to regular appraisal
- Any unmet training needs uncovered through appraisal should be met
- The JSB Competence Framework should underpin all TS training programmes
- A system should be put in place to ensure that all judges and members are properly trained before assignment to a different jurisdiction

101. All of these recommendations have been accepted and are being actively implemented.

102. Our Tribunals Judiciary Training Group (TJTG), chaired first by Michael Harris and now by Professor Jeremy Cooper has been effective in ensuring that these strengths are maintained in the new structure.

**Tribunals Training Review**

103. The 2004 White Paper spoke of a “partnership” with the JSB. So far our relationship has evolved on a largely ad hoc and pragmatic basis. Although we have had a good working relationship with the Tribunals Committee of the JSB and its successive chairmen and training directors, their work represents only a small part of the JSB’s own training programmes, and, in budgetary terms, is very small relative to the training programmes of tribunals. We are looking at the opportunities for redefining the present arrangements, and working in the longer term to a unified judicial training system which properly represents both those needs which are common to courts and tribunals and those which are distinctive to two systems.

104. In the Senior President’s First Implementation Review<sup>36</sup> I noted that I would be taking an incre-

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36. para 51: [http://www.tribunals.gov.uk/Tribunals/Documents/News/\[30june\]SPImplementationClean7b.pdf](http://www.tribunals.gov.uk/Tribunals/Documents/News/[30june]SPImplementationClean7b.pdf)

mental approach to training, building on the current provision provided by JSB and the tribunals' judiciary in separate but complementary programmes. This joint approach has worked well. However the work of the TJTG over the past two years has brought together individual jurisdictional budgets into a single judicial training budget overseen by the group. That has made clear the need for the tribunals approach to training to be reconsidered in the light of the new TCEA architecture with flexible assignment and ticketing provisions.

105. In recognition of this in August 2009 I invited Jeremy Cooper to act as my Training Adviser, in relation to my statutory responsibilities for the training of the tribunals judiciary, and, in that capacity to undertake a preliminary study of the future arrangements for training within the tribunals system. The preliminary study, which is expected to be completed by January 2010, will include consideration of:

- Developing proposals for a full review of current training provision for the tribunals judiciary, by both the TS and the JSB
- The feasibility of establishing minimum training requirements and for monitoring these requirements
- The interfaces between training; proposals for appraisal; procedures for assignment/cross-ticketing, and JAC processes
- Encouraging greater use of on-line electronic training programmes across the TS, and piloting best practice models of such training
- Identifying areas where further training is needed, such as judicial management, human resources support and the welfare needs of judges
- Reviewing the overall cost and operational efficiency of the system

106. I have also agreed with the Lord Chief Justice to invite Jeremy Sullivan LJ, a former Chairman of the Tribunals Committee, to lead a joint JSB/Tribunals group to review the present arrangements and look at the options for reform, taking account of the results of Jeremy Cooper's review. Jeremy Cooper will also represent me on the Sullivan Group.

### **Judicial Appointments Commission**

107. Following the CRA reforms, most appointments of tribunal judges and members are now made by the Lord Chancellor after selection by the Judicial Appointments Commission (JAC)<sup>37</sup>.

108. In 2008/09 JAC ran 24 appointment competitions of which 13 were for tribunals, resulting in 172 tribunal appointments from the 516 judicial appointments made in that year. Full statistical analysis of the JAC competition results for 08/09 can be found at the link in the footnote below<sup>38</sup>.

109. The Tribunals Judicial Appointments Group works closely with the JAC and advises me on the development of the appointments programme, including the balance between new appointments and assignment. The JAC Director of Tribunal Appointments sits on this group. This close relationship is further supported by regular meetings between me and Baroness Prashar (Chairman of the JAC).

110. Sir Goolam Meeran has been succeeded (following his retirement as President of the Employment Tribunal for England and Wales) by Phillip Sycamore as my nominee on the JAC Diversity Group. Maintaining and improving the diversity of the tribunal judiciary is an important shared objective, not least because many of our users are from ethnic and religious minorities or come from potentially disadvantaged groups of society.

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37. the JAC annual report 2009: [http://www.judicialappointments.gov.uk/static/documents/JAC\\_AR09\\_web.pdf](http://www.judicialappointments.gov.uk/static/documents/JAC_AR09_web.pdf)

38. [http://www.judicialappointments.gov.uk/static/documents/JAC\\_SELECTION\\_EXERCISE\\_RESULTS\\_2008-09.pdf](http://www.judicialappointments.gov.uk/static/documents/JAC_SELECTION_EXERCISE_RESULTS_2008-09.pdf)



111. We have agreed with the JAC a procedure whereby tailor-made delivery teams are assembled for each competition, representing the key stakeholders (the Chamber President of the relevant jurisdiction, the MoJ, the Tribunals Service, and the JAC). These teams closely monitor the progress of each individual exercise and resolve any queries as they arise. Tribunal judges are also directly involved in the JAC processes in a number of other ways:

- working with the Tribunals Service in forecasting the need for appointments, to provide a basis for agreeing with the JAC programmes for future competitions
- providing specialist judicial input for various tasks in relation to individual competitions, for example:
  - defining job descriptions and requirements for individual offices
  - acting as referees for applicants
  - drafting qualifying tests for the JAC
  - participating in paper sifting and in interview panels
  - acting as statutory consultees (under the CRA) for JAC recommendations before they are referred to the Lord Chancellor

# Chapter 6: Views from the Chamber and Tribunal Presidents

## UPPER TRIBUNAL

### Administrative Appeals Chamber: Chamber President Mr Justice (Paul) Walker

#### The jurisdictional landscape

112. The initial appellate jurisdictions of the AAC are broadly those of the former Social Security and Child Support Commissioners (mainly state pensions and social security, housing benefit, child benefit, and armed forces compensation) along with mental health, education and social care.

113. Social entitlement appeals come from the First-tier Tribunal Social Entitlement Chamber in England, Wales and Scotland on all social entitlement matters other than criminal injuries compensation and asylum support.

114. Armed forces appeals come from the First-tier Tribunal War Pensions and Armed Forces Compensation Chamber in England and Wales, the Pensions Appeal Tribunal in Scotland and the Pensions Appeal Tribunal for Northern Ireland (as regards assessment appeals).

115. Appeals come from the Health, Education and Social Care Chamber concerning care standards in England and Wales, and mental health and special educational needs and disability discrimination in schools in England. There are separate tribunals in Wales dealing with mental health and special educational needs and disability discrimination in schools: appeals from these tribunals also come to the AAC.

116. From its inception, the AAC has had three other jurisdictions. The first is in cases referred directly to it by the Secretary of State for Work and Pensions under the Forfeiture Act 1982. These cases formerly went to the Social Security Commissioners. The second is appeals from the newly-created Independent Safeguarding Authority. The third is the judicial review jurisdiction considered in more detail below.

117. Additional appellate jurisdictions are in place with effect from 1 September 2009. These relate to three of the jurisdictions of the new General Regulatory Chamber – Consumer Credit, Estate Agents (both UK wide) and Transport (England, Wales and Scotland). In addition, appeals from decisions of the Traffic Commissioners are, with certain exceptions, dealt with by the AAC. New jurisdictions concerning the ethical standards of members of local authorities, gambling and freedom of information and data protection, among others, transferred in January 2010.

#### People and places

118. Under the leadership of Mr Justice Hickinbottom, the Administrative Appeals Chamber (AAC) became the first functioning Upper Tribunal chamber on 3 November 2008. He was succeeded as Chamber President by Mr Justice Walker on 21 April 2009. The Chamber comprises Upper Tribunal Judges and Deputy Judges with jurisdiction in England, Wales, Scotland and Northern Ireland. They are supported by teams of registrars, legal information officers and administrators.

#### England

119. Our judicial base in London is Harp House, Farringdon Street EC4, home to 16 permanent AAC judges and, under the leadership of senior registrar Jill Walker, nine registrars (in-house lawyers) and two legal information officers. Administrative support is currently based nearby in Chancery Lane, save for administrative staff dealing with appeals from the Independent Safeguarding Authority and from Traffic Commissioners, who are based at Victory House WC2. In 2011 the plan is to move all the judges, registrars and staff of the AAC based in London to a major new development, the Rolls Building off Fetter Lane EC4.

## Scotland

120. Judge Douglas J May QC is the Senior Upper Tribunal Judge in Scotland. He and Judge Alan J Gamble are based in George House, Edinburgh. George House is also home to our Scottish Registrar, Mr Christopher Smith, and a team of administrators.

## Wales

121. The AAC has a team of judges who are Welsh speakers, or have other connections with Wales with an administrative base in the Civil Justice Centre in Cardiff. Parties are offered oral hearings in Cardiff or in other regional venues in Wales. Procedures for Welsh cases, whether handled in London or Wales, comply with the Welsh Language Act 1993, including the opportunity for correspondence, submissions, hearings and decisions in Welsh.

## Northern Ireland

122. The Northern Irish base for the AAC is located in Bedford House, Bedford Street, Belfast. Upper Tribunal judges His Honour Judge Martin QC and Judge Kenneth Mullan combine their AAC functions with their existing roles as Chief Commissioner (Northern Ireland) and Commissioner (Northern Ireland) respectively. In both capacities they are assisted by Mr Niall McSperrin as registrar, and a team of administrators.

## Deputy judges and other part-time judges and members

123. In addition to the judges mentioned above, there are other judges who sit in the AAC only from time to time. The former Deputy Social Security Commissioners and Deputy Child Support Commissioners have become deputy judges of the Upper Tribunal and continue to sit in the Upper Tribunal for about four weeks a year as before. In addition, the Presidents and some other senior judges of the tribunals whose functions have been transferred to the First-tier Tribunal have become Deputy Judges available to sit in the Upper Tribunal and bring their experience with them. In those jurisdictions where the Upper Tribunal provides the first level of independent judicial appeal, namely on appeals from the Independent Safeguarding Authority or the Traffic Commissioners, expert members have been transferred to the Upper Tribunal from, respectively, the Care Standards Tribunal and the Transport Tribunal and, in the latter case, the judges of the Transport Tribunal have all become judges of the Upper Tribunal.

## Our first year

124. The overarching nature of the AAC makes it one of the main vehicles within the new system for giving coherence across jurisdictions. This theme was strongly developed from the outset by Mr Justice Hickinbottom. In particular decisions are being made on procedural issues that have implications for all jurisdictions and not just the one in which the case was decided.

125. However, it is equally important that the Upper Tribunal maintains the specialist expertise that has led the courts to give strong support to tribunal decisions. Our new jurisdictions expertise has been developed by creating teams of judges to handle the cases in each new jurisdiction. Where a panel of three judges has sat, it has been possible to include a judge with extensive experience of sitting in lower tribunals in the relevant jurisdiction because presidents and other senior judges from tribunals whose functions have been transferred to the First-tier Tribunal have been made deputy judges of the Upper Tribunal. In each jurisdiction, a lead judge has been identified. He or she has two roles. One is, in liaison with Judge Wikeley, our lead judicial studies judge, to ensure that the group keeps abreast of developments in the relevant law. The other is to give initial consideration to each case so as to identify those that are urgent and need expediting or include an application for interim relief. Both the use of expertise and expedition are exemplified in *Dorset Healthcare NHS Foundation Trust v MH* [2009] UKUT 4 (AAC), discussed in the section of this report dealing with the Health, Education and Social Care Chamber of the First-tier Tribunal.

## Judicial review

126. 2009 has also seen the start of a developing AAC role in judicial review cases. In England and Wales the Lord Chief Justice has specified two classes of case that should be brought in the Upper Tribunal rather than the High Court. The first of these classes is any decision of the First-tier Tribunal concerning criminal injuries compensation, in respect of which there is no right of appeal to the Upper Tribunal. This has provided a steady stream of work, increasing in volume during the course of 2009. However, it is unsatisfac-

tory that these cases must be brought by way of judicial review, because the judicial review procedure is more complex than an ordinary appeal, giving rise to delay. The second class of case that should be started in the Upper Tribunal in England and Wales – and only class of case that must be transferred to the Upper Tribunal if started in the Court of Session in Scotland – is broadly judicial review of an interlocutory or procedural decision of the First-tier Tribunal. This class has produced less work, partly because most interlocutory decisions have been found to be appealable. In Scotland all judicial review proceedings must be started in the Court of Session. Cases concerning non-devolved matters may be transferred to the Upper Tribunal on a discretionary basis. There are also broad discretionary powers to transfer judicial review cases to the Upper Tribunal from the High Courts in England and Wales and Northern Ireland. So far, these powers have been used sparingly, and only by the High Court of England and Wales. The cases transferred have been associated with tribunal decisions or areas of law which are part of, or akin to, the Upper Tribunal's other jurisdictions.

127. In addition, of course, the AAC has continued to carry out the functions inherited from the Social Security Commissioners and Child Support Commissioners. The new procedural rules have made very few differences to the way these cases need to be handled and so it has been possible to provide users with a seamless transition into the new tribunal system.

### **Judicial Studies**

128. The launch of the AAC was marked in November 2008 with a successful one-day event organised with the Judicial Studies Board which focused on the new procedural rules for the Upper Tribunal. The AAC has also, in its first year, held one-day judicial studies events in London and Edinburgh which have been devoted to analysing the statutory framework and descriptors for Employment and Support Allowance, the new benefit which replaces Incapacity Benefit and which is expected to give rise to a substantial number of appeals to both the First-tier Tribunal and the Upper Tribunal. AAC judges have attended judicial studies sessions organised by First-tier Tribunal Chambers and other tribunals from which appeals stem. Many of these have involved the Social Entitlement Chamber, where there are longstanding links in relation to judicial studies issues. These training events provide important opportunities for the Upper Tribunal judges and First-tier Tribunal judges to meet and discuss matters of mutual interest. Our own AAC judicial studies sessions have also been arranged in other areas such as mental health, care standards and special educational needs. The AAC is also exploring the potential for joint judicial studies events with other Chambers of the Upper Tribunal.

## **Tax and Chancery Chamber: Chamber President – Mr Justice (Nicholas) Warren**

### **The jurisdictional perspective**

129. The Finance and Tax Chamber of the Upper Tribunal came into being, with the First Tier Tax Chamber (the Tax Chamber) on 1 April 2009. Our primary function in tax cases was, and remains, to hear appeals from the Tax Chamber. But we also have jurisdiction to deal with selected first instance cases which would otherwise be heard by the Tax Chamber. From 1 September 2009, we also have jurisdiction to deal with judicial review applications against HMRC with certain exceptions.

130. The functions of the Charity Tribunal were transferred to the General Regulatory Chamber on 1 September 2009. Our functions and our name have been extended as from that date to include appeals charity in charity case from the GRC –so the chamber is now know as the Tax and Chancery Chamber (T&CC). A charity case is an appeal or application in respect of a decision, order or direction of the Charity Commission, or a reference under Schedule 1D of the Charities Act 1993. As with tax cases, we have a jurisdiction to deal with first instance cases which would otherwise be heard by the GRC. We also have a judicial review jurisdiction in relation to decisions of the Charity Commission.

### **People and places**

131. In terms of administrative complexity and the establishment of protocols and appointment of judiciary, the creation of the Finance and Tax Chamber (as it was originally named) has been something of a side-show. (T&CC).

132. Our case-load is small compared with other Chambers whether of the Upper Tribunal or the First Tier. As at the end of November we had dealt with only three cases –two appeals and one first-instance case transferred from the First-tier Tax Chamber. The flow of work under the new system is, however, now picking up: we have around 50 tax appeals and a small number of judicial reviews in the pipeline with hearing dates starting early in 2010. We have not, as yet, received any appeals under our charities jurisdiction. Our administrative and IT needs are correspondingly small. Our size and the scope of our functions mean that we do not face many of the challenges faced by the larger and more disparate Chambers. We are, all the same, always looking for ways in which to improve our service to users and aware of the need to ensure that matters are dealt with as quickly and as cheaply as possible.

133. We have a small team at Bedford Row who now handle the tax and charity work of the Chamber. They also handle the administration of the Financial Service and Markets Tribunal and the Pensions Regulator Tribunal (which share the same judicial and non-judicial members). There will be a seamless transition when the functions of those two Tribunals are transferred to the T&CC in April 2010. With our small unit and relatively small case load, the President of the Chamber has been able, in a way that some other Presidents are not so easily able, to take a close and comparatively hands-on approach to the work of the Chamber. This may become more difficult as the case-load increases with the extension of our role to charities and financial services.

134. Our judiciary are all experienced individuals. So far as concerns tax, the full-time judges of the Chamber were all previously special commissioners. The fee-paid (deputy) judges of the Chamber were all former fee-paid deputy special commissioners or on the panel of chairmen of a VAT and duties tribunal. In addition, all the judges of the Chancery Division (other than the Chancellor) are permitted to hear cases in the T&CC. We have no non-legal members. Our judges both in and out of the full time judiciary represent a huge wealth of talent able to provide the citizen with a first class appellate service in the tax field. The involvement of the full-time and fee paid tax judiciary ensures the availability of relevant expertise; the involvement of the Chancery Division judges brings an expertise to the process of judging appeals in tax cases and preserves this resource for the benefit of the public. The possibility of hearings with a panel of two or even three judges drawn from the two parts of our judicial resources brings to the system the expertise and judgment for which those involved in tax appeals have so long sought.

135. In the charities arena, the transfer of the functions of the Charity Tribunal to the GRC has been accompanied by a mapping-in of judges and members. All of the judges and members of the Charity Tribunal have mapped in as judges or members of the GRC. In addition, the President of the Charity Tribunal has mapped-in as a deputy judge of the Upper Tribunal. She has been assigned to the T&CC Chamber.

136. We look forward to the next year with optimism particularly welcoming the transfer to the T&CC of the functions of the Financial Service and Markets Tribunal and the Pensions Regulator Tribunal. We will need to earn the trust and confidence of the users of these Tribunals. We look forward to that challenge with enthusiasm.

## Lands Chamber: Chamber President - Judge George Bartlett QC

### The Jurisdictional Perspective

137. The Lands Chamber of the Upper Tribunal came into existence on 1 June 2009. It was a re-creation, within the new tribunals structure, of the Lands Tribunal, whose jurisdictions were transferred in their entirety and whose procedural rules, with the minimum of modification, were continued in effect (new rules are planned for 2010).

138. The workload of the Tribunal continues at a relatively high level. References of compensation claims for the compulsory purchase of land are still being made in respect of the Channel Tunnel Rail Link. There are also claims relating to the Olympics site, and the first Crossrail claims are coming in. References relating to urban renewal schemes by local planning authorities appear to be increasing. The large number



of claims for compensation by house owners in respect of the use of the extended runway at East Midlands Airport and the new runway at Manchester Airport are being processed. The number of rating appeals from valuation tribunals continues at about the same level as before. The fall in the property market has led to a decline in the number of applications for the discharge or modification of restrictive covenants, but this effect has yet to be felt in relation to appeals from leasehold valuation tribunals in leasehold enfranchisement cases. Service charge appeals continue at the same level as previously.

139. As *Transforming Tribunals* made clear, the transfer of the Lands Tribunal’s jurisdictions into the new system is only the first step, and it remains an important objective that a First-tier Lands Chamber, embracing those jurisdictions for which the Lands Tribunal is the appellate body and other jurisdictions in the land and property field as well, should be brought into existence.

### **People and places**

140. Following a Judicial Appointments Commission competition, George Bartlett (the last President of the Lands Tribunal) was appointed President of the Lands Chamber; the surveyor members became transferred-in members of the new Chamber in accordance with the TCEA; and the circuit judges were assigned to the new Chamber. Two further circuit judges were assigned to the new Chamber, one of whom, a specialist civil circuit judge in Cardiff, is well-placed to hear Welsh cases. The Senior President will sit to hear the occasional case.

141. The chamber has a new administrative and judicial base at Bedford Square where we cohabit with our tax colleagues but, as with other jurisdictions, we are able to use the hearing estate around the UK as necessary.

## **FIRST-TIER TRIBUNAL**

### **Social Entitlement: Chamber President – His Honour Judge Robert Martin**

142. Implementation of the Tribunals Courts and Enforcement Act 2007 brought together three jurisdictions to form the Social Entitlement Chamber within the First-tier Tribunal – Social Security and Child Support (SSCS), the Asylum Support Tribunal (AST) and Criminal Injuries Compensation Appeal Tribunal (CICAP).

### **People and places**

143. In Asylum Support there are 26 judges; in Criminal Injuries Compensation Appeals 72 judges and members and in SSCS 1,608 judges and non legal members. Of the members in the Social Entitlement Chamber over 550 are medical professionals with a further 400 with special knowledge of disability issues and a small number of financially qualified members.

### **SSCS Leadership Structure**

144. Judicial leadership in SSCS is provided by the Chamber President and a team of seven Regional Tribunal Judges (RTJs) covering Great Britain who meet regularly throughout the year as The President’s Steering Group, with the President of the Social Security Tribunal Northern Ireland also in attendance. A Chief Medical Member leads 569 medically qualified panel members and oversees appraisal and training in liaison with a lead RTJ. Within each region salaried District Judges lead smaller teams of fee-paid judges and members allocated to one of the 130 SSCS dedicated venues spread throughout the country.

### **Recruitment in SSCS**

145. An annual cycle of planning and forecasting predicts future panel members’ needs for the next three to five years and is based on established listing rates, intake and the turnover of panel members. A number of exercises are under way for the year 2009/10. A salaried District Judge competition to fill 14 whole time equivalent posts attracted 217 applications and following 34 interviews, 17 full and part-time appointments were recommended. Although it was hoped to run a joint salaried and fee-paid competition JAC colleagues highlighted a number of difficulties developing a single set of competences and a single test in order to meet

our requirements. We therefore disengaged the fee paid competition for 18 judges and filled the shortfall by enlisting the help of asylum support judges in an assignment exercise with induction training completed during summer 2009. JAC also ran recruitment exercises for medically qualified and disability qualified members. In an effort to coordinate recruitment across the chamber it was agreed that for vacancies of medical members in criminal injuries compensation appeals a process of ticketing of SSCS jurisdiction medical members could be arranged. A disability qualified member recruitment exercise for 34 vacancies attracted 203 applicants, interviews were scheduled for August. In the absence of a slot for the recruitment of financially qualified members we embarked upon an assignment exercise from other chambers within the tribunal structure. A second forecasting exercise this year has taken planning forward up until 2014.

146. In terms of legally qualified panel members our strategy has been to put the case for improving the ratio of salaried to fee-paid judges principally because increasingly salaried judicial office holders are required to embark on wider judicial management roles over and above the required sittings within the jurisdiction. These include seeking to establish an effective system of appraisal across tribunals, training and mentoring, which have taken on a higher profile, engagement with administrative colleagues on continuous organisational change in order to meet central government challenges associated with public sector reform and the key role played in feedback to first tier decision makers, support for appointments through liaison with the JAC all of which take time and require skills beyond traditional “judge-craft” roles.

147. In Asylum Support judges were amongst the first within the transformed Tribunal Service to benefit from the ticketing process. In March 2009, the Chamber President ticketed the Principal Judge Asylum Support, to the Criminal Injuries Compensation jurisdiction (T-CIC). Following a period of observation and focused induction training, Sehba Storey commenced sitting in T-CIC in July 2009. In June 2009 the Chamber President ticketed 16 fee-paid and two salaried Asylum Support judges to sit in the Social Security and Child Support (SSCS) jurisdiction. Led by the SSCS Judicial Training Team, an intensive programme of induction training was organised and Part 1 delivered within two weeks of deployment.

148. In September 2009 the Asylum Support jurisdiction vacated Christopher Wren House in Croydon, the accommodation they have occupied since the Tribunal was set up by the Home Office in April 2000. On 25 September 2009 they relocated to East London where together with SSCS and the Employment Tribunal, they have formed the first multi-jurisdictional hearing centre in the country. Although this represents a major change for the jurisdiction, the judiciary and a new team of support staff remain committed to delivering a high quality efficient service to its users. Criminal Injuries administration is based in Glasgow with their salaried judge based in London. SSCS has a widely distributed administrative and judicial set up.

### **The Transforming Tribunals Programme**

149. The vision for the Tribunals Service is of a network of multi jurisdictional hearing and administrative support centres; the Transforming Tribunals Programme was the governing structure put in place to achieve that end. As one of the largest chambers we have played an important part in the programme since its inception. We have done so on a pragmatic basis judging the proposals in terms of the benefits they bring to tribunal users. Initially the scope of the project was to centralise administrative work in six Administrative Support Centres (ASC) working on the basis of a standardised operating model seeking to deliver reduced waiting times and improved service to users. At the same time nine multi-jurisdictional hearing centres would be introduced with the ability to process appeals across a range of jurisdictions. Some of this work has been paused. A ‘Pathfinder ASC’ office in Birmingham has proceeded with SSCS work being transferred to the new site from September 2008. This has resulted in considerable changes in established working practices from a district based approach with clerks responsible for a geographical area with end to end working to a functionalised approach focussing on processes. This was at the same time that we were introducing new ways of working and creating a new tribunal structure implementing the TCEA. It remains to be seen whether a functionalised approach will prove successful in delivering real benefits to tribunal users and a proper evaluation and lessons learned exercise should be completed before standard operating procedures are introduced in other regions. Despite our misgivings engagement continues on a pragmatic basis.

### **The jurisdictional landscape**

150. The Social Entitlement Chamber remains a large volume jurisdiction. In addition to rising workloads associated with the recession there have also been two notable changes in the jurisdiction: the re-

placement of the Child Support Agency with the Child Maintenance and Enforcement Commission and the introduction of the Employment Support Allowance to replace Incapacity Benefit.

151. A new Criminal Injuries Compensation Scheme for all applications for compensation made on or after 3 November 2008 came into force on 3 November 2008. From 3 November 2008, there are four schemes (the three tariff schemes 1996, 2001 and 2008) and the “ex-gratia” pre-tariff 1990 scheme to deal with. The 2008 scheme makes several significant changes to the previous scheme.

152. There is no onward right of appeal to the Upper Tribunal from the Criminal Injuries jurisdiction. Whilst still very few relative to the number of decisions, there has been a discernable and predicted increase in applications for judicial review, probably due, to perceived easier access to the Upper Tribunal in England and Wales. In Scotland, applications for permission to bring judicial review proceedings are still made to the Outer House of the Court of Session.

153. In developing the work of the chamber the underlying philosophy has been to respect the different character, traditions and working patterns of the individual jurisdictions whilst at the same time encouraging the sharing of best practice and cooperation in the best interests of tribunal users.

### **New Procedure Rules**

154. The TPC put in place new generic rules for the chamber’s inception. Each set of chamber rules takes into account jurisdictional requirements however, inevitably, further amendments are coming to light in the course of using the rules. For example in asylum support the upper time limit for the listing of appeal hearings was omitted. Under the Asylum Support Appeals (Procedure) (Amendment) Rules 2003, Rule 6(1) stipulated that the tribunal must determine an appeal no later than nine days after receipt of the notice of appeal. Under Rule 29 of the 2008 Rules, there is no longer a specific requirement for the tribunal to hold the hearing within nine days, an omission which has the potential to seriously disadvantage destitute appellants. The TPC has therefore been requested to consider an urgent amendment to the 2008 Rules to ensure that hearings are listed within the previous timescales.

### **Alternative Dispute Resolution**

155. Between September 2007 and the end of January 2009 SSCS took part in a pilot scheme testing the use of Alternative Dispute Resolution (ADR) to identify effective mechanisms for resolving appeals without the need for a full tribunal hearing. The technique used called Early Neutral Evaluation (ENE) focussed on Disability Living Allowance and Attendance Allowance and involved a review of the cases by District Tribunal Judges (DTJs) who assessed the likely outcome based on the information in the submission. The DTJ then contacted the party who, in their opinion, was likely to lose the appeal, explained the decision and invited them to reconsider the decision or the appeal. If they were unable to reach a conclusion on the papers the case would go forward to a hearing. A number of venues were used in the pilot and appellants invited to take part by letter informing them of the proposals and asking for consent to proceed. 51% of those eligible chose to take part, and of those taking part in 42% of cases directions were issued prior to the hearing as compared to 1% of those not in the pilot. 23% of opt in cases were resolved without a hearing, as compared to 9% of other cases. There was also a 9% lower rate of adjournments for opt in cases. Cost savings were recorded in avoiding cases coming to a full tribunal. The report<sup>39</sup> following the pilot recommends a limited roll out of the ADR process with continuous monitoring to test the longer term capacity of this type of system to deliver positive outcomes.

### **SSCS Feedback to First-Tier Agencies**

156. Responsibility for a separate report on the standard of first tier decision making in Social Security and Child Support 2008-9 has been delegated to the Chamber President.

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39. <http://www.justice.gov.uk/latest-updates/early-neutral-evaluation-sscs.htm>

# Health, Education and Social Care: Chamber President – His Honour Judge Phillip Sycamore

## The jurisdictional perspective

157. The Health, Education and Social Care Chamber ('HESC') was one of the two new First-tier Tribunal Chambers which began life on 'T Day', 3 November 2008 when the TCEA was implemented. Its first President is His Honour Judge Phillip Sycamore. Under the new Tribunal system, Judge Sycamore is Senior Tribunals Liaison Judge and is lead for Appointments and Assignments, chairing the Tribunals Judiciary Appointments Group ('TJAG').

158. At the outset, the biggest challenge was to bring together three very different jurisdictions under one Chamber: Care Standards ('CS'), Mental Health ('MH') and Special Educational Needs ('SEND'). In January 2010, a fourth jurisdiction, the Family Health Services Appeal Authority ('FHSAA') will transfer into the Chamber. Implementing the TCEA also introduced two very significant changes to the appeals process: the review provisions and the right of onward appeal to the Upper Tribunal.

159. The review provisions allow the First-tier Tribunal, on receipt of an application for permission to appeal, to review its own decision and where satisfied there has been an error of law, to set aside and direct for there to be a fresh hearing before either the same or a differently constituted panel. These applications are considered by either a full time regional or salaried tribunal judge who can, in appropriate cases, set aside the decision and order a rehearing. This is particularly relevant to the Mental Health jurisdiction where patients' cases can be dealt with more quickly than before.

160. Since the start of the new structure there have been 181 applications for permission. 26 applications under Rule 45 of which one was granted and 25 refused. 155 Rule 46 applications for permission to appeal of which 62 decisions were set aside and 93 were not; of the 93, permission to appeal was granted in eight, leaving 84 where the decision was neither reviewed nor permission to appeal granted.

161. The Rules have also provided a route for dedicated appeals to the Upper Tribunal with permission to apply to the UT where permission has been refused by the First-tier Tribunal. In January of 2009, a panel of three Tribunal Judges of the Administrative Appeals Chamber of the UT (His Honour Judge Gary Hickinbottom (as he then was) Chamber President, His Honour Judge Phillip Sycamore Chamber President and UT Judge Mark Rowland) heard the first such appeal, Dorset Healthcare Trust v MH [2009] UKUT 4 (AAC), in which the parties asked for guidance. The appeal was heard very quickly, within weeks of the initial hearing, which is far more appropriate in such cases.

## People and places

162. One feature that all three jurisdictions had in common was that, to a very large extent, they relied on their part-time membership. The vision from the outset was for a chamber with full time judiciary and a full time judicial leadership team, and there are now 17 salaried mental health judges in post. Their focus is to provide continuity and effective case management as they each work on a variety of initiatives to improve the quality of service provided to our users. A recruitment exercise is underway for four salaried Tribunal Judges for the SEND, CS and FHSAA jurisdictions and the post of a full time medical member for MH was advertised in November 2009.

163. The judicial leadership structure of the chamber has also grown with the appointments of two deputy chamber presidents: John Aitken, with responsibility for SEND, CS and FHSAA; and Mark Hinchliffe, with responsibility for Mental Health, are very welcome.

164. The varied geographic locations of judges and administrators has also provided challenges: salaried judges are based at either Pocock Street in London or the Manchester Civil Justice Centre whilst administrative staff are based in three different areas, Darlington, Leicester and Pocock Street. Our long term plan is to bring them closer together, hopefully, by the end of the financial year, by moving CS and SEND to-



gether, based in Darlington with MH remaining in Leicester. The loyal and committed staff in Darlington worked under a cloud of uncertainty in 2009 whilst decisions were made on the office location, this has been happily resolved with a move into much more appropriate accommodation on an adjoining site which took place in September 2009. Many thanks go to all the staff for their continuing loyalty and support during that very difficult time.

## War Pensions and Armed Forces Compensation: Chamber President – Judge Andrew Bano

### **The jurisdictional landscape**

165. The Armed Forces Compensation Scheme, which applies to injuries caused by service since April 2005, has been the subject of much public interest, and continuing uncertainty over the fundamental legal principles of the scheme has created problems in dealing with the greater than expected number of cases arising out of the conflicts in Iraq and Afghanistan. The chamber has dealt with requests for adjournments pending resolution of the legal issues on a case-by-case basis, and has been assisted in dealing with these cases by the more flexible case management powers available under the new rules of procedure.

166. As a result of the introduction of the new rules, the procedure for cases in England and Wales now differs from that in Scotland and Northern Ireland. The consultative committee which was established at the same time as the War Pensions and Armed Forces Compensation Chamber has been examining these differences in detail and has provided a valuable forum for dealing with issues common to the three jurisdictions. We are grateful to the AJTC for chairing and hosting the committee.

### **People and Places**

167. The War Pensions and Armed Forces Compensation Chamber of the First-tier tribunal-with 70 part-time and two full-time judicial members-is considerably smaller than the other chambers. However, the benefits of membership of a unified First-tier Tribunal are already becoming apparent, particularly in the areas of training and development.

168. The chamber has worked closely with the Social Entitlement Chamber in dealing with 'licence to practise' issues for medical members and plans to take advantage of the medical expertise available in other jurisdictions in order to enable it to deal most effectively with cases involving psychiatric conditions, such as post-traumatic stress disorder. Many ex-service appellants are very vulnerable, and future training will concentrate on ensuring that the practices and procedures of the chamber are those which are best suited to the needs of the Service community. The chamber is also planning to use the Judicial Portal (a web-based information resource for judges) to make legal and medical reference material available at tribunal venues.

## Tax: Acting Chamber President – His Honour Sir Stephen Oliver QC

### **The jurisdictional landscape**

169. On 31 March 2009 the four tax tribunals ceased to exist. They were replaced by a single UK-wide tribunal, the Tax Chamber of the First-tier Tribunal. The old tribunals had each had a different jurisdiction. The oldest, the general commissioners, had been the lay magistracy of the tax system with 2,200 commissioners operating in 240 separate divisions each managed by (usually) legally qualified clerks. The Special Commissioners were all lawyers. They sat throughout the United Kingdom and heard the long, the difficult and the sensitive tax appeals. The section 703 tribunal, a separate UK-wide tribunal, dealt with anti-avoidance cases. The VAT and Duties Tribunals, grouped in separate panels of judiciary for each of Scotland, Northern Ireland and England and Wales, heard all the VAT appeals and all those concerned with the multitude of "duties" managed by HMRC.

170. The project of bringing into one UK-wide chamber the work of four tribunals, each with its own judiciary, its own legal and regional jurisdiction and its own administration called for a considerable exercise



on the part of the Tribunal Service in planning and execution. The work started several years in advance. The Tribunal Service strategy was to work closely with a “stakeholders group” drawn from the users and including judges and administrators. The greatest challenge was the huge diversity of the workload as between the four tribunals, in terms of taxes and the weight of the matters, in issue. There was found to be little hard information as to the volume and type of work handled by the general commissioners. Then, while the plans for progressing, HMRC decided to establish a review process designed to impose an internal re-examination of all potentially appealable decisions. How far this would affect the number of appeals has been the biggest unknown.

171. The demands of the users have been recognised by attempting to preserve the best features of the General Commissioners, such as their wide geographical coverage and their “turn up and talk” ethos on the one hand with the more formal approach of the special commissioners to high value and legally complex appeals on the other.

172. The rules cope with the diversity of Tax Chamber work. They categorise appeals into four classes, namely - paper, basic, standard and complex. The rules gave to each class case management directions appropriate to the nature and scale of the appeal. The complex class carries with it a liability for costs, with a right (exercisable at the start of the appeal) conferred on the taxpayer to opt out; the parties have an opportunity to apply for the appeal to start in the Upper Tribunal. The users’ reactions to the rules have, in our experience, been positive. They are comfortable with the flexibility given by the “overriding objective” in rule 2. There have, as yet, been only two applications for complex appeals to start in the Upper Tribunal, permission is given only to cases of high legal importance where the fact finding requirements are relatively slight.

### People and places

173. The administration of the tax appeal system has been founded on the rules. The Tax Chamber’s Birmingham administrative centre receives all appeals, classifies them and then passes the standard appeals that are likely to require extensive case management and the complex appeals to the satellite centres in London, Edinburgh and Manchester. The rest are retained in Birmingham and allocated out to hearing centres throughout the United Kingdom.

174. The judiciary, legal and non-legal, have been drastically downsized. Prior to 1 April there were 2,200 General Commissioners and 35 lawyer chairman of the Special Commissioners and of the VAT and Duties Tribunals together with 100 non-legal members of the latter. The Tax Chamber has a total complement of 244 judges and members in a ratio of 1:3.

175. Nearly half of the tax chamber’s judiciary are new to tax tribunals. Around 30 of these have come from other Tribunal Service tribunals by process of “assignment”. The rest have come through the JAC selection process. The assignees have been an influence for the good, bringing in useful practices and know how from their home tribunals. We find ourselves, as a new and relatively small tribunal, being seen as trespassers in the hearing venues of the large and well established tribunals. The assignees have served as our guides and friends in an alien world. Above all the assignees have bridged the gap between ourselves and those other tribunals. There is now a much greater awareness of the work in other fields of administrative law.

176. Training of judiciary has been a key part of the changeover. The new judiciary, delivered through the JAC competition, have mixed backgrounds. Some are household names in the world of tax and others have either had no experience of tax or no experience of tax in the non-contentious environment. We ran 15 days of training, throughout the UK, in the run up to 1 April 2009. Every new recruit has, as well as attending training, been required to sit as an observer (on two occasions in the case of judges) before taking a formal part on a tribunal. We intend that every judge will have a two-day training session each year and, in 2010/11, every non-legal member will have a day’s training; those who are to chair basic category appeals will be required to attend the JSB’s course for new chairmen.

177. The flow of work is varied. It has tended to defy the projections on which the recruitment exercises were based. The Tax Chamber’s direct tax appeals started with an unexpectedly large number of “legacy”

appeals transferred over and from the jurisdiction of the general commissioners. The HMRC's new review policy received statutory force from 1 April 2009. A significant number of potential appeals are still either in the review process or they have been culled by the outcome of reviews. The result is currently a distinct shortage of the old General Commissioner-type work. This is partly the consequence of a drive, at the start of 2009, to clear outstanding disputes (many of which went back ten years) before the new regime came in and partly because of learning difficulties in the use of the new review process. At the other end of the spectrum we have experienced a surge of high value appeals, where the tax at stake ranges from £1m to £1,000m.

## General Regulatory: Acting Chamber President – Judge John Angel

### The jurisdictional landscape

178. The General Regulatory Chamber (GRC) is comprised of a number of small niche jurisdictions which mainly deal with appeals from decisions of regulators and is part of the First-tier Tribunal.

179. The GRC commenced in two phases on 1st September 2009 and January 2010. Upon transfer, existing rules for all of the tribunals were replaced by chamber-specific rules which were subject to public consultation.

### Jurisdictions transferring into the GRC

180. In September 2009 the following tribunals transferred to the GRC:

- Charity Tribunal;
- The Consumer Credit Appeals Tribunal;
- Estate Agents Appeal Panel; and
- Transport Appeals Tribunal (appeals from the Driving Standards Agency (DSA));

In January 2010 the following also transferred to the GRC:

- Information Tribunal;
- Claims Management Services Tribunal;
- Gambling Appeals Tribunal;
- Immigration Services Tribunal; and
- Adjudication Panel for England

181. The GRC will have a growing workload from later in 2010, when appeals under the Regulatory Enforcement and Sanctions Act 2008 (RES Act) will start to transfer to the GRC as regulators opt in under the RES Act.

182. There is provision under the TCEA for other Tribunals to transfer into the GRC in the future when and if appeals arise. These could include: Sea Fish License Tribunal, Aircraft & Shipping Tribunal, Antarctic Act Tribunal, NHS Medicines Appeal Tribunal, Plant Varieties and Seeds Tribunal, Insolvency Practitioners Tribunal, Foreign Compensation Commission, Chemical Weapons Licensing Appeal Tribunal and Mines and Quarries Tribunal.

183. As with tax appeals there is the facility for particular first instance charity and information rights appeals to start in the Upper Tribunal. The new rules of procedure provide the criteria of suitability and the

process by which a case will transfer from the First-tier to the Upper Tribunal. Some information rights national security cases will transfer straight to the Administrative Appeals Chamber of the Upper Tribunal. Similarly some charity cases will transfer straight to the Tax and Chancery Chamber in the Upper Tribunal.

### People and places

184. The GRC has created a number of challenges because of the number of jurisdictions transferring and the diffuse nature of those jurisdictions (some were not administered by the Tribunals Service) and the fact its launch date changed twice. There were seven tribunal presidents and four administrative teams situated in three locations. There were eight transfer orders needing to be agreed by seven presidents. The reason for jurisdictions being transferred to the new chamber in stages was because of the concern of getting the necessary Parliamentary approval all in one go and it was decided to de-risk the situation by transferring in two stages. The chamber rules required consultation with a whole range of stakeholders. Because of the hybrid jurisdictions, two Upper Tribunal Chambers’ rules needed to be amended to facilitate those GRC cases being heard in the first instance in the Upper Tribunal.

185. In bringing the jurisdictions together, I learnt from the experience of the judicial leaders of the First-tier Tribunal chambers launched in November 2008. As a result I brought together all the Presidents of the transferring tribunals in October 2008 and we have met quarterly since. These meetings have served both for communications and decision-making and at all times my strategy has been to let them take the lead on jurisdictional specific matters, like composition orders, so that the specialist nature of the jurisdiction can be maintained. However I have sought to agree chamber wide policies where it made sense. For example, to have a common decision template and a GRC bench book.

186. During the same period I have been closely involved with the TS project to set up the administrative arrangements for the new chamber including the legal process, IT developments and communications internally and externally. The operational meetings later became combined with the judicial meetings which proved very effective. I wish to give praise to the operational team who managed the whole process very professionally and effectively.

187. Clearly the GRC work will be varied but the skills of the judiciary are based on similar types of issues, for example many of the GRC jurisdictions deal with appeals in relation to licensing – gambling, immigration services and consumer credit.

188. The GRC is likely to be a convenient place for new jurisdictions in the future, particularly where they do not easily fit into other chambers. The RES Act jurisdictions should increase the workload of the new chamber considerably but I am hopefully we can absorb most of this without having to extend our resources provided we can have an appropriate combined IT infrastructure. This will provide numerous ticketing opportunities to existing members.

## OTHER TRIBUNALS UNDER THE RESPONSIBILITY OF THE SENIOR PRESIDENT

Employment Appeal Tribunal: Tribunal President – Mr Justice (Nicholas) Underhill (who succeeded Mr Justice, now Lord Justice, Elias as President of the Tribunal with effect from 1 January 2009)

189. The Employment Appeal Tribunal is in a different position from most of the other bodies contributing to this report. Although it has been brought within the structure of the Tribunals Service, and is under the leadership of the Senior President, it represents a “separate pillar” and has not faced the kinds of change experienced elsewhere. No doubt as the new system beds down there will be benefits to the Tribunal from liaison with the staff and judges of the various components of the Upper Tribunal; but it is too early for any

advantages of this kind to be gained. There has, however, been one piece of cross-fertilisation in the opposite direction. The previous President, Mr Justice Elias, was able to make use of his familiarity with the Employment Tribunal Rules and the Employment Appeal Tribunal Rules, and their application in practice, in chairing the committee which drafted the model rules for the First-tier Tribunals.

190. There is accordingly little to report save the continuation of the well-established work of the Employment Appeal Tribunal in hearing appeals on points of law from decisions of the Employment Tribunals, within the procedures established five years ago under the Presidency of Mr Justice Burton. The principal feature of those procedures is that all appeals lodged with the Tribunal are subjected to a careful “sift” by a judge of the Tribunal in order to establish whether they do indeed raise an arguable point of law (though appellants rejected on the sift are entitled to a short oral hearing to seek to persuade a judge to reinstate the appeal). Of the 1,794 “potential appeals” received in the year to 31 March 2009, 927 were rejected at the sift stage – the first time that the proportion has exceeded 50%. Although the sifting process is laborious it has proved invaluable in ensuring that hearing time is devoted to issues which raise genuine points of law which merit the determination of the Tribunal.

191. There are no firm trends detectable in the workload of the Employment Appeal Tribunal over the last year. The numbers of appeals lodged is slightly down on the previous year but not to a significant extent. It remains to be seen whether either the abolition of the ill-starred dispute resolution regime introduced under the Employment Act 2002 or an increasing number of redundancies as a result of the economic climate will have a significant impact.

192. One continuing trend has been the proportion of registered appeals heard by Judge alone, i.e. without lay members. This is not a matter of policy but appears to reflect an increasing number of cases heard by Judge alone in the Employment Tribunal.

## Employment Tribunals for England and Wales, and Scotland – Tribunal President England and Wales: Employment Judge David Latham; Tribunal President Scotland: Employment Judge Shona Simon

193. 2009 brought with it a series of increases: in workload; the complexity of the law; the length of Hearings; the cases that are proceeding to Hearings; and a marked shortage of judicial and other resources in order to process the Hearings that are required. This is putting the attainment of the performance targets increasingly in jeopardy.

194. The workloads in Employment Tribunals have dramatically increased in the last year: by about 40% for single, standalone cases as well as an overall increase in the multiple cases. Currently, the single caseload is continuing to rise and may not peak until the end of this financial year. This will leave the Employment Tribunals with a considerable caseload, which will, if it follows previous recession periods, plateau at that high level for a number of years thereafter.

195. ETs also have a large volume of Equal Pay claims (in excess of 75,800 Local Authority claims in England and Wales, 43,429 in Scotland and 15,500 National Health Service Equal Pay claims in England and Wales with 12,662 in Scotland).

196. Against this workload, the Employment Tribunals have been recruiting Employment Judges with an additional 23.9 new full-time equivalent salaried Employment Judges and 35 fee-paid Employment Judges in England and Wales with an additional 8 fee-paid employment judges for Scotland where a reserve list has been created for salaried posts arising in the next eighteen months. As a result there will be 132 salaried Employment Judges, (27 of which will be salaried part-time appointments), and 218 fee-paid Employment Judges in England and Wales. Further competitions for salaried Employment Judges were advertised and commenced in December 2009 (21 vacancies), and a competition for fee-paid Employment Judges will commence in March 2010 (40 vacancies). Non legal members are also being recruited, with in excess of 340

Non Legal Member vacancies filled in 2009 in England, Wales and Scotland with a further competition envisaged in 2010.

197. Against this backdrop of increasing case loads there are also a number of particular projects and advances that should be mentioned:

- Case management has been constantly developed over the last 5 or 6 years. Better, in depth and earlier case management can help parties to resolve their disputes between themselves much earlier than waiting for a full hearing which improves the service we offer to the public and our use of resources.
- Judicial Mediation started as a pilot scheme in three regions of England and Wales between July 2006 and July 2007, with a success rate in excess of 60% for those cases that were the subject of Judicial Mediation. Judicial Mediation is a process that is offered particularly in discrimination cases which are likely to last 3 days or more for a full Hearing, and which the parties agree voluntarily to enter into once it has been offered by the Regional Employment Judge in the respective region. A trained judicial mediator Employment Judge is then assigned to conduct the Judicial Mediation, which is on the facilitative mediation model. The success of the pilot led to its expansion to all regions in England and Wales with effect from 1 January 2009 with each region on average offering approximately six judicial mediations per month. Success rates are now in excess of 65% not just in terms of providing the service to the public, but also in respect of the efficient use of resources. The parties who have experienced Judicial Mediation have generally been positive about it, gaining particular support from the independent nature of the judicial mediator in the process. In Scotland a similar Judicial Mediation scheme was commenced in June 2009. It also operates on an entirely voluntary basis, with offers of mediation being made by the Vice President.
- CaseFlow, an integrated IT system linking the judiciary and their administration and, in some aspects, ACAS has been further delayed although a pilot began on 23 November 2009 which will be followed by a progressive roll out into the regions.
- Employment Tribunal training continues to be comprehensive and of a high quality, having received a very high assessment by the Judicial Studies Board during 2008. It is worth noting the diversity awareness course (run in England and Wales and, with a similar well established course in Scotland) which covers a number of issues that ET judges come into contact with in their working lives including religious practices; mental health and disability. The value of these courses is well recognised across the tribunals and it is hoped to extend it to other jurisdictions.
- Equal Pay cases have continued to increase over the last few years. There have now been 32 major test decisions for the cases dealt with in England and Wales which should now allow the tribunal to resolve the outstanding Local Authority and National Health Service cases over the next 12 months.

### **People and places**

198. In terms of judicial management, Judge David Latham succeeded Sir Goolam Meeran on his retirement as President for England and Wales, and during this year also there has been the appointment of two new Regional Employment Judges – Mr Stuart Williams (Cardiff region) and Ms Elizabeth Potter (London Central region). There are a total of 12 Regional Employment Judges in England and Wales contributing to the judicial management structure. In Scotland a Vice President (Scotland), Susan Walker, was appointed in January 2010 by the Lord President to fill the vacancy left by Shona Simon who succeeded Colin Milne CBE as President for Scotland on his retirement.

199. The Scottish Government has announced its intention to create a Scottish Tribunals Service. Whether that will encompass the Employment Tribunal (Scotland) or any other tribunal involving non-de-



volved legislation is the subject of on-going discussions in Scotland involving both the judiciary and administration.

## Asylum and Immigration Tribunal: Deputy President – Senior Immigration Judge Elisabeth Arfon-Jones

For the Asylum and Immigration Tribunal 2009 was a year of sadness and drama, upheaval and achievement.

### People and places

**200.** In June 2009 we lost our much-loved leader when Henry Hodge lost his courageous battle with leukaemia. Although he had been unable to be physically present with us for some months, his committed support in the background provided a strong sense of leadership to us at the AIT. His loss has been immense but the AIT is determined to face up to all the challenges that lie ahead, the memory of his inspirational leadership guiding us in our way forward.

**201.** Drama and excitement came in March 2009 when as a result of a serious fire at Field House, we were forced to seek humanitarian protection elsewhere. Accommodation and immediate help came from our colleagues at Taylor House where our judicial and administrative colleagues worked together to meet the challenges arising from the disruption caused by the fire. It was a great tribute to all those involved that no one was hurt as a result of the fire and we were relieved at the small scale of loss of files. We eventually relocated to Procession House in Ludgate Circus where, happily based on a temporary basis, we awaited our return to a refurbished Field House which took place in December 2009.

### The jurisdictional landscape

**202.** A significant challenge to the operation of the AIT has come in increased (and unbudgeted) workloads for managed migration and entry clearance whilst asylum appeals now represent a mere 6% of our workload. Another important feature in our work has been a marked increase in the number of paper cases we determine.

**203.** Undoubtedly the most exciting challenge is our transfer into the new two tier tribunals structure early in 2010. The key challenge is to ensure that business continues as usual, with the minimum of disruption to all involved. Under the new structure the Upper Tribunal will deal with appeals which (from April 2005 when the AIT came into being) have accounted for much of the High Court's workload. The proposed measure should also ease the pressures the Court of Appeal. Some judicial review work also transfers to the Upper Tribunal posing new challenges for our Senior Immigration Judges.

**204.** Despite all these challenges, individual and collective, there has been a concerted effort to improve judicial performance and productivity. The current sitting pattern is under active review and far-reaching changes may well be implemented in the near future. Rolling lists, ex tempore judgements, morning and afternoon hearings have all been piloted and will be evaluated closely.

# Chapter 7: Tribunals across the UK

## CROSS-BORDER ISSUES

205. The joint enterprise has extended to all parts of the UK. Unlike the courts, the tribunals had no uniform pattern of geographical competence. Some of those coming into the new system had jurisdictions extending to the whole of the United Kingdom, some to the whole of Great Britain, some to England and Wales and some only to England. These differences are generally the product of their piecemeal historical development rather than logic. As Senior President, I sought to minimise the practical effect of the differences by co-operative work with the chief justices, tribunal leaders and administrators in all parts of the United Kingdom. This process has been assisted by the establishment of Tribunal Presidents' Groups, chaired by senior court judges, in both Scotland and Northern Ireland, which bring together judicial leaders and administrators, from both within and outside the new system.

206. I have asked three judges, who have been of special help to me in encouraging effective co-operation in each country, to give a brief account of developments:-

### Scotland: Colin Milne CBE (former President of Employment Tribunal Scotland)

207. While developments in Scotland have closely mirrored developments in England and Wales in relation to the jurisdictions that were brought into the Tribunal Service, there is a parallel development into the devolved Tribunals in Scotland.

208. As in England and Wales the creation of the First-tier Tribunal impacted on the relevant jurisdictions. The effect was not however so extensive as in England and Wales because the Scottish equivalent of many of the jurisdictions that came within the First-tier Tribunal in England and Wales were devolved in Scotland and effectively continued as they were. That said the scale of the Social Security jurisdiction (which constitutes the main element in Scotland of the First Tier Tribunal) should not be understated.

209. Shortly after the creation of the Tribunal Service new premises were delivered in Dundee which are primarily used by Employment Tribunal and the First-tier Tribunal (Social Entitlement Chamber). These premises are a vast improvement on the premises previously occupied by both Employment and Social Security in the pre Tribunal Service days. There has also been a co-location in Aberdeen where again both Employment Tribunals and First-tier Tribunals (Social Entitlement Chamber) are co-located but both Dundee and Aberdeen host other tribunals from time to time – as do the more major Tribunal Service Offices in the central belt.

210. Scotland also saw the introduction of the Upper Tribunal. The jurisdiction of the Upper Tribunal is primarily related to social security (taking over from the role of the Commissioners) initially but the new tax jurisdiction will have an impact in due course.

211. While the devolved Tribunals did not come within the scope of the recommendations made within the Leggatt report it was inevitable that change would come sometime. In January 2008 the First Minister of Scotland announced his Government's intention of looking at the Tribunal system in Scotland. Ever since then various initiatives have taken place the most significant of which was the publication of a report, in October 2008, on "Options for the Future Administration and Supervision of Tribunals in Scotland" which was published by the Administrative Justice Steering Group under the Chairmanship of Lord Philip which has been followed by further debate in conferences and at the Scottish Tribunals Forum. That report was published on 6 October 2008<sup>40</sup>.

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40. [http://www.ajtc.gov.uk/docs/Tribunals\\_in\\_Scotland.pdf](http://www.ajtc.gov.uk/docs/Tribunals_in_Scotland.pdf)

212. Matters now are moving forward as the Constitution, Law and Courts Directorate of the Scottish Government have announced their intention of focusing on two of the options identified in the report namely:-

- establishing a Scottish Tribunals Service to support all Scottish Tribunals
- establishing a new Scottish Tribunals Service to support both GB Tribunals operating within Scotland and all Scottish Tribunals.

213. At this stage the Scottish Government are gathering information about the practical operation of each Tribunal in Scotland. In due course it is expected that a consultation paper on the options will be produced by the Scottish Government.

### Northern Ireland: His Honour Judge Martin, QC - Upper Tribunal Judge (Administrative Appeals Chamber)

214. United Kingdom tribunals operating in Northern Ireland have been included with the reforms noted above such as the creation of a unified administration (the Tribunals Service) and the implementation of the Tribunals, Courts and Enforcement Act 2007. There are, however, a relatively small number of such UK wide tribunals – most tribunals operating in Northern Ireland are the responsibility of the Northern Ireland Court Service (a Department of the Lord Chancellor), the Northern Ireland Office (a United Kingdom Government Department) or a number of Northern Ireland Departments (part of the devolved administration).

### **Devolution in Northern Ireland**

215. Devolution in Northern Ireland is a two stage process. The NI Assembly was restored in 2007 and its departments are responsible for the majority of Northern Ireland tribunals. The second stage, devolution of policing and justice to the NI Assembly, is to occur at a time agreed by the political parties. Planning for this second stage is underway. Devolution of justice allows for the creation of a Department of Justice with responsibility for all tribunals. This is consequently an opportunity to fundamentally reform tribunals.

216. While the substantive reforms in the rest of the United Kingdom (including United Kingdom tribunals operating in Northern Ireland) did not come into effect in relation to Northern Ireland tribunals, steps have already been taken to re-organise the Northern Ireland tribunals administratively. An interdepartmental working group was established in 2006 to consider the implications of the Leggatt report. The group noted that many of the issues identified by Leggatt also had relevance in this jurisdiction. As a consequence, the then Secretary of State for Northern Ireland, on 21 March 2006 during a period of Direct Rule, announced that he had agreed with the Lord Chancellor that the Northern Ireland Court Service would assume administrative responsibility for all Northern Ireland tribunals. In addition, any newly established tribunals would become the responsibility of the Northern Ireland Court Service from the outset.

217. Following restoration of devolution (not including the devolution of justice) it was necessary for the new NI Executive to endorse the tribunal reform programme announced by the Secretary of State for Northern Ireland.

218. In July 2009 the Northern Ireland Executive endorsed a *“reinvigoration of the [reform programme] initiated under direct rule which would aim to achieve greater coherence and efficiency through the creation of a unified management framework and a common administrative support under the Court Service”*. It is planned that the Court Service would assume responsibility for the administration of NI departmental tribunals on a phased basis. This will result in a massive change in the administration of tribunal justice in Northern Ireland. The Court Service assumes responsibility for administering NI departmental tribunals by way of agency arrangements under s.28 of the Northern Ireland Act 1998. The Service Level Agreements seek to underpin the independence of the tribunal from its sponsor departments.

219. The Northern Ireland Court Service already had responsibility for the Commissioners (Social Security, Child Support and Pensions Appeal Commissioners) and the Pensions Appeal Tribunals. Other recently formed tribunals and tribunals transferred from the Northern Ireland Office have also been administered by the Northern Ireland Court Service namely, the Traffic Penalty Tribunal, the Northern Ireland Valuation Tribunal, the National Security Certificates Appeal Tribunal and the Criminal Injury Compensation Appeal Panel. These tribunals have been joined by the following Northern Ireland Departmental tribunals on 1 September 2009, namely the Care Tribunal, the Lands Tribunal, the Mental Health Review Tribunal, the Schedule 11 Tribunal (a tribunal established under Schedule 11 of the Health and Personal Social Services (Northern Ireland) Order 1972) and the Special Educational Needs and Disability Tribunal. The Court Service also provides support to UK wide tribunals sitting in Northern Ireland under an agreement with the Tribunals Service (presently being formalised). The majority of these tribunals are now co-located in a Tribunals Hearing Centre in the centre of Belfast.

220. It is intended that this reform will continue with a second phase of transfers involving the Rent Assessment Panel, the Appeal Tribunals for Northern Ireland (Social Security, Child Support etc), while a third and final phase of transfers will consist of the Fair Employment Tribunal, the Industrial Tribunals, the Reserve Forces Reinstatement Committee, the Reserve Forces Appeal Tribunal, the Planning Appeals Commission, the Water Appeals Commission and the Police Medicals Pensions Appeal Tribunal. The latter is a tribunal administered by the Northern Ireland Office while the rest are Northern Ireland Departmental tribunals. It is also intended that the Court Service will assume responsibility for the Charities Appeal Tribunal when it is established in the not too distant future.

221. While these are significant developments, it is noteworthy that the administrative reform does not result in any formal recognition of the independence of the tribunal judiciary or the creation of independent rule-making authorities. In addition the substantial addition to the rights of litigants, especially rights of appeal, before tribunals in the United Kingdom under the Tribunals, Courts and Enforcement Act 2007 have not been replicated in Northern Ireland and this remains a concern for the Northern Ireland Tribunal Presidents' Group, which was established in December 2005 under the Chairmanship of Mr Justice (now Lord Justice) Coghlin, to monitor the work of the Tribunals Service Planning Group, a body set up under the co-chairmanship of the Director of the Northern Ireland Court Service and the Office of the First Minister and Deputy First Minister to examine the organisation and functions of Northern Ireland Tribunals.

222. The present position is that United Kingdom tribunals operating in Northern Ireland operate under a very different system to that of Northern Ireland tribunals. Nevertheless, substantial steps have been taken or are being taken to effect a separation between Ministers and other authorities, whose policies and decisions are tested by tribunals, and the Ministers who appoint the relevant judiciary and administer the tribunals.

223. As noted above, new premises (a Tribunals Hearing Centre) opened in September 2009 for many of the smaller tribunals under the administrative umbrella of the Court Service and this has helped generate a new collegiate atmosphere for both the judiciary and the staff serving these tribunals. The new tribunal centre and associated offices also provide a Northern Ireland base for the Administrative Appeals Chamber of the United Kingdom Upper Tribunal. The Northern Ireland Commissioners, acting as Upper Tribunal Judges, are in a position, when necessary, to carry out Administrative Appeals Chamber functions in relation to United Kingdom Upper Tribunal matters. The premises are also used by the Tax Chamber of the First-tier Tribunal and are available for use by the Tax and Chancery Chamber of the Upper Tribunal.

## Wales: Elisabeth Arfon-Jones, Deputy President AIT

224. Tribunal reform within the United Kingdom has posed cross-border issues for Scotland, Northern Ireland and Wales. Some tribunals are UK tribunals, others are devolved with responsibility resting with the national government. Whilst Wales, of course, has no separate justice

system as pertains in Scotland and Northern Ireland nevertheless because there are some devolved Tribunals in Wales administered by the Welsh Assembly Government (WAG) in one sense part of the justice system has undergone a process of devolution.

225. The retained tribunals are part of the Tribunals Service and are administered from London although there is a strong regionalisation of many of these Tribunals in Wales. It is important to remember that Wales is not a region but a nation, with its own language.

226. The devolved tribunals administered by the Welsh Assembly Government are effectively administered in the way that sponsoring departments administered tribunals in England prior to the coming into being of the Tribunals Service. This is a cause for concern in that the separation of powers is a powerful constitutional safeguard against interference with the judicial process by the executive. Independence from the sponsoring department is key.

227. It is important that tribunal judiciary in Wales work together so as to ensure that it can benefit from cross-ticketing and assignment. Economies of scale in terms of resources and in particularly in the field of estates are important to exploit.

228. A positive step has been the creation of the Welsh Committee of the Administrative Justice and Tribunals Council which is ably chaired by Sir Adrian Webb. It organised an extremely successful day in Cardiff on 18 June 2009 – etched on my memory because it was the day the President of my tribunal, Mr Justice Hodge, died.

229. The increasing role of the Upper Tribunal in Wales is to be welcomed. There are immense opportunities for tribunal judges in Wales and those exciting challenges and opportunities need to be grasped. It is, therefore, crucial to create the appropriate environment for those opportunities to flourish.

230. To that end it is important that the Welsh tribunal judiciary work together resolving common issues. I also envisage the AJTC in Wales facilitating and supporting the Tribunals Service in a role very similar to the one played under the brilliant Chairmanship of Tony Newton in London. The Welsh Committee published its *Review of Tribunals operating in Wales* on the 29th of January 2010<sup>41</sup>.

231. Tribunal justice is about providing easy access to court users on as local a level as is possible. Bearing in mind that there are also Welsh language issues in Wales, I very much hope that there will be an ever increasing ease of access to Tribunal justice throughout Wales. With this in mind the opening of the AAC office in Wales of course is to be welcomed and the fact that it will hear appeals from two of the devolved Tribunals in Wales MHRT and SENT. The new Administrative Court office opened in April 2009 and I am sure it will be a great success. The Administrative Court office is an integral part of the Administrative Court regionalisation project which HMCS has undertaken which includes activity in the regions of England as well as in the nation of Wales.

232. I would hope in due course that the Association of Welsh Judges would be prepared to extend its membership to tribunal judges as well as to the salaried court system judges. The Welsh Forum of Tribunal Judges chaired by Jim Wood has been a useful means of getting together tribunal judges and continues to discuss issues of mutual applicability in a cross-jurisdictional forum.

233. It will need to focus on the complexities occasioned by devolution to ensure that there is a properly functioning administrative justice system in Wales. There will be common issues impacting on both devolved and national tribunals in Wales. Multi-jurisdictional co-operation is key.

234. I have two things left to say: Watch this space and diolch yn fawr!

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41. <http://www.ajtc.gov.uk/news/372.htm>



# Appendix 1: Tribunals Judicial Executive Board and its sub groups – terms of reference

## **The Tribunals Judicial Executive Board**

The Tribunals Judicial Executive Board is the Senior President’s discussion and decision making forum although final decisions on matters relating to his statutory and delegated responsibilities rest with him.

The Board takes collegiate responsibility for the leadership, organisation and management of those tribunals judiciary who come under the remit of the Senior President as set out in the Tribunals, Courts and Enforcement Act 2007.

The objectives of the Board are to:

- a. provide leadership, direction and support to the tribunals judiciary
- b. manage the tribunals judiciary’s overall relationship with the Tribunals Service, MoJ and other jurisdictions and bodies
- c. provide comment and advice to the Tribunals Service and MoJ from the judicial perspective on any initiatives or projects relating to tribunals or their service delivery (Joint meeting)
- d. discuss with the Tribunals Service and MoJ the spending review priorities, targets and plans as they affect the tribunals judiciary and the financing and resources for the Tribunals Service (Joint meeting)
- e. liaise with the Judges’ Council
- f. ensure appropriate cross border relationships are maintained and promoted
- g. develop policy and practice on judicial appointments in tribunals, relationships with the Judicial Appointments Commission and Lord Chancellor and hold discussions on specific appointments where necessary (Appointments and Assignment Group)
- h. ensure the provision and delivery of judicial training in tribunals within the TJO budget and to oversee the link with the Judicial Studies Board (the Training Group).
- i. oversee the provision, over time, of a consistent system of appraisal in tribunals and develop general policy for the welfare and guidance of the tribunals judiciary (the Appraisal and Welfare Group)
- j. direct the judicial communications strategy (both internal and external) for tribunals; develop policy and practice for precedent and reporting system in the new generic tribunals (the Communications Group);
- k. oversee the provision of publications, on-line services and other reference materials for judicial use and agree allocation of the publications budget (Publications Group)

## **Tribunals Judiciary Appointments Group**

The group oversees the judicial input into the end to end forecasting and appointments lifecycle and the assignment and ticketing processes. In particular the group will:

- set the annual forecasting timetable

- analyse the forecasting results prior to sending them to TJEB for endorsement
- comment on the draft JAC programme to ensure that it correctly reflects priorities

The group will monitor progress of tribunal competitions in the JAC programme and work with them and JSO to identify and solve problems at an early stage (this may be achieved by way of written updates rather than meetings).

The group will develop, for the Senior President, both the policy on and processes for assigning and ticketing judges and members.

In delivering these objectives the group will be responsible for the development of an efficient, effective and documented forecasting and appointments process which minimises hand offs and duplication of work within MoJ and between the Ministry and JAC.

### **Tribunals Judiciary Training Group**

Overriding objective: To maintain and improve judicial standards through training.

TJTG advises the SP on training issues generally, and in particular:

- will identify judicial training needs across the Tribunals Service and their priority within the overall programme
- will develop and cost the annual judicial training programme for the Tribunal Service, and where appropriate will reassess and/or adjust the programme as required in the light of the final allocated budget and agree the final programme with the Senior President
- will keep under review the delivery of the agreed training programme within budget.

In delivering these objectives TJTG will have regard to the SP's TCEA responsibilities under Section 2 and Schedules 2 (para 8) and 3 para (9), as well as the JSB's role for delivery of training to non-TS tribunals. To this end, TJTG group will keep under review training provision to ensure that it is provided in the most efficient and effective way to its target groups whether delivery be from within TS or by another provider and in consultation with the other Groups that report to TJEB.

### **Tribunals Judiciary Appraisal and Welfare Group**

The group's purpose is to:

1. Develop policy and proposals which effectively support the Senior President in his role as head of the tribunals judiciary for the implementation of a welfare scheme and record across the tribunals judiciary.
2. Consider JSB's recommendations on existing appraisal systems and make recommendations to the Senior President regarding the convergence of judicial appraisal schemes.
3. Develop proposals which address the need for consistency of appraisal for both fee paid and salaried judicial office holders
4. Produce a joint policy statement with the JAC regarding the use of appraisal reports during the judicial appointment process
5. Ensure that the use of appraisals in ticketing and assignment decisions is compatible with the way in which appraisal evidence is used in the appointments process
6. Ensure that judiciary responsible for appraisal are trained to a consistent level of competence.

7. Develop proposals for the harmonisation of judicial terms and conditions in relation to appraisals across the tribunals judiciary
8. Develop proposals for a new welfare system
9. Develop proposals for a mentoring scheme, allowing for jurisdictional differences, but ensuring that a scheme is available across the tribunals' judiciary
10. Oversee the agreed appraisal and welfare processes ensuring that there is close liaison with the training and appointments groups.

**Tribunals Judiciary Communications Group**

The group's primary purpose is to ensure that the Judicial Communications Strategy is implemented. In doing that the group will also

- Evaluate and implement appropriate means and mediums of communication (including e communications) between tribunals judges, and between the judiciary and the outside world;
- Develop efficient and effective internal communications using existing methods to reach both legal and non-legal tribunals office holders;
- Develop and monitor the use of the judicial portal as the primary internal communications channel;
- Initiate work on Precedent and Reporting and establish a separate group to develop policy and practice on this area.

**Tribunals Judiciary Publications Group**

TJPG advises the Senior President on the procurement of publications, on-line services and other reference materials for judicial use with a view to improving the supply and distribution of these information resources through the development of collaborative approaches.

Each year TJPG will support the process of financial planning by collating bids for judicial information resources in a format approved by the Senior President and making recommendations to the Senior President.

**Tribunals Medical Advisory Group**

The object of the group is to provide advice and recommendations to TJEB and TSET on medical issues. Those would include:

- a. the recruitment and retention of medical members, their necessary qualifications, and their deployment within the tribunal jurisdictions;
- b. their remuneration and revalidation requirements;
- c. their training, appraisal, mentoring and their information requirements.

# Appendix 2: Tribunals Judicial Executive Board sub-groups: Chairmen’s reports

## Tribunals Judiciary Appointments Group – Phillip Sycamore

1. The Appointments Group is chaired by Phillip Sycamore. Its membership includes representatives from each Chamber in the TCEA structure as well as representatives from the Employment Tribunal, the Tribunals’ Judicial Office, the Judicial Appointments Commission and the Ministry of Justice. TJAG is one of the non-statutory groups which supports and makes recommendations to the Senior President and TJEB for taking forward in the joint TSET/TJEB meetings.

2. TJAG’s remit is to oversee judicial input into the end to end forecasting of both the appointments and the assignments lifecycle. In particular it:

- sets the annual forecasting timetable
- analyses the forecasting results prior to sending them to TJEB for endorsement and,
- comments on the draft JAC programme to ensure that it correctly reflects priorities

3. One of the key tasks for the group in 2009 was overseeing the development of a policy for assigning judges and other members between chambers. This sits with the group’s role in ensuring that there is an appropriate and cost effective balance between appointments and assignments. Whilst ensuring high levels of expertise, they have had to take into consideration both the needs and diversity requirements for a continually refreshed judicial workforce as well as providing a variety of career development opportunities for existing judges and members.

4. Using the LEAN methodology to analyse the appointments process has resulted in the introduction of JAC led delivery teams specific to each selection exercise. These new teams will be set up before an exercise start date to ensure coherence and provide a single point of contact for all key stakeholders including judiciary. They will work alongside the JAC selection teams to ensure close communications between all those involved in the process. The aim is that these contacts will address queries or concerns quickly and cooperatively. Another benefit of this approach will be that the teams will have a ‘closedown’ process incorporating lessons learnt to be applied to future campaigns.

5. One of the group’s current projects is to consider the possibility of running a multi-jurisdictional exercise for the First-tier Tribunals. Again, the group will have to take into account a number of competing considerations such as the need to ensure there is an appropriate number of judges and members appointed with the necessary specialist knowledge and expertise but in a more timely way than current campaigns allow.

## Tribunals Judiciary Training Group – Jeremy Cooper

6. As Senior President, Lord Justice Carnwath has statutory responsibility for ‘the maintenance of appropriate arrangements for the training of judges and other members of the First-tier Tribunal’. In 2007, to assist him in carrying out these functions the Senior President created the Tribunals’ Judiciary Training Group ( the ‘TJTG’).

7. The overriding object of the TJTG is ‘to support and maintain judicial standards through training’. In the exercise of this function the TJTG advises the Senior President on training issues generally, and is tasked in particular:

- To identify judicial training needs across the Tribunal Service, and their priority within the overall programme.
- Through a process of developing, costing and where appropriate adjusting the annual judicial training programme in light of the final allocated budget, to agree the final programme with the Senior President.
- To keep under review the delivery of the agreed training programme within budget.

8. The TJTG met 4 times during 2009 (its 5th planned meeting having been cancelled due to adverse weather conditions). Its meetings are timed to match important strategic moments in the annual planning cycle, and also include an annual ‘open agenda’ meeting to enable its members to debate wider training issues and ideas outside the current programme. This year the ‘New Tribunals Jurisprudence’ was introduced as a core ‘open agenda’ theme for discussion and analysis, and it is planned that TJTG will disseminate the fruit of these discussions in the course of 2009-10 via thought-piece papers, and a seminar. The Group membership covers the range of jurisdictions within the TS, together with an invited representative from those tribunals currently outside TS, and a representative from the JSB Training Committee. Secretarial and administrative support is provided by the Tribunal Judicial Office.

9. Perhaps the most significant achievement of the TJTG to date has been its success in developing a model for the development of a controlled but informed overview on the global TS training budget which can then be formally approved by the Senior President. Each TS jurisdiction still retains ownership of the development, costing, planning and delivery of its own training programmes which will vary significantly in size, scope, content and learning style, reflecting the nature of each jurisdiction. The smaller jurisdictions tend to provide training at a one-off annual event for all members, whilst larger jurisdictions offer a range of mixed training menus tailored to meet the sometimes differing training needs of judges and specialist members. In some cases, training events are also shared across jurisdictions. Each jurisdiction must submit to the TJTG details of its programme - the number and nature of events, outline content, cost breakdown including estimated travel and subsistence costs and so on – at an early stage in its planning cycle, for discussion and approval.

10. The TS training budget is a one-line budget for the whole Service. It must be seen to be shared responsibly and fairly across the whole TS. The 2010-11 TS training programme bid passed successfully through this cycle, and was approved by the Senior President in October 2009. The total budget bid for the programme was held at £4.4, in line with this year’s budget. The TS has introduced a further check and balance in the form of an on-going monitoring process to ensue that jurisdictions deliver their agreed and approved programme with the minimum deviation, and within budget.

11. A particularly beneficial aspect of the process this year has been the way in which it has revealed to all TJTG members the wide range and extent of innovation and imaginative course design in operation across the sector, and enabled different jurisdictions to share ideas and model best practice. A further important consequence of the above process has been the production within the Group of a Training Event Guidance Booklet which marks part of a concerted attempt to achieve uniformity of practices across the TS that should both improve course quality and drive down costs. The booklet covers such matters as the use of hotel and conference booking agents, protocols on paying for overnight stays and travel arrangements, delegate attendance fees, availability of efficiencies in reproducing training materials, sharing of training modules, economic usage of audio visual equipment with useful advice on accessing sources, and ways of controlling and monitoring on-going expenditure.

12. A topic of great interest to the TJTG in line with the development of a more homogeneous service (generic chamber rules, cross ticketing, inter jurisdictional recruitment etc.) has been to explore the feasibility of developing joint training programmes, in particular in the area of ‘judgecraft’ skills. To this end, work is now taking place within the Health, Education and Social Care Chamber to explore the idea further. The other new chambers will also be looking into possibilities in this direction within their own chambers over the coming year.

13. A number of other matters have been the subject of analysis and discussion within the TJTG in



2008-9. The Group understands the importance of establishing clear linkages between appraisal outcomes and subsequent training plans, To this end the Chair maintains regular contact with the Chair of the Judicial Welfare and Appraisal Group, and a Protocol has been established whereby Minutes are exchanged between the Groups, and items of mutual interest flagged for joint discussion. The important relationship between the TS and the JSB Tribunal Committee that oversees the training and other services provided to the TS by the JSB has been another topic of lively discussion and debate. The need to ensure consistency of approaches to training for judges who sit as both courts and tribunals' judiciary is a key topic for further exploration, brought into sharp relief by the existence of the Upper Tribunal which now carries out many of the functions previously held within the High Court, but with different judicial personnel tasked to execute this function.

## Tribunals Judiciary Appraisal and Welfare Group - Elisabeth Arfon-Jones

16. The Tribunals Judiciary Welfare and Appraisal Group (TJWAG) reported to the Senior President (SP) in December 2008. Its committee comprising of members across the tribunals, made recommendations in respect of appraisal, mentoring and welfare.

17. Mindful of the statutory responsibility for the welfare of all tribunal judges placed on the Senior President by the TCEA in Section 2(3)(B) thereof, the committee considered appraisal and mentoring to be mechanisms of support and important aspects of an overall welfare strategy.

18. The JSB had compiled extensive information about appraisal and mentoring across tribunals. Almost all of the jurisdictions had appraisal in place or plans to implement it and schemes broadly followed the JSB model. All jurisdictions with schemes in operation appraised their fee-paid legal members and about half appraised their non-legal and specialist members. Only AIT appraises salaried members and has introduced 360° feedback for the most senior members of its judiciary. All appraisers were trained before they undertook appraisal.

19. The appraisal cycle for existing members varied from between one to three years although, in most tribunals, the appraisal of new members took place after six or twelve months. All jurisdictions used observations of (a day's) hearings to assess performance, many supplemented that with self-assessment and several also ask legal members to provide three decisions to supplement observation. Appraisers in all tribunals meet with the appraisee following the observation to give feedback. Two outcome standards (variations of: no training needs identified/in need of training) were most common although some identify a level above 'competent'. Schemes have links in place to ensure needs identified through appraisal are fed into training.

20. Nearly all tribunals offer peer (legal, non-legal and specialist) mentoring to their new appointees. Arrangements are largely informal, although most base their mentoring arrangements around the JSB's guidance. The group used this useful back ground information as the starting point for their discussion and recommendations.

21. Key recommendations were made to ensure harmonisation of appraisal schemes across tribunal jurisdictions. It was acknowledged by the TJWAG that as well as being a mechanism for support and a means of identifying both individual and general training needs, appraisal would also play an important role when chamber presidents considered cross-ticketing and cross-assignment of judicial colleagues. Chamber Presidents need to have confidence in the abilities of judges and members assigned to them from other jurisdictions. Appraisal is an objective and transparent method of providing relevant and up-to-date information on judicial competence and performance to Chamber Presidents.

22. The TJWAG recommended establishing a common method of selecting appraisers across jurisdictions including the development of core appraiser competences. The joint JSB/TS Appraisal Development Group was formed in January 2009 and included representation from TJWAG as well as the AJTC and non-TS tribunals. That group focussed on developing a set of tribunal appraisal standards. These are the basic standards against which all appraisals should be measured. They build on the JSB's 2003 framework but

aim to introduce greater consistency within the process across jurisdictions. The standards are supplemented by a set of Appraiser Competences for Tribunals which define what a good appraiser should aim to achieve and which further encourage a common approach to the appraiser role. The competences set out key elements based on the familiar format of previous JSB appraisal frameworks. In 2009 the group published a new *Appraisal Standards for Tribunals and Competence Framework*.

23. One further development has been the work done to prepare for a seminar to complement the JSB’s induction course for appraisers. The new seminar which has the title “Appraisal Skills: Follow Up Multi-Jurisdiction Seminar” aims to familiarise experience to appraisers with the new competences and to enable them to discuss and practise the more challenging aspects of the process. The providing of feedback to appraisees and writing the report were identified as the most challenging aspects of appraisal. Key to the harmonisation of appraisals is consistency and the cross-jurisdiction exchange of ideas and experiences. The sharing of best practice is to be built in to the seminar. The standardisation of appraiser competences and appraisal standards should ensure a meaningful and equal comparison of judges and provide for common standards.

24. TJWAG’s recommendations were for:

- a. mandatory induction training for appraisers and thereafter refresher training every three years
- b. ongoing sharing of good practice was to be facilitated and to be encouraged and facilitated through multi-jurisdictional training wherever appropriate
- c. first appraisal for new appointees after a year or after a sufficient number of sittings to ensure that that appraisal be meaningful. Thereafter, it was recommended that an appraisal be conducted on at least a three year cycle
- d. where a tribunal judge is ticketed or assigned into another jurisdiction there should be an initial appraisal regardless of whether or not there has been a recent appraisal in another jurisdiction at any time during the previous year
- e. a minimum of two written decisions should be considered by the appraiser when reviewing the standard of decision recording
- f. two outcomes for an appraisal (“satisfactory” and “developmental needs identified”) to be supplemented where appropriate by any additional comments
- g. a clear and agreed dispute resolution mechanism in the event of any disputes.

25. Mindful of current economic constraints on spending, TJWAG nevertheless asked that it be noted that resources would need to be diverted to appraisal for it to be effective and meaningful. TJWAG considered it important that proper budgetary provision be made for appropriate administrative support to facilitate the appraisal process and to provide effective record keeping of appraisals. It was for the judicial leads to hold the appraisal reports either on a regional or national basis but to be made available as required to chamber presidents.

26. Acknowledging that it may well for the moment be aspiration, TJWAG made a recommendation that appraisal on the same criteria should be of all tribunal members, salaried and fee-paid, legal and non-legal.

27. The SP’s statutory responsibility for the welfare of tribunal judges reflects the statutory obligations imposed on the Lord Chief Justice in respect of the courts judiciary. Tribunal judges and members ought to enjoy the same benefits as are available to the Court Service judiciary in terms of welfare. The Judges’ Council Standing Committee for Judicial Support and Welfare has been meeting on a regular basis and has had tribunal representation since the end of last year. I have been privileged to join the group and have been able to participate fully in drafting the policy document on medical referral.

28. One area in which tribunals have been able to play a meaningful role on the Judges' Council Standing Committee for Judicial Support and Welfare has been the recommendation that regular interviews with judicial leaders be introduced for salaried judges. The Judges' Council Standing Committee for Judicial Welfare recommended in its progress report of 2007 that regular interviews with presiders or senior judges be introduced for salaried court judges to afford them an opportunity to discuss working patterns, itineraries, career development and welfare issues.

29. As an addendum to the Standing Committee's second progress report it was noted that some of the Tribunal judiciary had already benefited from such a scheme. The former Social Security Child Support Appeals (SSCSA) now incorporated into the Social Entitlement Chamber of the Tribunals Service has operated such a scheme for some time. It provides for an annual interview with the appropriate Tribunal judge who has pastoral responsibility for the salaried judge in question.

30. TJWAG in its report of 2008 recommended that annual interviews be arranged for salaried Tribunal judges, following the format previously used successfully by the SSCSA. The commitment to annual interviews for full-time judges is acknowledged as being onerous and it may indeed be necessary to consider biennial interviews instead. TJWAG recommended that all fee-paid Tribunal judiciary be invited to complete a questionnaire and offered a welfare/development interview on request.

31. TJWAG welcomed any measures which ensured a coherent approach to welfare and support across the judiciary as a whole. Regular interviews were considered to be an effective mechanism for discharging the Lord Chief Justice and the Senior President's statutory responsibilities for the welfare of their judge.

32. One area of growing importance is the relationship between illness or stress and performance issues. It is crucial that there be clarity on process in this particular area, to reflect the SP's statutory responsibilities. What clearly is of great importance is that there is a mechanism to ensure that Her Majesty's Court Service and Tribunal Service remain unified on judicial HR issues and policy.

33. I hope that TJWAG can continue to play a full and meaningful role in the coming months in working towards this end.

## Tribunals Judiciary Communications Group – Alison McKenna

34. In April 2009, the Chairmanship of this group passed to Alison McKenna, then President of the Charity Tribunal from Gary Hickinbottom. Alison has completed a review of the group's membership to ensure that all of the chambers and tribunals within the Senior President's remit are represented. The group's terms of reference and the overall communications strategy are also being reviewed in order to reflect better the new Chambers/Pillars structure emerging from the TCEA reforms.

35. The group retains its traditional roles of, firstly, considering how we can improve communications between the centre and the tribunals judiciary as a whole (in both directions!) and secondly that of keeping under review the image of the tribunals judiciary in the outside world and working with the JCO to correct misunderstandings where appropriate. The process of tribunals reform has also identified a third important role for the group: that of considering how we can best learn about each other across the jurisdictions, Chambers and pillars as we move closer together as a family.

36. With that third objective firmly in view a small group of members devised the programme for the Senior President's 2009 conference in Birmingham. Around 140 judges and members attended a day of presentations and debate with the theme Tribunals for Users. Speakers included Ann Lewis from the Advice Services Alliance who spoke about pro bono services as well as Professor Dame Hazel Genn who started a discussion about areas for future research into tribunal users experience and Lord Newton of Braintree, then-chairman of the AJTC. Delegates from across all the jurisdictions discussed within their table groups, as well as in plenary session, the commonalities between their users, as well as the differences. The delegate feedback from the conference was very good and demonstrated the value that judges and members place on the opportunity to share experiences and best practice across jurisdictions.

## Tribunals Medical Advisory Group (TMAG) – Robert Martin

37. The TMAG was originally convened in 2008 under the co-chairmanship of HH Sir Michael Harris and Dr Jane Rayner, Chief Medical Member of the Social Entitlement Chamber. Since Sir Michael's retirement the group has been co-chaired by HH Judge Robert Martin, President of the Social Entitlement Chamber.

38. The object of the group is to provide advice and recommendations to the Tribunals Judicial Executive Board and Tribunals Service Executive Team on medical issues. These include:

- The recruitment and retention of medical members, their necessary qualifications, and their deployment within the tribunal jurisdictions
- Their remuneration and revalidation requirements
- Their training, appraisal, mentoring and information requirements

39. The groups' membership comprises representatives from all jurisdictions where doctors sit as medical members. Representatives from the GMC and Department of Health have attended past meetings as guests.

40. One of the main issues addressed to date has been that of the application of the rules regarding the GMC licence to practice but matters relate to such wide-ranging issues as a medical database and medical recruitment.

# Appendix 3: The Tribunals Judicial Office

The Tribunals Judicial Office (“TJO”) is an administrative unit within the Tribunals Service. It was set up in December 2007 specifically to support the Senior President of Tribunals and his senior judicial colleagues in their judicial leadership roles.

The Tribunals Service (“TS”) is an executive agency of the Ministry of Justice and part of its Access to Justice Group. TS’s business plan can be read at: <http://www.tribunals.gov.uk/Tribunals/Publications/publications.htm>

Although TJO is staffed by civil servants and is part of the TS it serves the independent tribunal judiciary, not MoJ Ministers. Constitutionally, therefore, it is similar to the Judicial Office which serves the Lord Chief Justice, although the Judicial Office is a free-standing organisation not part of the Access to Justice Group or an executive agency.

But despite its constitutional position TJO works closely with the rest of TS and with colleagues across the MoJ, in line with the general approach and culture of the tribunal system. This emphasises collaborative working between judiciary and administration, underpinned by common aims and a common understanding of the respective roles and accountabilities. As a practical guide to how we work, and what we will and what we can’t do TJO has adopted a set of rules:

## **RULES FOR PRESIDENTS’ STAFF**

1. You work for a judge. That means that you do not advise Ministers, directly or indirectly, as to what they should do. However, Ministers and their officials may want to know facts in your possession or what your judge’s view is, or is likely to be. You should feel free to tell them, if you know, and to offer to help them to draft advice which correctly reflects your judge’s view.
2. It is up to colleagues advising Ministers as to whether they share their advice with you. Likewise it is up to you whether you share your advice with them. But you should share as much as possible and neither of you should allow the other to be misled.
3. You have no secrets from your judge. Colleagues advising Ministers (and other judges) should understand that you cannot be told things on the basis that you will not pass them on. If they don’t want your judge to know they shouldn’t tell you.
4. You are not a post office. Unless it’s straightforward or convenient officials should communicate directly with your judge if they want his/her view on something, though keeping you copied in on the discussions.
5. You are still a civil servant in MoJ and TS. That means you are still bound by all the rules and procedures of the Ministry and by the ethical standards which govern all civil servants.

The framework for the role of the Senior President of Tribunals and the Chamber Presidents was created by the Tribunals, Courts and Enforcement Act 2007. The way in which the tribunals are now organised is largely determined by subordinate legislation made under that Act.

For a full account of the role of the Senior President, the legislative framework and practical implementation of the new judicial structure see the Senior President’s first two Implementation Reviews at: <http://www.tribunals.gov.uk/Tribunals/Publications/publications.htm>





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