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| SENIOR PRESIDENT
| OF TRIBUNALS |

Senior President of Tribunals' Annual Report

February 2011

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Court of Appeal

Upper Tribunal and First Tier Tribunal Presided over by Senior President: Lord Justice Carnwath

Upper Tribunal

Administrative Appeals Chamber
President:
Mr Justice Paul Walker

(First instance jurisdiction: forfeiture cases and safeguarding of vulnerable persons. It has also been allocated some judicial review functions.)
 PAT (Scotland), PAT (NI) ('assessment' appeals only), MHRT (Wales), SENT (Wales).
Also hear appeals from:
 PAT (Scotland), PAT (NI) ('assessment' appeals only), MHRT (Wales), SENT (Wales).

Tax and Chancery Chamber
President:
Mr Justice Nicholas Warren

(First instance jurisdictions: Financial Services and Markets and Pensions Regulator.)
Hears appeals from:
 Taxation Chamber and from the Charity Jurisdictions in the General Regulatory Chamber. It has also been allocated some judicial review functions.

Immigration and Asylum Chamber
President:
Mr Justice Nicholas Blake

Lands Chamber
President:
Judge George Bartlett QC

Employment Appeals Tribunal
President:
Mr Justice Nicholas Underhill

First Tier Tribunal

War Pensions and Armed Forces Compensation
President:
Judge Andrew Bano
 England and Wales appeals only.

Social Entitlement Chamber
President:
HHJ Robert Martin
Jurisdictions:
 Social Security and Child Support,*
 Asylum Support,**
 Criminal Injuries Compensation.

Health, Education and Social Care Chamber
President:
HHJ Phillip Sycamore
Jurisdictions:
 Mental Health, Special Educational Needs and Disability, Care Standards, Primary Health Lists.

General Regulatory Chamber
President:
Judge Nicholas Warren
Jurisdictions include:
 Charity,
 Consumer Credit,
 Estate Agents,
 Transport (Driving Standards Agency Appeals),
 Information Rights,
 Claims Management Services,
 Gambling,
 Immigration Services,
 Local Government Standards.

Tax Chamber
Acting President:
Judge Sir Stephen Oliver QC
Jurisdictions include:
 Direct and indirect taxation.

Immigration and Asylum Chamber
Acting President:
Senior Immigration Judge Elisabeth Arfon-Jones
 Immigration and Asylum

Land, Property and Housing Chamber
 (timetable and content to be decided)

Employment Tribunal (England and Wales)
President:
Employment Judge David Latham
Employment Tribunal (Scotland)
President:
Employment Judge Shona Simon

* Except NHS charges in Scotland
 ** No onward right of appeal



Tribunals and Judicial office staff

Clockwise - Robert Carnwath (Senior President), Phillip Sycamore (Senior Tribunals Liaison Judge and Chamber President Health, Education and Social Care), Paul Stockton (director of Tribunals Judicial Office) and Tribunals Judicial office staff at a regular weekly update meeting.

Introduction

My first report published in February 2010 covered the formation of the First-tier and Upper Tribunals until the end of 2009. This report takes the metamorphosis up to November 2010 and the second birthday of the new tribunal's structure.

This report is also the first in which I respond to a formal request by MoJ Ministers to report under Section 43. I refer later to the terms of their request and my response to it. This request arises from our joint concern as to how best to meet the pressures of increased workloads across the majority of our jurisdictions. This report contains many examples of how judges and members are responding to those increases. I would also emphasise the importance of working with government departments to ensure that a greater proportion of decisions are “right first time”, and that recipients are given clear explanations of their effect and implications.

Since my first report there have been four particularly significant government announcements: the integration of HM Courts Service (HMCS) and the Tribunals Service (TS) to form a single administrative agency (which the previous Government announced in March 2010); the intention to create a single head of the judiciary (a written ministerial statement by the Lord Chancellor in September); the abolition of the Administrative Justice and Tribunals Council (in October); and the consultation documents

on legal aid (November).

As Senior President I have been consulted at each stage by government in relation to the **integration of the courts and tribunals administration**. Both I and the Senior Presiding Judge, John Goldring, are members of the Courts and Tribunals Integration Board. We and our teams have been working together on the preparation of the new Framework Document which will provide the model for the governance of the combined service and its supervisory Board. The Framework fully recognises the distinctive qualities of tribunals, and the Board will have a specific duty to support the Senior President in protecting those qualities. As part of the rearrangement, my own support team will not remain as part of the new Service, but will be linked directly to the Judicial Office, which provides support for the Lord Chief Justice, and the Heads of Division.

The new combined service (Her Majesty's Courts and Tribunals Service – HMCTS) is due to take over its responsibilities from April 2011. I am very pleased that the Chief Executive (Designate) of the combined service (Peter Handcock) is someone who needs no persuasion of the strengths of the tribunal model, and with whom I have worked harmoniously for some six years. He has already become Acting Chief Executive of the Courts Service, and is leading the preparation and planning for the new service.

The proposal for a **single head of the judiciary** in England and Wales is less well-developed. Its implementation will require primary legislation, which will need also to resolve the difficult issues concerning tribunals which operate also in Scotland and Northern Ireland (see below). In principle, I see this proposal as a logical step in the evolution of the tribunal system in accordance with the Leggatt vision. The separate statutory role of Senior President has served a useful purpose in the formation and development of the new system. It has allowed me a large measure of autonomy in working with the jurisdictional leaders, and allowed me to operate across the usual geographic divides whilst working co-operatively with the three Chief Justices. But now that tribunal judges and members are accepted as full members of the judicial family, it makes sense for them to be brought within the same leadership structures as the court judiciary.

Until there is legislation, the Senior President will continue as a separate autonomous office. In the meantime, however, I am in practice working closely with the Lord Chief Justice on all issues of common concern. I am grateful to him for agreeing to my participation in his Judicial Executive Board, as a full member.

Preparation for tribunals judges and members to take their full place in the family circle

also involves playing a full part in **judicial governance structures**. For this purpose we have been reviewing the tribunals' representation on the Judges Council and its sub-committees. This was well timed as the Lord Chief Justice has recently completed his own review of the Judges Council and its supporting Committees which has resulted in the re-structuring and strengthening of the relationships between them and the Judicial Executive Board. Sir Stephen Oliver continues to lead the Tribunals sub-committee. I shall be working with him and the representatives of the Forum of Tribunal Organisations to establish the principles for selecting members. As we move further into this period of change I expect the Tribunals Committee to be a forum through which the interests of our many distinctive jurisdictions can be represented.

As already mentioned, judicial integration will entail resolving important and complex devolution issues. The AJTC Scottish Committee has led the consultation on these matters in that country, and their advice to Ministers is awaited. Scottish Ministers have already announced the formation of a Scottish Tribunals Service to support the devolved jurisdictions and that is an important first step. There are signs of a similar debate beginning in Northern Ireland.

In a **devolved justice system** (as we now have in Scotland and Northern Ireland) it makes sense

for all the judges and members based within that system, whether in courts or tribunals, to look to their chief justice for leadership and support. At the same time, we are all judges of the United Kingdom, in which we share the same legal values and many of the same laws, and have a common interest in our role within Europe. That is particularly relevant to those tribunals which are overseeing the actions and decisions of the Westminster government across the whole UK (as in tax and immigration), but also in the many other tribunals which have developed as cross-border institutions and have benefited enormously from the contributions of all their judges and members, whichever part of the UK they come from.

I am pleased that the benefits of cross-border working were recognised by Government in the September announcement of proposals for a single head for the judiciary for England and Wales. I shall be looking for the support of the Lord Chancellor and the chief justices to ensure that, whatever direction devolution may take, those benefits are preserved and enhanced.

I must also mention the **proposed abolition of the AJTC**. Over the years AJTC (and its forerunner the Council of Tribunals) has been an important critical friend and supporter of tribunals. They have been an invaluable source of information and expertise on tribunals, including

those not within the reformed tribunal system. They have highlighted, through their annual reports, areas of good practice and those for improvement, many of which were reflected in the recommendations of Sir Andrew Leggatt which came to fruition in the Tribunals, Courts and Enforcement Act 2007 [TCEA]. They played a particularly important part in the planning and formation of the new system, both before and after the passing of the TCEA. I am particularly grateful to their recent successive chairmen, Lord Newton and Richard Thomas, for their expertise and personal support. The Scottish and Welsh Committees have led the debate on development of distinctive tribunals systems in those jurisdictions. AJTC can be justly proud of the role it has played. It is essential that its legacy should be preserved after their demise. I shall be working with them to ensure that this is achieved.

The government consultation papers on changes to **legal aid** cover many areas of tribunal work. Whilst the proposals are to preserve legal aid for asylum and mental health cases (where liberty and human rights are at stake) for other tribunal areas we face the prospect of an end to all legal aid, relying instead on the accessibility of tribunals, and the support of voluntary legal advice services to fill the gap.

I am very concerned at the implications of removing the majority of civil legal aid, including legal

help, without investing in alternatives. For example, Citizens Advice Bureaux play an essential role in explaining welfare benefit decisions, helping appellants decide whether to appeal, and helping them to prepare their case. Without their work, not only will many be left in ignorance of their rights, or without the ability to pursue them, but the load of the tribunals may increase rather than decrease, both because cases will come to the tribunal which could (with proper advice) have been avoided or settled, and because lack of preparation may add to the length of hearings.

Two areas of work, which have been particularly significant in recent months, are covered in some detail in later chapters of this report. I have specific statutory responsibility for arrangements for judicial welfare and training, subject to duties of mutual co-operation with the chief justices. Judicial Welfare has been the subject of review by a working group led by Mr Justice Underhill, in conjunction with the judicial office. They have prepared and put in place a comprehensive set of health and welfare policies, supported by practical measures to help judges and members in their professional lives. Judicial training is also undergoing its own revolution. Following the acceptance by the Lord Chief Justice and myself of the Sullivan Committee's report, work is going ahead to integrate the current arrangements for tribunals and judges and members with those in place for court colleagues.

Finally, I am delighted that we now have three new First-tier Chamber Presidents – Michael Clements, who will be succeeding Elisabeth Arfon-Jones in the Immigration and Asylum Chamber; Colin Bishopp who, on Sir Stephen Oliver's retirement will take over the Tax Chamber; and Nicholas Warren who in January succeeded John Angel in the General Regulatory Chamber. I congratulate them on their appointments. All three are well known in their jurisdictions and bring to their new roles a great deal of experience in leadership and judging. At the same time I record my gratitude to the departing presidents for their enormous contribution to the establishment, and subsequently their leadership, of the new Chambers. They know that they are leaving their Chambers in safe hands. I am delighted that Libby will be continuing in the Upper Tribunal on a part-time basis, and has also agreed to take on the important new role of Senior Tribunals Liaison Judge for Wales.

I take this opportunity also to pay tribute to the continuing work of the Tribunals Procedure Committee, which has been crucial in providing a coherent, modern procedural framework for the new system. I record with gratitude our debt to Mr Justice Elias (now Elias LJ) who guided the committee through its early stages, and now to Mr Justice Walker who succeeded him in April 2010, and whose account of its current work appears later in this report.

In a letter dated 15th September 2010, the Parliamentary Under-Secretary Jonathan Djanogly MP referred to **the power under section 43** to request me to cover particular matters in the report, and said:

“While I know that this option was not taken up last year, I believe that the social security workload issues are significant at this time and I would be grateful if within your report you could bring out your plans on how you are looking to address this issue as well as workload pressures on the Tribunals Service more generally. I am sure there will be a good story to tell.”

I have taken note of this request in preparing this report. I have asked to be highlighted (in blue)* passages which are directly relevant to these concerns. At the same time, I should express a reservation as to whether a request in these terms falls strictly within the scope of section 43. As will be apparent from the remainder of the report, we have been working closely with the Tribunals Service to address the problems created by the increasing workload, particularly in the Social Entitlement Chamber. However, neither the increasing workload itself, nor the availability of the resources to deal with it, is within our control as judges. They are very much dependent, on the one hand, on the efficiency of the relevant

Departments in getting their own decisions “right first time” so as to avoid the need for appeals, and on the other on Ministerial decisions relating to the allocation of resources. There are also limits on the ability of the system, even with added financial resources, to provide additional judges and expert members. For example, recruitment of new judges or members is subject to the capacity of the Judicial Appointments Commission.

Social Security & Child Support (SSCS) is our largest jurisdiction with the number of appeals continuing to rise. There are consistently high rates of overturn on appeal and there are several initiatives under way involving the Tribunals Service, DWP and our judiciary that will help to get decisions right first time. With the support of the Chamber President, Robert Martin, I have welcomed the setting up of a joint DWP/ Tribunal taskforce to address these issues. Their work is already producing useful results.

At present DWP is running reconsideration pilots – they are examining cases which have been passed to the Tribunals Service for hearing and are awaiting their turn to be listed. The approach that their decision makers are taking is ‘can I support the decision that has been made?’ The results so far, in a pilot running for

*on pages 22, 39, 40, 43, 45, 58, 59, 60

Employment Support Allowance cases, is that, in around 13% of cases, they cannot support those decisions and they are being overturned. A further judicial initiative that is being progressed to help original decision makers is “benchmark decisions”. These decisions will be made by senior judges and members to act as guidance cases for decision-makers on approaching fact-finding in some, fairly common, areas of difficulty. These cases usually involve medical evidence in relation to particular conditions including epilepsy, severe mental impairment, anxiety and depression. I was also very pleased to learn of a DWP initiative to take a more proactive approach to customer information, telephoning claimants at key points in the decision making process to talk through with them the decisions that they propose to make, to explain and also check that they have all the information they need to make a properly considered decision. Together these three initiatives will tackle initial decision making for both new cases and those awaiting an appeal hearing.

These are no more than examples. Generally, I encourage Chamber Presidents and other judicial leaders to work with government departments (so far as that is compatible with the requirements of judicial independence) to ensure that the only cases which reach a tribunal hearing are those cases that require the

skills of the judiciary – where they are arguable point of fact or law or where an agreement cannot be reached. Tribunals have a positive story to tell both on administrative and judicial performance even with a context of increasing caseloads, as I hope the Chamber accounts in this report demonstrate.

The form of this report

One of the strengths of the reformed tribunal system is the contribution of judicial leaders, not only as Chamber Presidents or heads of jurisdictions, but also as chairs of a number of specialist committees and working-groups. In the following chapters I have asked those responsible to give accounts of their work in their own words, beginning with the key issues of welfare and training, and then going on to a review of the various Chambers and jurisdictions, at Upper and First-tier level, “cross-border” issues, and finally the work of the (statutory) Tribunals Procedure Committee and the Tribunals Judicial Executive Board specialist committees.



Robert Carnwath
Senior President.

Chapter 1 Welfare and Training

Welfare

Judicial Human Resources Working Group: Chairman Mr Justice (Nicholas) Underhill

Background

The Tribunals, Courts and Enforcement Act 2007 (the TCEA) established a new judicial and legal framework for tribunals, headed by the Senior President of Tribunals. This is a statutory office, established under the TCEA, giving leadership powers to one judicial office holder together with extensive powers to delegate. The office is independent of both the executive and the Chief Justices responsible for the courts in England and Wales, Scotland and Northern Ireland, although the Senior President has a general duty of mutual co-operation with the other Chief Justices in relation to their responsibilities for the training, welfare and guidance of the judiciary. The Senior President has a number of statutory responsibilities for tribunals judiciary similar to those that the Lord Chief Justice has for the courts judiciary in England and Wales. Among various duties, he is responsible for ensuring that, within the resources granted by the Lord Chancellor, appropriate structures are in place to ensure the welfare, training and guidance of the judiciary.

Legislation has deliberately created identical duties for the Chief Justices and the Senior President and for virtually all purposes places courts and tribunals judiciary on the same footing in relation to the executive.

Under the terms of the TCEA, the Senior President has a specific statutory duty, within the resources provided by the Lord Chancellor, “for the maintenance of appropriate arrangements for the provision of training, welfare and guidance to the Tribunals judiciary.” With the transformation of the tribunals and the appointment of the Senior President a unique opportunity was created to consider the structure and focus of judicial welfare within the tribunals, review the functions of the current Judicial HR system and devise policies and processes accordingly. The overall aim is to create a clear, simple and unified structure that supports both the judiciary and the executive and in which all parties have a stake and an interest in seeing it succeed. There is also an opportunity to look at areas which we have previously been unable to consider in detail because of the restrictions on resources, such as the effect of stress and the provision of a proactive rather than a solely reactive service.

What is Judicial HR?

Judicial HR has come to mean those policies and

practices that support the relationship between the Ministry of Justice in the role of “employer” and the judiciary in the role of “employee”. The scope is wide and covers functions from recruitment to retirement or death in service. The major difference between the usual HR practices of organisations and Judicial HR is that judges are appointed as office holders, not employees, and are independent of the executive. In addition, security of tenure during good behaviour alters the dynamics of the relationship quite considerably.

Judicial HR in practice covers a variety of functions, some of which are under the purview of the Lord Chancellor, such as pay and pensions, whilst others are under the responsibility of the LCJ, other Chief Justices and the Senior President. Not all functions relate to all judges: differences occur between legal and non-legal office holders and between fee-paid and salaried judges. There are also differences based on the level of judge and whether they are courts based or in tribunals. In the Tribunals Service many of the administrative HR functions are undertaken locally by the Chamber Presidents with health matters being undertaken by the Judicial Office of England and Wales. Judicial Office performs most of the HR functions for the courts judiciary in consultation with the Circuit Offices.

The Working Group

In February 2010 the Senior President set up a small working group to consider whether his statutory functions for the welfare of the tribunals judiciary under the TCEA were being met. The Group led by Mr Justice Nicholas Underhill, President of the EAT, included Libby Arfon-Jones, Acting President AIT (formerly Chair of the Tribunals Judicial Appraisal and Welfare Group) and Ann Gaffney, from the Tribunals Judicial Office as permanent members. They were assisted by a small cadre of tribunals judges working as an Expert Panel and called on for specific expert advice as and when needed. The idea behind this is to utilise the vast wealth of knowledge and experience among the tribunals judiciary to help develop relevant and more focused HR policies. However, asking serving judges to attend numerous meetings is a waste of their time and the tribunals, so the volunteers act in the capacity of consultant and are asked to advise on policy development and process via email and attend meetings only when necessary. The Expert Panel is proving to be a valuable resource and has allowed the Working Group to access advice and suggestions from some of the country’s foremost experts on topics such as equality, disability discrimination and occupational health.

The Work So Far:

An initial review was conducted and a report prepared summarising the statutory requirements for the welfare of the judiciary, the historical development of the Judicial HR function, the current Judicial HR provision and suggestions for the future development of a fully-integrated and unified HR function for tribunals judges and members. Gaps were identified in policy and provision and recommendations made to fill those gaps. The work of various working parties, such as the Tribunals Judicial Welfare and Appraisal Group, Tribunals Judicial Appointments Group, Tribunals Judicial Training Group, the Judges Council, Judicial Office and others was considered and discussions held with interested parties.

Following the review we devised a set of aims and principles, which are as follows:

Aims:

- 1 To ensure that the Senior President's statutory functions are being met.
- 2 To create a simple, unified and streamlined set of policies and processes with clear lines of authority that can be applied across the Tribunals judiciary and which is, above all, accessible.
- 3 To ensure that operational functions and policies that currently exist and are used across the various Chambers are applied consistently.

- 4 To standardise the approach to administrative functions to allow for easier use and to develop pro-formas where appropriate
- 5 To define clear lines of authority and accountability for the approval of administrative functions and the referral of more serious matters.

The overarching principles which will be applied in our development work are:

- 1 The HR function must take into account judicial independence; confidentiality; the use of and accountability for public funds; and the public perception of how public money is spent.
- 2 To liaise closely with the Judicial Office of England and Wales in order to avoid duplication or the creation of different policies.

Health and Welfare

The priority areas for policy update and development were those on ill-health and medical referral and the provision of reasonable adjustments under the Disability Discrimination Act 2005. An updated policy on Judicial Ill-health and Medical Referral was published on the judicial intranet by the Senior President on 1 October 2010. This provides a more focused and workable system for medical referrals and for dealing with long-term sickness absence. A hard copy was also sent to all salaried judicial office

holders together with the Senior President's HR Booklet. The purpose of this booklet is to bring together details of the various benefits available, together with useful information and sources of help and advice.

A major achievement this year has been to extend the coverage of the Judicial Assistance Programme, commonly known as the Judicial Helpline, to the salaried tribunal judges and members. The Judicial Helpline was launched on 1 April 2007. It is a confidential telephone line for salaried judicial office holders to access both practical and emotional support direct from trained personnel 24 hours a day, every day of the year. Benefits of the service include the provision of telephone advice and telephone counselling provided free of charge to the judicial office holder, with limited face-to-face counselling also available where necessary,

Another area in which the Working Group has made significant progress is in the development of stronger links with the charity LawCare, of which the Lord Chief Justice is Patron. LawCare (www.lawcare.org.uk) is run by volunteers from the legal profession and provides help and support to all members of the profession, from secretaries to senior judges, throughout Great Britain and the Republic of Ireland. The

LawCare service is provided free of charge, although any subsequent professional counselling or treatment will normally have to be paid for (unless available on the National Health Service or covered by private health insurance).

Following a presentation on the work of LawCare by its Chief Executive, details of the charity's work in both support and training were cascaded to tribunal members via the Chamber Presidents. The website provides extensive information on subjects such as stress, alcohol and substance abuse and debt, which can be easily downloaded. There is also a wellbeing portal which helps individuals to recognise and manage stress. Some Chambers have already invited LawCare to make presentations on various topics at their individual training days.

Disability

With the commencement of the Equality Act 2010 it has been decided that a fundamental review is necessary of the existing policy and procedures for providing reasonable adjustments for those judicial office holders who have, or acquire, a disability under the Act. Our aim is to provide, for managers and individuals, a clear policy statement coupled with a detailed guide to the processes involved in accessing reasonable adjustments, including (but not limited to) adjustments in relation to premises, working

arrangements and equipment. Close liaison with the MoJ and Judicial Office will ensure that the resulting policy is clearly defined and workable. We will also review the provision of the Display Screen Equipment assessments for judicial office holders on appointment and throughout their career.

Leadership

The Judicial Studies Board (JSB) was asked by both the Judicial Executive Board (JEB) and the Senior President, to develop a new programme to support judges with leadership and management roles. As a result of these requests, the JSB conducted a learning needs analysis (LNA) of senior judges in the courts and tribunals systems, to identify the learning needs of those carrying out judicial leadership and management roles. Using the results of the LNA and a series of interviews with judicial office holders, a small team of consultants, working with members of the JSB, Judicial Office and Tribunals Judicial Office are developing a competency framework for leadership roles. There will be an explanation of the purpose and use of the competency framework in operation, with high level descriptors of the judicial leadership and management competences, calibrated to show the skills and behaviours required of judicial leaders in the courts and tribunals at the different hierarchal levels. It will include behavioural examples that describe effective and ineffective

behaviours for each judicial level.

It is also intended that the framework will serve as a training tool for judges at both induction and continuation levels and help existing and new judicial leaders in the courts and tribunals to identify any gaps in their skills and knowledge in the judicial leadership and management discipline. This information, in turn, will help the JSB to design a training programme specifically focussed on the individual needs of judicial leaders or the collective needs of specific hierarchal judicial groups. In the longer term it is hoped that the framework will contribute to the development of appraisal systems for those judges (mainly in the courts) not already appraised and assist in developing further the concept of ‘judicial career development’.

Liaison with Judicial Office

An effective working relationship has been established between the Tribunals Judicial Office and the Judicial Office in developing and reviewing existing Judicial HR policies, in order to ensure a co-ordinated approach to HR matters. This close liaison is important in order to ensure that neither office is developing separate policies or practices. This co-operation is now even more important in the run up to the integration of HMCS and TS.

Where to Now?

During the next stage of policy development our

priority will be to consider the effects of stress in the workplace in relation to judicial office holders. Initially, the intention is to produce and distribute guidance to managers and judicial office holders on identifying the symptoms of stress in themselves and others, consideration of causes of stress and some basic coping strategies. If resources allow, we may consider commissioning more detailed research, including the possibility of conducting stress audits, considering the area of vicarious trauma and the consequences of stress, including alcohol and substance abuse, mental illness and ill-health.

We would like to look at the development of a general well-being policy and consider more proactive ways of supporting our judges and members. Our aim is to provide the support and assistance to the judiciary, in what can be a stressful and sometimes isolated job, which other workers expect and enjoy.

Training

Tribunals Judiciary Training Group: Chairman Judge Jeremy Cooper

Over 5000 tribunal judges and members currently sit in Tribunal Service tribunals; they are a highly diverse group of people with a wide

range of training needs. Some of the individual jurisdictions are extremely small, with very few members and less than 10 hearings per year. In contrast in the Social Entitlement Chamber, Social Security and Child Support Appeals account for over 300,000 appeals per year.

In 2009-10 the Tribunal Service delivered over 150 continuation training events for its judges and members, together with a number of induction courses in a mix of residential and non-residential settings, and with a wide range of training formats. The current annual budget for training within the Tribunal Service is c. £5m., which is allocated in accordance with priorities set by the Senior President on the advice of the Tribunals Judicial Training Group (the TJTG). Almost all the training funded by this process is delivered 'in-house' with each jurisdiction planning, organizing and executing its own training programme for its members. In addition there are scattered examples of shared training across jurisdictional borders, and some jurisdictions send delegates onto generic training courses organised by the JSB, but tailored to the particular needs of tribunal members.

As a consequence of incremental improvements in both the quality and the quantity of training delivered over the past few years the training across the Tribunals Service is now of a high

standard and united through a number of important features:

- Every jurisdiction in the First-tier Tribunal provides full in-house induction training to all new judges and members before their first sitting.
- Every jurisdiction in the First-tier Tribunal provides continuing education to its judges and members ranging from one to six days per year (and in most but not all cases the training is mandatory).
- There is an increasing emphasis on judgecraft, although training formats vary widely to suit the jurisdictions,
- Most jurisdictions have training committees, with clearly defined training policies and strategies; all have a lead training judge.
- Almost all jurisdictions have a formal appraisal system for their judges and members and in most cases the results of appraisal are linked to training plans.

The TJTG is comprised of the lead training judges of all the main TS jurisdictions together with representative members of the smaller jurisdictions, of those currently outside the TS, and of the JSB. In addition to carrying out its role as steward of the TS training budget TJTG has addressed a number of strategic questions

in relation to training over the course of the past 12 months, including the need to develop more cross-jurisdictional training, raising awareness about the distinctive new ‘tribunals jurisprudence’, the development of processes to monitor and reallocate training budgets in response to unanticipated underspends, and the development of universal quality assurance systems with regard to the preparation and delivery of training materials.

As the Senior President’s Training Adviser I undertook a major review of the TS Training Programme which was published in April 2010. The review concluded that whilst training within TS was in generally good health a number of areas remain where more work needs to be done in the interests of consistency and quality, in line with Sir Andrew Leggatt’s rousing entreaty that ‘the principal way to address the fundamental issues that confront tribunals is by training’.

I identified several key areas for further transformative activity:

- To set minimum training requirements across the TS and introduce agreed enforcement procedures in relation to any such requirements.
- To standardise training course feedback, and the monitoring and evaluation of training programmes across the TS.

- To encourage more chamber-based training activity and sponsor generic cross-TS training.
- To introduce a training system for assigned judges prior to their sitting in a new jurisdiction.
- To introduce systems for sharing best training practice across the TS.
- To introduce training in judicial management, human resources and judicial welfare.
- To develop e-learning pilots.
- To reform the role of the JSB in TS training.
- To rationalise and expand diversity awareness training.
- To strengthen the links between appraisal and training.

A sub-group of the TJTG has been established to work through each of these reforms and its work should be completed by early 2011.

Another development of great significance in the field of training over the past year was the joint announcement in June 2009 by the Lord Chief Justice and the Senior President of their ‘agreement in principle on the aim of providing a unified system of judicial education’ for the courts and tribunals service. The announcement has been given further momentum by the

Government’s decisions to create a unified courts’ and tribunals’ administration and a single head of the judiciary.

A working group under the chairmanship of Lord Justice Sullivan provided an initial analysis of the feasibility of unification and an assessment of the benefits a project might bring to judicial training in general. The report also incorporated the views of the judicial training community in Scotland and Northern Ireland, as well as those tribunals outside the TS, on how unified judicial training might impact on their training provision.

The report has been considered and its recommendations accepted by the Lord Chief Justice and the Senior President. A project group, chaired by Mr Justice Hickinbottom, on which I represent the tribunals’ judiciary, has been set up. The project will unify the training resources of the Judicial Studies Board and the Tribunals Service into a single judicial training organisation for which we aim to have established a single budget and administration by April 2011. By that date the high level governance arrangements for the new entity will also have been established. After April, the serious work on developing the shape and size of the new entity and the vision and content of its training activity will begin in earnest.

Chapter 2 Upper Tribunal Chamber Reports

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

The jurisdictional landscape

The Administrative Appeals Chamber of the Upper Tribunal (AAC) decides appeals on points of law from decisions of:

- the General Regulatory Chamber of the First-tier Tribunal – at the start of the year these involved three jurisdictions: Consumer Credit (UK), Estate Agents (UK) and Transport (GB)
- the Health, Education and Social Care Chamber of the First-tier Tribunal – at the start of the year these involved three jurisdictions: Care Standards (England & Wales), Mental Health (England), and Special Educational Needs and Disability (England)
- the Social Entitlement Chamber of the First-tier Tribunal in one of its jurisdictions, Social Security and Child Support (GB)
- the War Pensions and Armed Forces Compensation Chamber of the First-tier Tribunal (England & Wales)
- the Pensions Appeal Tribunals for Scotland and (in relation only to assessment cases) Northern Ireland,
- the Mental Health Review Tribunal for Wales
- the Special Educational Needs Tribunal for Wales.

In addition, it hears appeals on fact and law from the Independent Safeguarding Authority and from Traffic Commissioners. It also has a judicial review jurisdiction (mainly concerned with English and Welsh decisions of the Criminal Injuries Compensation jurisdiction of the Social Entitlement Chamber of the First-tier Tribunal) and determines references under section 4 of the Forfeiture Act 1982.

During the year the AAC acquired six new jurisdictions involving appeals on points of law only:

- from the General Regulatory Chamber of the First-tier Tribunal: Claims Management Services (England & Wales), Environment (England & Wales), Gambling (GB), Immigration Services (UK) and Local Government Standards in England
- from the Health, Education and Social Care Chamber of the First-tier Tribunal: Primary Health Lists (England & Wales)

The AAC also acquired a new jurisdiction concerning Information Rights cases – dealing with Freedom of Information (including rights conferred by the Environmental Information Regulations) and Data Protection. In these cases appeals from the General Regulatory Chamber of the First-tier Tribunal lie to the AAC on a point of law. In addition GRC

Procedure Rules make provision for two types of transfer to the AAC. First, certificates issued by a Minister of the Crown under Section 28 of the Data Protection Act 1998 or section 60 of the Freedom of Information Act 2000 (National Security Certificates) may be the subject of an appeal. The appeal is made initially to the General Regulatory Chamber of the First-tier Tribunal. Once lodged the appeal must be transferred to the AAC where it will be heard by a panel of judges authorised to deal with such certificates. Second, in other Information Rights cases there is a discretionary power to transfer if both Chamber Presidents agree. A joint office note published on the GRC website explains possible criteria and arrangements for such transfers http://www.tribunals.gov.uk/Tribunals/Documents/Grc/AACGRCnote_MandatoryTransfers0310.pdf
http://www.tribunals.gov.uk/Tribunals/Documents/Grc/AACGRCnote_DiscretionaryTransfers0410.pdf

Judges

His Honour Judge (David) Pearl has joined the permanent judges at Harp House in London, bringing the total to seventeen including the Chamber President. All these judges have now been authorised by the Lord Chief Justice to preside in judicial review proceedings.

A further twenty six ‘transferred in’ judges of the Upper Tribunal and Presidents of other Chambers have been assigned to sit in the AAC. These include the judicial heads of the tribunals whose functions were transferred to the First-tier Tribunal during the course of the year with onward appeals to the AAC, and also all the former Deputy Chairmen of the Information Tribunal designated to hear National Security Certificate cases.

During the year arrangements have been made for High Court judges in England and Wales to be assigned to sit in the AAC as judges by request under paragraph 6 of Schedule 3 to the TCEA 2007. This is in addition to existing arrangements under which out of hours judges of the Queen’s Bench Division are authorised to act as judges of the AAC.

There are now seventy-five expert members of the AAC: thirty-three former members of the Information Tribunal have joined the thirty seven members appointed to sit on Independent Safeguarding Authority appeals and the five members appointed to sit on appeals from Traffic Commissioners.

The AAC has a structure of overlapping judicial groups dealing with each of the subject matters within the AAC’s jurisdiction. A lead judge has been designated for each judicial group. He or

she keeps abreast of legal developments, drawing attention to any need for AAC judicial studies involvement, and is also involved in practical developments, including the revision of forms and guidance, and liaising on subject-specific matters with the office, with Registrars, and with the bodies whose decisions are the subject of relevant appeal rights. The lead judge also liaises with users and the Administrative Justice and Tribunals Council (see below).

Staff and offices

Information about staff and offices is set out in last year's report. The London based judges, registrars and administrative staff are looking forward to being located together when they all move into the new Rolls Building near the Royal Courts of Justice in 2011. In May and June this year, a number of staff in London took part in a lean¹ exercise. Two of the London based judges and several registrars provided ideas and suggestions to the pre-event discussions and participated in the concluding presentation. The exercise has already led to changes in standard forms making them clearer and easier to read and complete. [These amendments, which include improvements to layout and better use of plain English, have already seen a reduction in the number of telephone queries from applicants requiring further or better explanation. Follow](#)

[up lean activity took place on 1st November with a team managers' workshop using lean tools and looking at problem solving techniques such as '10 at 10' meetings where staff and managers spend 10 minutes at 10 a.m. each day, agreeing targets and prioritising matters for the day.](#)

Cases

This year has seen a number of three-judge panels dealing with important or difficult points. Several of them have concerned procedural issues arising for the first time under the TCEA or under Tribunal Procedure Rules. The Senior President of Tribunals presided in *R (RB) v First-tier Tribunal (Review) [2010] UKUT 160 (AAC)*, giving guidance on the exercise of the First-tier Tribunal's power to review its decisions under section 9 of the TCEA.

The majority of judicial review cases have been challenges to decisions of the First-tier Tribunal concerned with Criminal Injuries Compensation, this being one of two classes of case specified by the Lord Chief Justice as cases that may be started in the AAC. In the first full year in which the AAC had jurisdiction, there were 60 applications for judicial review in Criminal Injuries Compensation cases in England and Wales, compared to 6 or 7 in the High Court in previous years. This substantially

¹Lean – Lean working describes a methodology, based on a common-sense principles and continuous improvement to move work through a process in the most efficient and effective way possible. Using lean methodology should strip out wasteful activity from a system and concentrate effort on what matters to the user and improves their experience of the organisation.

higher level of applications has been maintained in 2010. It seems likely that it reflects the simpler procedures for access to justice in the Upper Tribunal: many of these cases are brought by unrepresented individuals. Three judicial review cases were decided by a three-judge panel presided over by Mr Justice Nicol (*see R (Withey) v First-tier Tribunal (CIC) [2010] UKUT 199 (AAC)*).

Although a streamlined procedure has been agreed with the First-tier Tribunal and the Criminal Injuries Compensation Authority, these cases are still more unwieldy than appeals and, as I suggested last year, it would be helpful if these cases were no longer excepted from the usual right of appeal. This is particularly so as the Criminal Injuries Compensation schemes in issue extend to Scotland where any relevant challenges must be brought by petition in the Court of Session and, as has been pointed out by Lord Hodge in *Currie, Petitioner [2009] CSOH 145; [2010] AACR 8*, the Court of Session has no power to transfer Criminal Injuries Compensation cases arising in Scotland to the Upper Tribunal.

Selected decisions of the AAC are published on the Tribunals Service website <http://www.administrativeappeals.tribunals.gov.uk/Decisions/decisions.htm>

In addition; the reports of decisions of the Social Security Commissioners have been replaced by the Administrative Appeals Chamber Reports, published in an annual volume by the Stationery Office and containing the most significant decisions.

User Groups and the Administrative Justice and Tribunals Council

Where appropriate and practicable, AAC judges attend user group meetings in relevant subject areas. On 18 November 2010 the AAC held its first Chamber-wide user group meeting prior to the first plenary conference for its full “family” of judges and members. More than 30 representatives of users attended and discussed a range of practical issues.

At the Chamber-wide user group meeting, and throughout the year, the AAC has benefited from close liaison with the Administrative Justice and Tribunals Council. That liaison has extended to all aspects of our work, including judicial studies.

Judicial Studies

The AAC has undertaken a full programme of judicial studies seminars in the past year. Procedures in the AAC were the subject of the Chamber-wide plenary meeting held in conjunction with the user group on 18



Administrative Appeals Chamber Plenary Conference

November 2010. Major all-day events were also held on both Judicial Review and on Administrative Law: Reasons and Remedies. Speakers included senior judges, leading academics and experienced public law practitioners. Other seminars have been held to focus on the AAC's new jurisdictions, such as special educational needs, disability discrimination in schools and care standards cases. In addition, the impact of mental health conditions on entitlement to benefits and the scope of the criminal injuries compensation schemes have been explored in the course of other seminars. As in previous years, AAC judges have attended judicial studies sessions organised by Chambers of the First-tier Tribunal and other tribunals from which appeals lie to the AAC. Many of these have involved the Social Entitlement Chamber and the tripartite War Pensions and Armed Forces jurisdictions, where there are longstanding links in relation to judicial studies issues. Judicial studies links are also being forged with other Chambers. AAC lead judges attended and contributed to the first seminar for Health Education Social Care salaried judges in June this year. These judicial studies events

provide important opportunities for AAC judges and First-tier Tribunal judges to meet and discuss matters of mutual interest.

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

Jurisdictional changes

The major change this year has been the transfer, on 1 April 2010, to the Chamber of the jurisdictions previously exercised by the Financial Service and Markets Tribunal ("FINSMAT") and the Pensions Regulator Tribunal ("PRT"). These jurisdictions concern references in respect of decisions of the Financial Services Authority, the Bank of England, the Pensions Regulator and a person relating to the assessment of compensation or consideration under the Banking (Special Provisions) Act 2008 or the Banking Act 2009. A case within one of these categories is known as a "financial services case". Unlike our other jurisdictions which deal primarily with appeals from the First-tier Tribunal, financial services cases are all first-

instance cases. Procedurally, they are dealt with differently from appeals, the relevant provisions being found in a new Schedule 3 to the Upper Tribunal Procedure Rules.

The judges and members of FINSMAT and the PRT (who were the same individuals) have all become and been assigned as judges and other members of the Chamber. I have designated Sir Stephen Oliver, who was previously President of both of the old tribunals (which have been abolished), as the Principal Judge to deal with financial services cases. This is not a statutory position, but the title indicates his continuing key role in the exercise of these jurisdictions.

The practice in FINSMAT and the PRT was usually for a case to be heard by a panel of 3 members, with a judicial member presiding. So far, the constitution of the panel of the Chamber hearing a financial services case has followed the same pattern with a 3-member panel presided over by an Upper Tribunal judge who had previously been a judicial member of the FINSMAT and the PRT.

This will not always be so. The judges of the Chamber include all of the judges of the Chancery Division of the High Court as well as a number of judges of the Court of Session and of the High Court in Northern Ireland. In suitable cases, I will deploy such judges to act as the judicial president of the panel, although I would usually expect him or her to sit with two other members who may or may not be judges. This will ensure the allocation of a senior judge to cases which merit it when in the past that was not possible.

Our cases

We now have a steady flow of appeals and references passing through the system. The work is much the same as it was when appeals were against the decisions of the Special Commissioners or General Commissioners of Income Tax or of the VAT Tribunals. There is one important, and satisfactory, difference. The requirement for permission to appeal is, unsurprisingly, proving useful in reducing the number of appeals. The requirement for permission discourages taxpayers with hopeless appeals from even thinking about appealing;

and where permission is sought in hopeless cases, it is refused. There is extra work involved with applications for permission but, although there are no statistics on this, it is thought that the permission filter has reduced the number of appeals. Our workload in tax appeals is very much as predicted.

The jurisdiction to hear appeals from HMRC as a first-instance tribunal has been and will continue to be sparingly exercised. It is a useful jurisdiction since it enables a tax appeal and a related judicial review application to be dealt with in one hearing by the same judges sitting in the same tribunal.

There has also been a steady flow of financial services cases, including the first reference from a decision of the Pension Regulator concerning Northern Ireland. There have been over 380 references from the decision of the Independent Valuer appointed to consider compensation for investors in Northern Rock Building Society. These references produce case-management challenges. These cases will be dealt with during the course of 2011.

Apart from two related cases, no charity cases have found their way to the Chamber. Those two cases concern the meaning of the “public benefit” test. The first case is a judicial review brought by the Independent Schools Council

against the Charity Commission which has been transferred to the Upper Tribunal by the Administrative Court. The second is a reference by the Attorney-General which is being transferred from the General Regulatory Chamber to the Chamber. These cases will be heard together during the course of 2011.

Judicial review

A small number of judicial review applications in tax cases have been transferred to the Chamber from the Administrative Court of the High Court. I have recently been working with the Administrative Court judges to increase the use of their powers to transfer judicial review applications in cases where it is sought to review HMRC or the Charity Commission. This is a jurisdiction which can only be dealt with by a panel (which may be a panel of 1) chaired by an authorised judge. At present, the only judge assigned to the Tax and Chancery Chamber so authorised, apart from the Chancery Division judges, is Sir Stephen Oliver. In practice, it is all but certain that any judicial review application transferred from the Administrative Court will be heard by a Chancery Division judge or a panel chaired by such a judge.

Our judiciary and members

The only changes in our judiciary and members since the first Annual Report are those which occurred as a result of the transfer into the

Chamber of the jurisdiction of FINSMAT and the PRT. This resulted in 4 extra judges and 16 (non legal) members taking office. Of the judges, one is now a High Court judge (Sir William Blair) and one is a Circuit Judge (HH Judge Mackie QC who sits regularly on the mercantile list and in the Commercial Court). The other two are QCs who are part-time fee-paid judges. Those are in addition to the existing complement comprising 5 full-time judges and over 20 part-time fee-paid judges.

Sir Stephen Oliver is due to retire next year. His successor as President of the Tax Chamber of the First-tier Tribunal (Colin Bishopp) is already a judge of the Upper Tribunal and will continue in that capacity as First-tier Tribunal Chamber president.

Administration

The transfer into the Tax and Chancery Chamber of the jurisdictions of FINSMAT and the PRT has had virtually no impact on administration. Those jurisdictions were already administered out of Bedford Square by the same small team as administer the tax and charity work of the Chamber. I am pleased with the way the administration as operated over the last year and thank all the staff for their hard work.

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

The jurisdiction

Immigration and Asylum joined the family of First-tier and Upper Tribunals in February 2010. Around 188,880 immigration and related appeals per annum were heard in the Asylum and Immigration Tribunal in 2008/9. The system created in 2005 had become a time consuming and complex one and the case for changing it compelling. Decisions of the AIT judges were susceptible to internal review by Senior Immigration Judges followed by a paper application for reconsideration made to the High Court. There were some 26,700 High Court filter applications and 6400 order reconsideration in 2008/2009. The High Court judges acted under the considerable disadvantage of not having access to the full case file to assess the background to the application. Where reconsideration was granted any further appeal from the subsequent decision of the AIT was to the Court of Appeal. The application of the regime of the TCEA to the field of immigration offered the simpler alternative of an application for permission to appeal on a point of law from the First-tier Tribunal IAC to the Upper Tribunal IAC and where permission to appeal is granted,

the possibility of a further appeal to the Court of Appeal on second appeal criteria.

The great challenge for the Upper Tribunal IAC is to seize the opportunity for improving the efficiency of appellate determinations while maintaining the high standards associated with the High Court’s historic supervisory jurisdiction in this field. Rising to address this challenge has governed the arrangements made in the early months of the jurisdiction.

The statutory scheme for the Upper Tribunal IAC envisages three distinct elements. The first is that the statutory review function performed by the judges of the Administrative Court is to be removed and transformed into permission to appeal to the Upper Tribunal IAC. Second, that a refusal of permission to appeal by the Upper Tribunal is final. Third, that the most frequent class of immigration judicial reviews presently heard in the High Court would be transferred for determination in the Upper Tribunal itself. These are judicial review of the Secretary of State’s decision that further representations are insufficiently different or persuasive as to constitute a fresh claim for asylum or human rights protection. When all three elements are brought into force, the work of the Administrative Court with respect to immigration appeals will substantially be removed, although there will remain classes of

immigration decisions susceptible to judicial review that cannot be transferred to the Upper Tribunal IAC.

The first element came into force on 14 February 2010. Applications for review of AIT decisions made after that date are treated as applications for permission to appeal. It has nevertheless taken some time for the Administrative Court to work through the backlog of applications outstanding at the time of transfer. For the first six months of its existence the Upper Tribunal IAC has had three streams of case work: appeals generated by review decisions made by the High Court before 14 February; appeals generated by decisions made after the 14 February on applications lodged before then, and appeals pursuant to grant of permission to appeal by the Upper Tribunal IAC itself. It is only this last class that represents the new regime envisaged by the Upper Tribunal Procedure Rules, and that will have been subject to the full case management powers of Upper Tribunal IAC.

The second question as to the finality of a refusal of permission to appeal has been the subject of litigation in respect of other Chambers of the Upper Tribunal. In the case of *Cart [2010] EWCA Civ 859 23 July 2010* the Court of Appeal agreed with the Divisional Court that the fact that Parliament had declared the Upper Tribunal a superior court of record was not

decisive of whether its decisions were amenable to judicial review. Although the Upper Tribunal could not truly be described as the alter ego of the High Court, it was clear that the statutory scheme intended it to perform functions previously undertaken by the High Court and that its decisions should be final but nevertheless subject to judicial review in two classes of case: where it mistook its powers to determine a question at all and where it acted in breach of the rules of natural justice. A different conclusion has been reached in the Inner House of the Court of Session in Scotland in the appeal in the case of **Eba [2010] CSIH 78 10 September 2010** where it was concluded that under Scots law the Court of Session has jurisdiction to review all bodies inferior to the Court of Session itself. Further clarification will have to await any appeal to the Supreme Court. The Inner House in *Eba* declined to draw any distinction in principle between the different Chambers of the Upper Tribunal. The question remains whether review will be granted of asylum and expulsion decisions that have historically required the most anxious scrutiny by the superior courts.

The third element of Upper Tribunal IAC's intended jurisdiction has been deferred in implementation as a result of continuing uncertainty as to the effect of the last case heard by the Appellate Committee of the House of Lords in **BA (Nigeria) [2009] UKHL**. On one view of the statutory scheme in the

light of this decision, all further claims to asylum or human rights protection were claims giving rise to further rights of appeal if rejected subject only to the possibility of the Secretary of State certifying the claims as without foundation. On a more restricted reading, it was only where the further representations had resulted in a fresh immigration decision such as the refusal to revoke a deportation order that was engaged in *BA(Nigeria)* itself that the claim would lead to a further right of appeal in the absence of certification. The more restrictive reading was held to be the correct one in the case of **ZA (Nigeria) [2010] EWCA Civ 926** on 30 July 2010 upholding a decision of the Divisional Court. If this decision is upheld in any further appeal to the Supreme Court, there will be a distinction between decisions certifying that a claim is not a fresh claim, that can in due course be transferred to the Upper Tribunal and a decision certifying a further claim as manifestly ill-founded which is considered an immigration decision and therefore cannot be transferred.

Permission to appeal

The filter function of permission to appeal is critical to efficient performance of the appellate function and public confidence in its decision making. If the judgment in *Cart* is to be upheld, refusal of permission to appeal is the last opportunity for judicial scrutiny of a claim that may involve fundamental human rights, EU law

or the complex requirements of the points based system. Significant efforts have, therefore, gone into allocating appropriate judicial resources at the permission to appeal stage.

All applications for permission to appeal decisions of the First-tier Tribunal are administered centrally at Field House. The applications are allocated to Senior Immigration Judges including Resident Senior Immigration Judges who act as judges of the First-tier in considering the application under the Asylum and Immigration Tribunal Rules 2005 as amended that presently serve as the First-tier Tribunal Procedure Rules. At this stage an SIJ may first review a decision before deciding whether permission to appeal should be granted. Obvious errors may thus be corrected. Where review is not possible but there has been a fundamental failure to conduct a fair hearing below, permission to appeal can be granted and directions may invite the parties to agree to the case being remitted for a further hearing. Otherwise permission to appeal will be granted or refused with a brief explanation of either decision.

Where permission to appeal has been refused and the application has been renewed to the Upper Tribunal a selected panel of Senior Immigration Judges determine the application. Members of this panel do not decide First-tier applications. Second stage applications are normally decided

on the papers and if refused there is no right to an oral hearing to renew. Visiting senior judiciary who are entitled to sit as members of the Upper Tribunal may also sit as members of this panel. If the party seeking permission to appeal identifies cogent reason why an oral hearing should be granted or the SIJ considering the papers considers that the application would benefit from such a hearing it may be ordered. In cases of doubt, it is generally considered more appropriate to grant permission to appeal and where it subsequently appears that permission was unwarranted the appeal can be dealt with appropriately by case management directions.

Applying these procedures, the statistics available at the time of writing this report indicate that in the period from 14 February to 31 August 2010 there have been 17200 applications to the First-tier Tribunal for permission to appeal, 3300 were granted (19%) and 11800 were refused (69%). Of those refused 5800 (49%) were renewed of which 600 were granted (11%) and 3700 (64%) refused. By way of contrast some 13% of High Court applications for reconsideration were granted April 2009 to March 2010.

If these figures are sustained for the next six months it suggests a substantive appeal list for the Upper Tribunal of some 8,000 cases per annum once transitional cases have been finally determined. Two comments can be made on

the data presently available. First, the rate of grants of permission to appeal suggest that at least as intensive scrutiny is given to cases as was formerly the case under the statutory review system. Upper Tribunal judges have the advantage that they are experts in the particular jurisdiction and will be familiar with current issues of difficulty. Further the rate of renewals of permission to appeal from decisions refused by SIJs sitting as members of the First-tier suggests that there is a significant degree of acceptance of those decisions. Both features give some cautious ground for optimism if this trend is maintained.

One consequence of the deployment of SIJ's to decide permission to appeal applications is that they are not available to sit on substantive appeals themselves. As the system beds down and the full complement of permanent and deputy members of the Upper Tribunal is appointed and trained, further attention may need to be given to the appropriate allocation of permission to appeal functions.

The pressure of work on Upper Tribunal judges has been substantial and, as explained above, these figures reflect that resources have been targeted in the early months at applications for permission to appeal. The pool of experienced SIJs for the Upper Tribunal applications is smaller and they have other commitments on their time. With the appointment of part-time judges of the Upper

Tribunal the resources available to decide appeals will increase and it is expected that throughput will also increase in the second half of the year. The figures show the very considerable amount of work that Upper Tribunal judges undertake to promote fast and fair decision making. The throughput rate is better than would have been the case in the Administrative Court. As asylum cases reduce in number and Upper Tribunal guidance on contentious legal issues accumulates there is every reason to expect that numbers of applications will reduce and with them the time needed to determine them.

Leadership and recruitment

The Upper Tribunal IAC consists of the President, Vice –President, 30 legal SIJS, 9 RSIJS, and others authorised to sit as Upper Tribunal judges. 35 part-time judges of the Upper Tribunal have been appointed, trained and are sitting in appeals. A recruitment exercise for further permanent members of the Chamber has been announced.

In the meantime Designated Immigration Judges have assisted the Upper Tribunal IAC by sitting as part time members in hearing appeals, I am very grateful to them for their assistance in these early months and to the acting President of the First-tier Tribunal for making this valuable resource available. Indeed I am indebted to Libby Arfon-Jones and Mark Ockleton for all the work they

have undertaken prior to my appointment being effective to promote the start up of the two Chamber system. A particular heavy burden fell on them during the tragic illness and premature death of the last President of the AIT, the late Sir Henry Hodge OBE. It has been fortunate that I have had the benefit of Libby Arfon-Jones' experience and continuing role as acting President of the First-tier Tribunal and we have been able to act together to promote guidance across both Chambers. Amongst other members of the management structure of the Upper Tribunal IAC special mention should be made of the outstanding contribution made by Peter Lane, who serves on the Tribunal Procedure Rules Committee and whose technical expertise in this area in particular has been greatly appreciated. The role of RSIJ Field House is also a demanding one in ensuring effective allocation of cases to panels and much else besides. Peter Moulden performed this role for the AIT and the Upper Tribunal until his retirement in April, and we are fortunate to have Paul Southern undertaking this role as his replacement. SIJ Hugo Storey leads on the Country Guidance system. I am indebted to them and all the SIJs and also to HHJ David Pearl a Deputy High Court judge and former Chief Adjudicator who sat in the Upper Tribunal IAC in the early weeks of its existence. Mike Reed and his team have worked tirelessly at Field House to administer the new system and ensure

that the changes have not lead to delays or similar problems. I would like to thank all staff at Field House for their hard work this year.

Since the Easter 2010, Upper Tribunal IAC has also benefitted from the presence of a sequence of High Court judges to sit on appeals and decide some applications for permission to appeal as members of the Upper Tribunal. Their regular presence has served to give Upper Tribunal IAC a distinctive start to its existence; they rightly expect high standards of preparation and advocacy albeit in the more flexible and informal context of Tribunal appeals. I am very grateful to them for their participation to date and to the President, Queen's Bench Division for permitting it. It is an arrangement that I envisage extending into the future. A number of members of the Outer House of the Court of Session have been nominated by the Lord President to serve on the Upper Tribunal. November saw the first of these judges Lord Bannatyne, sitting with us. All at Field House look forward to working with them in the future when diary arrangements permit. I again am grateful to the Lord President for nominating these judges. It may be that a similar arrangement can be extended to Northern Ireland. In addition to these distinguished visitors past and future, the Upper Tribunal had the privilege of hosting a brief visit for a few days sitting by Lord Justice Sedley, whose interest in and contribution to

the work of immigration appeals is well known and profoundly appreciated. His participation in particular served to send a message to the interested public and stake holders in the new system of appeals that we aim for the highest possible standards in the determination of the many difficult and challenging cases that come before us. From feedback received, these visits have both served to inform the senior judiciary as to how the permanent judges of the Chamber go about their judicial tasks and address current problems in the jurisdiction, as well as provide opportunities for demonstration of judge craft by highly experienced senior judges. The benefits have been reciprocal, and the presence of these visitors has served to emphasise to the advocates before us, the high standards of preparation and presentation to which the Chamber aspires. These visits are likely to prove especially useful when judicial review claims are assigned to us.

Interesting cases

The past six months have been active ones for immigration jurisprudence. A number of important decisions have been handed down by the Supreme Court and the Court of Appeal. Of considerable significance to the practical determination of appeals has been the case of **Pankina [2010] EWCA Civ 719** on 23 June 2010 concluding that substantive amendments to the requirement of the Immigration Rules could not be effected by subsequent guidance issued

by the Secretary of State but not laid before Parliament. The number of potential appeals affected by this decision was considerable but the capacity of the Upper Tribunal IAC to respond to developments, and fast track important appeals where necessary was demonstrated in the group of appeals heard within a few weeks of Pankina determining the scope of the decision: **FA and AH (PBS effect of Pankina) UKUT [2010] 0304; CDS (PBS-Available-Art 8) UKUT [2010] 0305.**

Country guidance cases are a feature of the work of the Upper Tribunal IAC inherited from the AIT and reflected in the Senior President's practice directions. Such cases are an efficient way of accumulating and assessing all relevant recent material on conditions in a particular country, and determining disputed questions. The resulting decisions are ones that immigration judges must act consistently with as a starting point in determining any similar cases. The system has been the subject of scholarly review and critique in the *International Journal of Refugee Law* (2009) Vol 21. A significant country guidance case was delivered in September: **HM(Iraq) [2010] UKUT 0033 IAC** that addressed the most up to date evidence on risks to Iraqi nationals in Baghdad and elsewhere on return and the application of subsidiary protection under Article 15 (c) of the EU Qualification Directive.

This decision has been widely circulated to judges concerned with refugee law work both within the United Kingdom and beyond through the International Association of Refugee Law Judges. Other country guidance cases issued in 2010 include a number concerned with gender based persecution: **AM (Trafficked women) Albania [2010] UKUT 80 IAC; MD (women) Ivory Coast [2010] UKUT 215; RA (domestic violence on return) Pakistan [2010] UKUT IAC 216; AZ (trafficked women) Thailand [2010] UKUT 118 IAC, and healthcare RS (AIDS) Zimbabwe [2010] UKUT 363 IAC.**

The Upper Tribunal's flexibility in deciding cases is perhaps also demonstrated in the litigation concerning the case of **M (Chen parents-source of rights) Ivory Coast) [2010] UKUT 277 IAC.** In this case the mother and her child of French nationality both wished to relocate to the UK to join the mother's partner a British citizen. The debate was whether the mother had admission rights under EU law or merely under the Immigration Rules. A judicial review issued in the Administrative Court was stayed pending appeals to the First-tier against various refusals. A second judicial review was lodged in the Administrative Appeals Chamber after the mother succeeded in one of her appeals but no entry clearance had been issued. The President of the AAC transferred the case to the

Upper Tribunal for directions whilst the Entry Clearance Officer's appeal was progressed. In the light of the particular urgency of the case the appeal was heard speedily partly orally and partly with written submissions, enabling the appeal to be dismissed and the original judicial review stayed in the Administrative Court to be reactivated to obtain relief in support of the application that was not available to the Upper Tribunal. Prompt communication between the Chambers of the Upper Tribunal as well as the Upper Tribunal and the Administrative Court enabled the appeals to be substantively determined without undue delay and expense to the parties or burdening a substantial number of judges to decide essentially the same point.

A number of cases have been considered engaging Article 8 ECHR whether in the context of extensions of stay, removal and deportation. The task is to ensure that that the body of Article 8 ECHR case law developed by the higher courts in the UK as well as the Human Rights Court in Strasbourg is properly and consistently applied throughout the immigration judiciary. Such recent cases involving deportation following criminal conduct are **BK (Ghana) [2010] UKUT 328 IAC; MK (Gambia) [2010] UKUT 281 IAC** deportation in both of which Sedley LJ sat, and **RG (Nepal) 2010 UKUT 273 IAC.** Cases concerned with Article 8 and other immigration decisions

include: **MS (age restriction) Somalia [2010] UKUT 377 IAC; LB (Art 8-best interests of the child) Zimbabwe [2010] UKUT IAC.**

Innovations

The key to management of the substantial appellate case load of the Upper Tribunal IAC is identified as the active use of case management powers. The full use of such powers will only be possible when the Upper Tribunal decides permission to appeal itself and identifies the issue at stake and how it proposes it should be determined. A central ambition of the Upper Tribunal IAC is that cases will be decided by it rather than circulated back down the system with consequent delays. Even where the case concerns arguable flawed questions of credibility a complete re hearing may not be needed. Permission to appeal and case management directions are therefore designed to erode the old distinctions between first and second stage reconsideration. If an error of law is established the parties will be expected to go and argue how the decision should be remade at the same hearing and only exceptionally is it envisaged that there should be an adjournment for further oral evidence.

The success of these arrangements depends on the IJ making appropriate case management directions (Rules 5 and 6), the parties performing their duty of co-operation with the UT (Rule 2(4) and complying with directions (Rule 7),

supplying documentary evidence that is considered relevant and proofs of any witness statements they wish to adduce in the event that the decision needs to be remade. This is a new way of working for many immigration practitioners and representatives. The prize is efficient and flexible appellate determination on the material issue in the light of the material evidence.

Where oral evidence is needed or there is other good reason to do so the Upper Tribunal can sit at one of the hearing centres outside London where there is accommodation for SIJs. It is to be hoped that in due course Upper Tribunal IAC panels will sit in accommodation shared with the courts or other Upper Tribunal Chambers, rather than impinge on the court space available for the First-tier. The Upper Tribunal IAC has held one sitting in the AAC premises in Edinburgh.

Technological assistance to the efficient determination of appeals is under review. Video-link evidence is a regular feature of immigration bail hearings and there are different ways of ensuring that representatives have a chance to speak with the detained person before the hearing begins. In certain cases video-link can be used to hear evidence from abroad, particularly expert evidence, but planning is needed to ensure that this means of receiving evidence is appropriate. [Expert evidence was heard by video link from Zimbabwe in the case of RS \(Zimbabwe-AIDS\) \[2010\] UKUT 363 IAC.](#)

Service of documents and written submissions by email ought to become a possibility in the near future assuring more effective delivery and removing the problems associated with fax transmissions at busy periods. Regular audio recording of hearings is not standard throughout the First-tier and Upper Tribunals, and although pilot projects are in progress a roll-out of digital recording may be delayed through spending restrictions. At present judges seeking to deliver extempore judgments have to use hand held Dictaphones. A digital record of a hearing could resolve speedily disputes about interpretation or allegations of judicial misconduct.

The Upper Tribunal IAC web site

housed at <http://www.tribunals.gov.uk/ImmigrationAsylum/utiac> hosts relevant rules, guidance notes, as well as case law. Reported cases are provided with a head note approved by the reporting committee and may be cited as authority of the proposition of the law they contain without any requirement of permission.

Enforcement powers afforded to the Upper Tribunal in the case of non compliance with directions are limited. There is no power of strike out or to make a wasted costs order. The latter may need revisiting by the Tribunals Procedure Committee in due course, if experience demonstrates those failures by one side or another to adduce evidence that

leads to delay and expense frustrates the overriding objectives of the Upper Tribunal. In the meantime, one case management tool that can be used is to restrict submissions to written ones delivered within a precise time table.

Guidance notes have been issued with respect to calculation of time pending amendment of a failure to refer to working days in one Rule and the hearing of evidence from children and other vulnerable witnesses. Following consultation, both Chambers will change their practice as regards anonymisation of the details of appellants in immigration appeals. A review of bail hearing practice in the First-tier tribunal is also under way.

Training, Conferences and International Relations

Immigration judges have an extensive training programme for induction into the jurisdiction and updating their knowledge in the light of recent developments. Training will continue to be delivered strategically with a joint committee of both tiers reviewing the topics and methods of delivery. The programme anticipates that each judge will receive five days training per annum at the appropriate level. The work of immigration judges is supported by the Legal Research Unit whose staff produce a weekly electronic newsletter with list of pertinent decisions; and monthly updates of case law of interest in Europe and the UK as well as prepare cases for reporting. I am grateful to them for their work.

Immigration judges have a long tradition of association with the International Association of Refugee Law Judges, whose first president was a British adjudicator. The conferences at world wide and regional level of this organisation are an effective opportunity for exchange of views and information. Increasingly refugee protection within Europe also involves subsidiary forms of protection under ECHR and the EU Qualification Directive. British judges are active in the European Chapter of the Association (EARLJA) and participated in its recent conference in Lisbon. An SIJ will also be attending a seminar by the ACA Europe.

As President I led a group of three Upper Tribunal judges who participated in the annual meeting at the Court of Justice at Luxembourg of national judges to discuss relations and the new powers for national tribunals to make references to Luxembourg on questions of construction of EU legislation, that is of increasing importance not just in free movement issues but for asylum and subsidiary forms of protection. A guidance note on preliminary references is being developed in a project of the EARLJ with active participation by Upper Tribunal members. It is also a topic addressed in the case of RM (Iraq) see above.

I also gave a paper at a seminar at the Refugee Studies Centre at York University of Toronto attended by international judges and experts

and was invited to Ottawa to address the Federal Court of Appeal on the British experience in applying the ECHR. I have also delivered a seminar on judicial protection of migrants in Europe organised for judges, administrators and NGOs in Sofia, Bulgaria hosted by the Bulgarian Open Society foundation. The Vice President participated in refugee law training in Hong Kong and Lisbon. Many other SIJs have given papers at conferences and training sessions.

Lands Chamber: Chamber President – Judge George Bartlett QC

The Jurisdictional Perspective

The Lands Chamber has now been in existence rather more than a year, exercising substantially as before the jurisdictions of the old Lands Tribunal. At the time of transfer the existing Lands Tribunal Rules were continued in force and were modified only as necessary to provide for the formal consequences of transfer. The preparation of new Lands Chamber Rules has been a major task of the past year. Because different procedures are required under our principal types of jurisdiction, including appeals from Leasehold Valuation Tribunals and Residential Property Tribunals (which require permission) and on rating matters from the Valuation Tribunal (where permission is not required), originating references in claims for compensation and other matters

and applications under the Law of Property Act, the Tribunals Procedure Committee decided that it would not be appropriate to seek to build into the Upper Tribunal Rules the various specific provisions that are needed for the Lands Chamber. The new Upper Tribunal (Lands Chamber) Rules 2010 synthesise the Upper Tribunal Rules and the Lands Tribunal Rules and they incorporate new provisions that have long been needed, for example in respect of expert evidence and cross-appeals. Consultation on them was carried out in the summer. The new Rules, together with new Practice Directions, which substantially incorporate provisions in the Interim Practice Directions and also include additional provisions made appropriate by the new Rules, came into force on 29 November 2010.

The new Upper Tribunal (Lands Chamber) Fees Rules also come into force at the same time as the new Rules. Fees for the Lands Tribunal were introduced in 1996, when they were set so as to cover at least 50% of the Tribunal's operating costs. The level of fees had not been increased since then, so that by 2008/9 they covered only about 20% of the costs. The new Fees Rules have been designed to increase most of the fees by a factor of 5 in order to restore the original recovery rate. Consultation has been carried out. In one respect the opportunity has been taken to correct what was seen as an anomaly. Concern had been expressed that the basis of fee-charging

for lodging rating appeals was prohibitively high and out of line with that in other jurisdictions, and the number of rating appeals had certainly declined significantly. The new scales incorporate what is seen as a fairer basis for lodging these appeals. It remains to be seen whether the new scales will have an effect on the Chamber's caseload, which throughout the last year has remained almost constant in all jurisdictions.

One of the benefits of the new tribunals system is that the senior judiciary are able to sit in the Upper Tribunal. In the course of the year the Senior President has sat with a surveyor member to determine an appeal of wide importance from a Leasehold Valuation Tribunal (**Daejan Investments Ltd v Benson [2010] 2 P & CR 116**, since appealed to the Court of Appeal) and a High Court judge (Morgan J) has sat, also with a surveyor member, to hear a group of cases (**Cadogan v Cadogan Estates Ltd LRA/128/2007 and others**) with potentially wide significance for leasehold enfranchisement valuations.

Chapter 3 First-tier Chamber Reports

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

The Social Entitlement Chamber comprises 3 jurisdictions, namely Asylum Support (AST), Criminal Injuries Compensation (CIC) and Social Security & Child Support (SSCS).

The Jurisdictional Landscape

Social Security & Child Support

The most significant change in the landscape has been an increase in the volume of social security appeals.

In 2008–09, 242,800 social security appeals were received and 245,500 cleared. In 2009–10, 339,000 appeals were received. The principal driving force behind the increase is legislative change. The Welfare Reform Act 2007 introduced a new benefit, Employment and Support Allowance (ESA), to replace incapacity benefit. From October 2008 new claims to benefit based on incapacity for work have been directed to ESA. However, the main thrust of the change will be the re-assessment of 1.5m existing recipients of incapacity benefit, scheduled to begin in April 2011.

Combined with changes to the Industrial Injuries Scheme, which came into force in 2009, the volume of social security appeals is forecast to increase to 370,000 in 2010–11, rising to 436,000 in 2011–12 before dropping back to 409,000 by 2013–14.

Although appeal clearances rose by 14% in 2009–10, a more substantial package of measures has been required in order to address the rising intake. A three-fold strategy has been adopted, namely developing alternatives to tribunal hearings, improving operational efficiency and increasing judicial capacity.

(a) Developing alternatives to tribunal hearings

In the SSCS jurisdiction, the appeal is lodged not with the tribunal but with the government department or agency that made the decision. This affords the department or agency an opportunity to reconsider and revise its decision before the appeal proceeds further. For some while, I have sought to encourage and support a more effective approach to reconsideration by publishing annually reports on the standards of departmental decision-making. In 2009 I presented evidence to the Select Committee on Work and Pensions, which argued that many of the appeals coming before the tribunal ought to have been settled at the reconsideration stage.

Happily, DWP has begun to make more effective use of reconsideration. Supported by a joint ‘lean’ exercise with the Tribunals Service and the development of new methods of judicial feedback on decision-making, early results show up to 24% of ESA decisions under appeal being revised in the appellant’s favour without a tribunal hearing.

A more proactive approach towards appellants on the part of the Tribunals Service has resulted in fewer appeals without prospects of success proceeding as far as a tribunal hearing. The majority of SSCS appellants are not represented and the tribunal itself becomes a key source of information on the appeals process. Improvements initiated by the judiciary in the information supplied to appellants and the use of increased contact between tribunal clerks and appellants have seen the percentage of appeals withdrawn prior to hearing rise from less than 1% to 6.4%.

A further improvement in the information provided to appellants is planned by introducing a DVD on the appeals process – an idea successfully piloted in the CIC jurisdiction.

(b) Improving operational efficiency

A number of initiatives have been taken to improve operational efficiency, while striving to maintain judicial standards and avoiding

compromising access to justice. These initiatives include:

- A comprehensive review of interlocutory procedures to identify waste which has simplified notices issued to the parties, removed the completion of judicial forms that do not add value, fed back to the first-tier agencies unnecessary referrals for tribunal directions
- Greater use of IT support through the spread of electronic templates for directions and engagement with scanning of documents
- More efficient distribution of judicial work reducing long-distance movement of judges and members in order to save on travel expenses and by directing interlocutory work to centres with underused judicial capacity
- Introduction of digital audio recording of hearings. This project has been completed and the evaluation is awaited. Early feedback shows enthusiasm in SSCS. The hypothesis for SSCS is that recording reduces complaints and requests for written judgments and setting aside applications. We do not yet have data to verify the outcome.

(c) Increasing judicial capacity

Besides recruitment (see below), measures

have been introduced to increase the number of sittings undertaken by existing judges and members, most of whom are fee-paid. Sessions are running at a level 26% higher than the preceding year. A project to encourage greater flexibility of sitting is under way.

On current projections, the three-fold strategy will enable the increased volumes of SSCS appeals to be met.

Asylum Support

The Asylum Support jurisdiction has been faced with a similar rise in intake. In 2008-09 it received 2,000 appeals. The out-turn for 2009-10 was 3,100 appeals, with the first half of 2010-11 already approaching 2,500 appeals.

The increase in volume is attributable primarily to UKBA's "legacy programme" which concerns a pledge from UKBA officials to Ministers to determine all outstanding asylum applications made prior to March 2007, by summer 2011. Projected figures produced by them to date have consistently proved to be inaccurate, with the total monthly appeal receipts often being as much as 45% higher than projected figures.

New Strategies

In an effort to increase productivity whilst maximising effective use of limited tribunal resources, previous listing practices had to

be abandoned in favour of a more flexible approach. This included strategies common to other jurisdictions but not asylum support, encompassing mega-lists; half-day sittings; out of hours working and working at home.

These proved particularly popular with fee-paid tribunal judges in private practise and those with child care responsibilities unable to offer additional full sitting days on a regular basis but who were nevertheless willing to offer early or late part-time sittings or evening or weekend work at home. A willingness to work outside of normal working hours greatly relieved pressure on severely limited tribunal facilities at Anchorage House in particular on the availability of tribunal hearing rooms, chambers, desk space, computers and typing facilities.

Through a combination of increased sittings; the changes in listing practices and especially the introduction of out of hours working (which was used to clear hundreds of paper appeals) AST succeeded in increasing appeal clearances by 40% during 2009-10.

Criminal Injuries Compensation

In Criminal Injuries Compensation the volume of appeals rose from 2,500 in 2008-09 to 3,800 in 2009-10. At 3,300 the number of clearances was slightly higher than in the preceding year. An increasing amount of judicial time has been taken up in case management, as the tribunal

endeavours to make optimal use of the new Procedure Rules to ensure that appeals may be cleared fairly and promptly.

In neither AS nor CIC is there a right of appeal to the Upper Tribunal. Any challenge to the tribunal's decision must be by way of judicial review. However, CIC judicial reviews are automatically re-directed from the Administrative Court to the Upper Tribunal. In SSCS, there is a right of appeal for error of law direct to the Upper Tribunal. This inconsistency within a single Chamber is irrational. In AS and CIC cases the tribunal is deprived of the opportunity, available in SSCS cases, to review its own decision and, where appropriate, to set aside an erroneous decision and substitute a correct outcome. This restriction is particularly felt in the CIC jurisdiction. In 2009-10, there were 60 applications for judicial review against CIC decisions. In the first 6 months of 2010-11, the number of claims has already reached 45.

People and Places

The flexibility of deployment offered by the TCEA has been seized upon by the Chamber. There has been substantial cross-ticketing of judges between AS and SSCS and of medically qualified members between SSCS and CIC. Additionally, there have been assignment exercises between the Social Entitlement Chamber and 3 other Chambers (HESC, Tax and

War Pensions and Armed Forces Compensation) to strengthen judicial capacity.

Recruitment exercises have been launched through the Judicial Appointments Commission (JAC) to take on a further 260 medically qualified members and 84 fee-paid judges with a view to increasing the overall judicial capacity available to hear SSCS appeals by 30%. This is predicted to deliver an additional 83,000 clearances a year.

In CIC the selection of a new Principal Judge to replace Roger Goodier on his retirement was made in the first 'JAC-supported exercise'. Because the post is a 'deployment' by the Senior President of Tribunals, rather than a statutory appointment, the competition was handled by the tribunals' judiciary with JAC contributing an independent member to the panel. The successful candidate was Tony Summers.

Health, Education and Social Care Chamber: Chamber President His Honour Judge (Phillip) Sycamore

The jurisdictional landscape

This has been a year in which the Health, Education and Social Care Chamber (HESC), has settled into its envisaged structure. In January 2010 the former Family Health Services Appeal

Authority, subsequently renamed Primary Health Lists, transferred into the Chamber joining Mental Health, Care Standards and Special Educational Needs and Disability. Primary Health Lists is concerned mainly with appeals from the removal of doctors, dentists and pharmacists from the “performers’ lists”, which enables them to work for the NHS. With its structure complete the Chamber has also undergone a number of significant changes and developments as it settles into its new shape, which, are highlighted below.

HESC naturally divides into two distinct areas. Mental Health (the fourth largest jurisdiction in the First-tier Tribunal) is led by Deputy Chamber President Mark Hinchliffe and Principal Judge John Wright. Deputy Chamber President John Aitken has responsibility for the remaining jurisdictions within the Chamber which comprises Care Standards, Special Educational Needs and Disability and, most recently, Primary Health Lists.

Cases and trends

The Mental Health jurisdiction deals with nearly 30,000 applications and referrals every year, which far exceeds government forecasts. This is partly because, as a consequence of an underestimation by officials of the attractiveness of such orders to hospitals facing significant pressure on beds, there are many more

Community Treatment Orders than anticipated. Additionally, two decisions of the Upper Tribunal require that applications and referrals generated in one context must, generally, be judicially determined at a full hearing even if the patient’s circumstances and status change before the hearing takes place (**see KF v Birmingham & Solihull Mental Health NHS Foundation Trust [2010] UKUT 185 (AAC)**). The only exception relates to referrals arising if a patient is recalled to hospital and the Community Treatment Order is revoked. If the patient is then discharged back into the community on another Community Treatment Order, the tribunal will usually treat the referral as lapsed, because the entire reason for the referral has disappeared. But other statutory time-triggered referrals will not lapse following a change in a patient’s situation. And this means that, for all patients subject to the Mental Health Act, the important safeguard of having an independent tribunal review their situation from time to time remains unaffected – even if the patient’s status changes.

As noted last year, the power to review decisions where a clear error of law has occurred continues to provide a very useful and effective remedy for patients and users. The Upper Tribunal took the opportunity in the case of **R. (RB v First-tier Tribunal (Review) [2010] UKUT 160 (AAC)** to give further guidance on this power, which supports and reinforces the benefits to

users of a swift review by salaried tribunal judges in appropriate cases. In more contentious areas, the First-tier Tribunal has been working closely with the Upper Tribunal in order to ensure that urgent cases are prepared for appeal hearings quickly, so that authoritative guidance by the Upper Tribunal can be speedily given. **In RM v St Andrew’s Healthcare [2010] UKUT 119 (AAC)** an urgent application for permission to appeal was lodged on 14 April 2010. With the full cooperation of the First-tier Tribunal, which liaised closely with officials at the Upper Tribunal, the appeal judge was able to hear the case on 22 April 2010.

Of the very substantial and increasing mental health caseload, only a tiny proportion of cases are the subject of question or challenge. From these cases, however, we have derived much beneficial guidance and support. For example, in the case of KF referred to above, the Upper Tribunal encouraged the imaginative and proactive use of case management by salaried tribunal judges in order to ensure that panels have the information they need to deal with new circumstances, without having to adjourn. This is most effectively achieved if reports are submitted to the tribunal in electronic form, by secure email. The tribunal’s Administrative Support Centre can then quickly and easily forward all the reports to a salaried judge – who will look to see whether the evidence remains relevant

to the new situation. If not, and if additional information is needed to deal with the patient’s new circumstances, directions can be issued speedily. This means that the patient’s doctors, nurses and social workers should receive timely guidance from the tribunal about the need for additional or updated reports, well in advance of the hearing itself.

A focused effort by all judges and members undertaking Mental Health work has seen a dramatic reduction in adjournments, which were known to cause enormous distress to patients and their families, in addition to having obvious financial implications. Effective case management and a greater willingness by panels to determine the statutory issues arising, and to facilitate the giving of relevant up-to-date oral and written evidence on the day of the hearing, has reduced the number of cases adjourned by a half. Panels are also determining more cases each sitting day, and judges and members are increasingly willing to travel from one venue in the morning to another in the afternoon, in order to increase judicial efficiency and avoid unnecessary delay.

Innovations

There have been a number of innovative changes, some already introduced and others still in the planning in all four jurisdictions in recent months. In Mental Health one of the first to be introduced initially as a pilot, was a duty judge

scheme whereby salaried tribunal judges, on a rota, base themselves for two days a week in the administrative offices in Arnhem House, Leicester.

Duty judges deal more swiftly and efficiently with queries and case manage in situ with the listing and booking teams. The practical benefits of being able to case manage without a lengthy or delayed exchange of emails with case workers has allowed judicial work to be dealt with quickly and more efficiently. Another benefit which has become evident as the scheme has developed, is the training opportunity provided to administrative staff as the duty judge is on hand to explain queries leading to a broader understanding of the work of the tribunal. The scheme proved successful and is now adopted as part of the judges' weekly duties and will shortly be increased to three days a week.

Mental Health salaried tribunal judges have also been allocated regional responsibilities for liaison, providing advice and support for fee-paid judges and members and dealing with any ad hoc difficulties that may arise. They also liaise with stakeholders within their allocated areas to develop good working relations and deal with local issues with a better understanding.

In Special Educational Needs the listing of secondary school transfer appeals has been altered to match users' needs. A large group of decisions

by local educational authorities is issued on or soon after 15th February each year deciding the school a child is to attend at secondary stage. Each secondary transfer appeal case was listed before the end of July this year to ensure that a decision was available before the beginning of the new school term. This necessitated issuing new timetables for service of documents and where appropriate amending hearing dates on request. Feedback from parties and user groups has been very positive and a further reduction is planned for 2011.

The use of mediation is being increased in the three smaller HESC jurisdictions in the hope that cases will be settled earlier. Each acknowledgement of a notice of appeal now contains a letter from the Deputy Chamber President outlining the availability of mediation, and explaining the benefits and including general contact information for parents. By offering appellants more information, the hope is that cases will be settled earlier which in turn reduces all sides' costs and time spent. The uptake of mediation is to be monitored and further more specific information such as reasons for not undertaking mediation may be requested if uptake remains low.

Special Educational Needs Disability is planning to introduce in the near future Early Neutral Evaluation in cases where parents are contesting



Judges from the Health, Education and Social Care Chamber at their June conference

a local authority's refusal to have their child assessed for a Statement of Special Educational Needs. Using specialist members rather than judicial mediators the aim will be to give parties an idea of whether or not they are likely to succeed. An analysis of concession by respondents reveals that up to 84% of such cases are conceded by Local Authorities before a hearing. The objective of such a scheme would be to identify those Local Authorities which are likely to settle and encourage early settlement as well as identifying those cases in which parents are unlikely to succeed. Future projects in Mental Health include listing Community Treatment Order hearings in venues other than hospitals, including community venues, if feasible and appropriate, to accommodate patients who are not comfortable in a hospital environment.

In all four jurisdictions there has been a continuous effort to improve and streamline processes and forms to provide a better service for both users and staff. In Mental Health a comprehensive catalogue of new decision templates has been designed to make decisions more accessible and clearer for users.

'Lean' business improvement techniques have helped Care Standards, Special Educational Needs and Disability and Primary Health Lists staff to reconsider administration processes that work and those which do not. In particular forms which caused difficulties for users were re-designed by administrative staff with input from the Deputy Chamber President. Special Educational Needs and Disability which was the subject to the lean program first, has had satisfaction rates of over 80% in independent surveys and rising over the past year.

People and places

There are now 24 salaried tribunal judges in HESC including four salaried tribunal judges appointed to the Care Standards, Special Educational Needs and Disability and Primary Health Lists jurisdictions in June 2010. Forty-one new medical members have recently been appointed and their induction training will include observing hearings, a bespoke medical training event and mentoring.

The Mental Health jurisdiction also welcomed the appointment on 2 August of its first Chief Medical Member, Dr Joan Rutherford.

On 10 June in the Manchester Civil Justice Centre, the Chamber held its first conference for its salaried judicial office holders. The Senior President opened the event which included sessions on investigating judicial complaints, a presentation from the three lead judges of the Upper Tribunal Administrative Appeals Chamber for HESC jurisdictions followed by separate sessions to discuss jurisdictional issues. The Special Educational Needs and Disability, Care Standards and Primary Health Lists contingent were joined by the Operations Manager and used the opportunity for a review of all the processes operating within each jurisdiction. Those for Mental Health discussed ways to improve efficiency and reduce time spent on hearings that are either ineffective, or not needed.

War Pensions and Armed Forces Compensation Chamber: Judge Andrew Bano

The Jurisdictional Landscape

Last year we reported on the uncertainties surrounding the Armed Forces Compensation Scheme, which is the compensation scheme applicable to injuries caused by service in the armed forces since April 2005. The decision of the Court of Appeal in **Secretary of State for Defence v Duncan and McWilliam [2009] EWCA Civ 103** in October 2009 has clarified a number of the fundamental principles underlying the Scheme, while the Review carried out under the chairmanship of Lord Boyce is widely acknowledged to have been very successful in removing many anomalies in the original scheme. However, the retrospective application of the revised scheme to awards which have already been made is expected to give rise to some difficult adjudication issues once the legislative process for implementing the Review's recommendations has been completed.

We have taken further steps this year to ensure as far as possible consistency of approach between the three UK jurisdictions dealing with war pensions and armed forces compensation cases. As well as the consultative committee which was established at the same time as the WPAFCC, we have now established common training arrangements for tribunal members in England and Wales, Scotland and Northern Ireland under the leadership of Doctor Kenneth Mullan, who is a Social Security Commissioner in Northern Ireland and a judge of the Upper Tribunal in England and Wales. Joint training not only contributes to the consistent and coherent development of a specialised area of law, but also enables small tribunals in Scotland and Northern Ireland to take advantage of training resources which would not otherwise be available to them. The Presidents of each of the three jurisdictions have also worked closely together in responding to the challenges presented by the AFCS Review.

Recent military operations in Iraq and Afghanistan have unfortunately given rise to very serious physical and mental injuries, frequently of a type different from those encountered in earlier conflicts. Much of our planned training is therefore aimed at equipping us to deal with such cases, particularly those involving severe mental trauma.

People and Places

In April we were delighted to welcome back our Principal Judge, Clare Horrocks, on completion of a six months tour of duty in Afghanistan as a Commander in the Royal Naval Reserve. Her first-hand experience of current operational conditions is already making a valuable contribution to our work.

Immigration and Asylum Chamber: Acting Chamber President Elisabeth Arfon-Jones

Whereas last year was a year of sadness and drama for the Asylum and Immigration Tribunal, 2009–10 has been a year of change and excitement. Transfer into the Tribunals structure under the TCEA was seamless – at least on the surface (rather like a swan serenely gliding over the water, there was much furious paddling below the water!).

Thanks to everyone's hard work and resolve, there was a minimum of disruption as 15th February dawned and the Upper Tribunal and the First-tier Tribunal of the Immigration and Asylum Chamber (IAC) came into existence.

Whilst hopefully the senior courts will soon see the pressure on their workload eased significantly, the transfer has posed new challenges for tribunals. The First-tier Tribunal's work and structure has remained much the same with little noticeable change aside from the disappearance of reconsiderations. The demise of the Senior Immigration Judge circuit system is much missed by the IJs who welcomed the contribution of visiting SIJs to jurisprudential discussions at their centres. Greater co-operation between the senior judges and IJs was a real benefit of an integrated single tier. A meaningful joint commitment for both Upper Tribunal and First-tier Tribunal to excellence and quality is important and the promotion of guidance from the Upper Tribunal across the jurisdiction as a whole is a key measure to ensure this.

The First-tier Tribunal has played a crucial role in ensuring the smooth transition to a two-tier structure. RSIJs and DIJs who are Upper Tribunal and Deputy Upper Tribunal judges respectively, have, at the expense of their responsibilities in the First-tier Tribunal supported the Upper Tribunal in responding to the workload. Happily the recent Judicial Appointments Commission selection exercise has led to the appointment of 35 new Upper Tribunal deputies, drawn from salaried and fee-paid IJs of the First-tier Tribunal. This has ensured a career structure for judges in the IAC which has been most welcome.

Sir Thayne Forbes, recently retired from the High Court, conducted an analysis of judicial time in the AIT towards the end of 2009. He concluded "I was very impressed ... the AIT currently provides a high quality service manned by a high calibre judiciary and supported by an efficient administration". Colleagues were gratified by his views – "Each judge took pride in his or her work."

Whilst he endorsed the current 1+1 sitting (one day sitting and one day writing up) pattern for immigration judiciary, he made clear his approval for exploratory work to be undertaken to investigate alternative sitting patterns such as those provided by a rolling list and supported rule changes to enable the giving of extempore judgements. The rolling list allows First-tier Tribunal judges to hear and determine each case at a time before moving on to the next case.

There is ongoing current consultation on amending the Procedure Rules and I hope that some rule changes can be made to enable the giving of extempore judgements. I also very much hope that Rule 23, which permits a departure from the usual rules of service by permitting the respondent (which in this instance is UKBA) to serve the judgement on the appellant, will be abolished. This impinges on the perception of our independence as a tribunal.

Whilst the Upper Tribunal will continue to provide jurisprudential leadership of the highest quality, I do hope that collegiality will not be a casualty of the separation of the new structure. We enjoyed a successful joint training residential course in June 2010, which is a practical mechanism for maintaining integration and collegiality.

Despite the inevitable impact of the recent changes on performance and productivity, judicial performance remains a focus for the First-tier Tribunal. Pilots including rolling lists, extempore judgements and Saturday sittings have been conducted at both Hatton Cross and Taylor House over recent months.

The evaluation of the rolling list at Hatton Cross is ongoing and yet to be published. However, the indications so far suggest success.

Insofar as the Saturday Opening Pilot at Taylor House is concerned, the evaluation has been undertaken. As part of the ongoing drive to provide more choice for users, along with the need to identify additional court capacity it was decided to investigate the feasibility of trialling a system to run a limited number of hearings on Saturdays. The primary objective of this pilot was to establish a system that could be implemented at short notice should future listing levels warrant taking short term measures to address capacity

issues. Overall the pilot was deemed to be a qualified success. The reduced workload during the pilot was a concern and inevitably distorted the evaluation process. However, the pilot was well received by all those who participated, including users. It confirmed that Saturday hearings are a sensible contingency facility for any future fluctuations in workload which might necessitate additional court capacity.

The digital audio recording pilot is closely linked to the giving of extempore judgements, which in turn may impact on promulgation times. It does also provide greater protection for judges against an ever increasing number of complaints of judicial misconduct and bias.

Predicting workload remains an imprecise science, although the Tribunals Service has been more accurate of late in forecasting likely workloads and matching court and judicial profiles to those guesstimates. The Points-Based System and other changes in immigration law are beginning to impact on workload which is witnessing a significant downturn. A variety of factors have contributed to this reduction of work in the First-tier Tribunal, including greater scrutiny of Entry Clearance decisions en poste by Entry Clearance Managers. Asylum represents approximately 10.8% of all receipts, managed migration 24.8%, entry clearance appeals 24% and visit visas 39.7%.

Disposal of cases has been greater than the intake and although there is need for greater focus on performance, there is great productivity within the First-tier Tribunal. Many projects and initiatives are underway to tighten up performance and ensure that any unnecessary waste in terms of process and expense is eradicated.

Bails in 2009-10 amounted to 10,359 cases of which 90% were listed between 0 – 6 days. There has been considerable work undertaken with a view to publishing new bail guidelines levels in 2011. Guidance in respect of child/vulnerable adult and sensitive appellants has been published recently after having liaison with the Family Division in concentrating on children issues. Collaboration between the IAC and the Family Division is an area where there is potential for sharing best practice and expertise

There has been a flurry of significant decisions from the senior courts in recent months. **HJ (Iran) and HT (Cameroon) [2010] UKSC 31** was a unanimous decision by the five Supreme Court justices which held that gay and lesbian people cannot properly be required or expected to conceal their sexuality to avoid a risk of persecution in the country of return. Any such requirement to conceal an integral part of their personality was an affront to the human dignity which a properly informed human rights

culture would require and was therefore contrary to the law. This decision will be challenging for immigration judges as it will inevitably involve deciding as a matter of fact whether or not an appellant is gay.

Another decision which raises important issues is **Pankina and Others v SSHD [2010] EWCA Civ 718**. This arose from appeals on the Points-Based immigration cases and has potentially very far-reaching consequences, far beyond immigration appeals. Whilst challenging a specific requirement of the points-based system under the Immigration Rules it also raises a challenge to the established system of rule making whereby Ministers treat rules as policies which are formulated after Parliament has approved enabling provisions. In this landmark judgement the Court of Appeal rules a crucial distinction between the Immigration Rules which have attained a status akin to law and admit of no discretion to depart from them, and policies such as those contained in Policy Guidance of the Points-Based System, which are to be applied fairly and flexibly. It held that if policy guidance purports to add further requirements to what has been laid down by the Rules, they cannot be binding. This case had the potential for significant ramifications.

A similar point arose in **R (app. English UK Ltd) v SSHD [2010] EWCA Civ 1726 (Admin)** where Foskett J considered a policy

change to Tier 4 applications under the Points-Based System. New sponsor guidance sought to change materially the substantive criteria for entry for overseas students wishing to study English that was not in existence when the relevant Statement of Changes was laid before Parliament and could therefore not be incorporated by reference into the Rules. Foskett J felt bound by Pankina to hold that what the Secretary of State had sought to do through the sponsor guidance was to change “the practice to be followed in the administration of the [1971] Act”, but section 3(2) of the Act required him to follow the negative resolution procedure. These recent cases will have a significant impact on the work of immigration judges in the First-tier Tribunal.

I am especially grateful to Mr Justice Blake for the opportunity to work together to ensure the highest standards across both Chambers. I am also particularly indebted to SIJ Peter Lane for his unfailing willingness to give advice on Rules, Regulations, websites and anything related. The seamless transfer in February owed much to him.

I would wish to thank my colleagues at Field House and also the RSJs, DIJs and IJs for their support and commitment. As I approach retirement, I wish my successor, Michael Clements the very best as he steps up to the challenges facing the First-tier Tribunal.

Tax Chamber: Acting Chamber President Sir Stephen Oliver QC

Although much work was done prior to the reforms to forecast the workloads of the new unified jurisdiction, the first year’s caseload showed that far fewer ‘basic category’ cases than expected were received.

There may be a variety of reasons for this. There was no central database to record how much work the General Commissioners were doing so the view taken of the volume of work done by them may have been an overestimate. Secondly and probably more crucially, major changes in dispute resolution and appeal handling were implemented by HMRC at the same time as the First-tier Tribunal was launched. They introduced a new system of reviews and also gave appellants in direct tax cases the right to appeal directly to the tribunal. The new review system allow appellants to seek independent review of disputed tax decisions within HMRC before coming to the tribunal. This is likely to have been successful in resolving a high proportion of cases that in the past would have come to the tribunal. HMRC statistics show that this is mostly being taken up by unrepresented appellants and the tribunal continues to see a large proportion of its appellants being represented.

One feature of the reforms is the larger than expected number of requests for stays behind lead cases, which result in multiple cases being determined at the same time. Due to the complexity and the need for them to be determined in higher courts these are slow to resolve and are affecting performance against Tribunals Service targets. The tribunal also continues to consider and deal with a large number of missing trader fraud cases where the issue is usually whether the person reclaiming VAT knew, or ought to have known, that the deals were connected with missing trader frauds. The length and detail of these cases means that they usually have to be heard by salaried judiciary sitting in large hearing rooms with appropriate supporting facilities. Consequently they put a strain on tribunal resources; they use a disproportionately large part of the salaried judge's time and they can take longer to resolve than the Tribunals Service target times allow.

Using permission to appeal

Two cases have been transferred directly to the Upper Tribunal. In 2009/10 there were approximately 100 requests for permission to appeal to the Upper Tribunal of which 44 were granted permission. These cases were dealt with by the salaried Tax Tribunal Judges. We also had approximately 145 requests for full facts and findings, 15 requests for reviews and 28 requests for set asides. Due to the small number of cases

that have gone on to be determined by Upper Tribunal it is too early to draw any conclusions about decision making. From 29 November 2010 the First-Tier Tribunal (Tax Chamber) has jurisdiction to determine appeals from decisions of the Compliance Officer of the Independent Parliamentary Standards Authority in relation to MP's expenses.

General Regulatory Chamber: Acting Chamber President John Angel

The jurisdictional landscape

Since the creation of the General Regulatory Chamber (GRC) in the First-tier Tribunal on 1 September 2009 the tribunal for Local Government Standards in England, Information Rights, Gambling Appeals and Immigration Services have transferred into the GRC and an Environment jurisdiction has been created. These join the existing jurisdictions for Charity; Claims Management; Transport; Consumer Credit and Estate Agents.

Environment is a completely new jurisdiction introduced following the coming into force of the Regulatory Enforcement & Sanctions Act 2008 (RESA). This jurisdiction is expected to be extended through the RESA and also as the appeal forum for future environmental actions, such as appeals in relation to environmental

permitting and carbon trading, as and when introduced. In addition the RESA will introduce completely new jurisdictions, which are expected to come under the GRC umbrella, for example for consumer law enforcers (as an alternative to criminal prosecution) under the Consumer Protection from Unfair Trading Regulations 2008 and the General Product Safety Regulations 2005 (which is likely to be introduced in 2011).

There is a current consultation concerning the Alternative Business Structures jurisdiction which comes into force in October 2011 (pursuant to the Legal Services Act 2007). This is likely to result in a new ‘Professional Legal Services’ jurisdiction being introduced as part of the First-tier Tribunal in the GRC in 2011. The first legal services will be licensed conveyancers, possibly followed by solicitors, whereby they can appeal against a decision of a regulator which affects their ability to practise.

The interesting GRC cases are now recognised by the allocation of a Neutral Citation Number (NCN) which ensures that cases are picked up on decision databases including BAILII. Roughly 20 cases have been so allocated in the last 12 months a large proportion of which relate to Charity appeals because it is a new jurisdiction with early precedent setting decisions.

Decisions with a NCN will soon be found on the GRC web site <http://www.tribunals.gov.uk/Tribunals/Firsttier/generalregulatory.htm>

Very few decisions of the transferring in tribunals were appealed (less than 1%). This has changed with the new tribunal structure and rules and there is now a significant number of applications for permission to appeal (over 10% in some jurisdictions), although the majority have been refused. The likely reasons for this increase are the ease of appealing under the new rules and the fact that costs will rarely be awarded against a party in the Upper Tribunal.

Two of the GRC jurisdictions are what are termed ‘hybrid’ jurisdictions. This means that some first instance Information Rights and Charity cases may be transferred to be heard in the Upper Tribunal. So far there have been 12 such cases which have been heard largely in the Administrative Appeals Chamber.

People and places

The Chamber has approximately 150 judges and members across its numerous jurisdictions. Lord Parmoor (who was President of the Immigration Services Tribunal before it transferred to First-tier Tribunal) resigned in the summer and is missed. George Marriott became the leading judge in the jurisdiction but sadly died in October. Brian

Kennedy QC has joined the Northern Ireland Tribunals Group as the GRC representative. Cross-ticketing has enabled under resourced jurisdictions to deploy suitably qualified and experienced new judges and members quickly. In the first year there were 4 successful exercises resulting in 18 judges and 25 members being cross assigned. It was gratifying that the process was successful for the entirely new Environment jurisdiction where judges and members required a very different expertise and demonstrated the wide range of expertise and experience that judges and members bring to judicial office beyond that of their initial appointment.

Business has been much as usual for most of the GRC jurisdictions since transfer into the First-tier Tribunal - approximately 1000 appeals in total per annum. Information Rights has had a significant temporary increase (200% above normal levels) due to the regulator, the Information Commissioner, clearing a backlog of complaints.

Administrative support is provided at 3 locations but as new jurisdictions come on board support is being centralised at Leicester where 8 of the GRC jurisdictions are already administered. The Leicester staff have been trained to be able to support any of the jurisdictions in order to maximise flexibility.

Approximately 150 judges, members and administrators attended the GRC Annual Conference in London in October 2010. The conference was addressed by a number of speakers including LJ Carnwath, Mr Justice Walker and Mr Justice Warren.

Finally I should congratulate Nicholas Warren who succeeds me as Chamber President on my retirement.

Chapter 4 Employment

(These tribunals are not part of the new two-tier structure under the TCEA, but are within the Senior President’s responsibilities under the Act)

Employment Appeal Tribunal: President Mr Justice (Nicholas) Underhill

There have been no major developments affecting the work of the Employment Appeal Tribunal in the past year, but the trend in terms of workload is upwards. The number of potential appeals lodged was 1,963, almost 10% up on last year. Although many of these raise no arguable point of law, the proportion dismissed at the sift stage – 44% – was rather lower than last year, so the number of eventual hearings will also be proportionately higher. We anticipate a further increase in appeals lodged in the current year, not least because of the enormous increase in the number of claims in the Employment Tribunal in 2008; and figures to date confirm that expectation.

Of the cases going to a full or preliminary hearing, the highest proportion – 30% – are concerned with claims of unfair dismissal; but discrimination claims come a close second – over 24%. The largest number of such cases concern disability discrimination, with the claimed disability in question most typically taking the form of stress or depression or similar mental health problems. These types of claim give rise to some of the most difficult issues of law, along – on account of their comparative novelty – with claims of discrimination on the grounds of age and of

religious belief. The mass equal pay claims in the public sector are also continuing to generate heavy and demanding appeals. There was in the past year no perceptible decline in the number of appeals generated by the ill-conceived Dispute Resolution Regulations, but it is anticipated that their repeal with effect from 6 April 2009 should see the virtual disappearance of such cases in the course of the current year.

A noticeable feature over recent years has been for disappointed parties, whether in the Employment Tribunal or the Employment Appeal Tribunal, to focus not on challenges to the Tribunal’s substantive reasoning but on allegations of bias or other misconduct in the hearing. The procedures necessary to establish what has in fact occurred in such cases can be laborious; and in some cases the same allegations are advanced both as grounds of appeal and by way of complaint under the procedures applying to judicial misconduct. It remains to be seen whether if digital recording equipment is introduced in the Employment Tribunal such complaints will become easier to investigate.

It is not anticipated that the merger of the Courts Service and the Tribunals Service announced by the last government will affect the work of the Employment Appeal Tribunal in England and Wales, but it raises serious issues about its future in Scotland. It is the strong view both of myself

and of Lady Smith, who as a Judge of the Court of Session hears the great majority of Scottish appeals, that it is important to retain a single Appeal Tribunal for Great Britain.

Employment Tribunal, England and Wales: Tribunal President Employment Judge David Latham

Jurisdictional Landscape

Over the last year there has been a raft of new employment laws coming into force which have added to or varied the existing areas of law applicable in the Employment Tribunals. These include the new statutory system of fit notes; additional paternity leave; a power for Employment Tribunals for referring whistle blowing complaints to regulators and new rules governing no win no fee agreements. In addition, one major piece of legislation received the Royal Assent on 6th April 2010 that being the Equality Act 2010. The majority of the Act came into force in October 2010 with the remaining parts coming into force April 2011 and October 2011.

The Equality Act 2010 has two main purposes – to harmonise discrimination law and to strengthen the law to support progress in equality. It is said to be the most significant development in equality law and discrimination

law in a generation and not only consolidates the previous separate legislation in terms of discrimination and equal pay but adds to and varies that previous legislation. Whilst the Act attempts to restate the law in simpler terms it will also reform the law in a number of important areas. These are substantial areas that will now face the Employment Tribunals and a full training programme is being implemented for the judiciary. It is expected that this will increase the number and variety of claims made to the Employment Tribunal.

The Employment Tribunals being effectively a barometer of the British economy it is no surprise therefore that in the period since the summer of 2008 through to the end of the financial year 31st March 2010 the volume of claims lodged has increased substantially. For the financial year ended 31st March 2010 the number of claims lodged with Employment Tribunals was 236,100 representing an increase of 56% on 2008-2009. Whilst this increase included a substantial rise in multiple claims, single claims alone increased by 14% over the previous financial year. The result was that in that financial year claims with the Employment Tribunal were at the highest level ever. Included in those claims was a substantial jurisdictional mix and a large volume of multiple claims, a changing feature of Employment Tribunals over recent years. However, the number of session days held by

the judiciary in the Employment Tribunals in the financial year 2009/2010 increased by 6%. It is anticipated that that rate will continue during the current financial year with an increase in the disposal rate of cases of 22% on the previous financial year.

The level of increase in workload continues to be a trend shown in the first quarter of the financial year 2010/11. For the 3 months ended 30th June 2010 the number of claims lodged with Employment Tribunals is 44,306, 4% higher than the same period of 2009/10. The forecast seems to indicate that there will again be in excess of 200,000 claims again in this financial year. The current live caseload in Employment Tribunals is 417,504 cases of which a substantial proportion are multiples.

For the last few years the Employment Tribunals have received a high volume of Equal Pay claims particularly from National Health Service, Local Authorities and Central Government. That trend continues. This has resulted in excess of 35 leading appeal decisions in England & Wales clarifying many matters from this complicated area of law. In addition, there are a substantial number of airline multiple cases added to the expected increase of insolvency multiples which has therefore absorbed a considerable amount of the Employment Tribunal resource during the last few years.

Various innovations have been introduced over the last 18 months and that process continues. These innovations are assisting in dealing with the considerable volume of increase in work. Such innovations have included evening sittings, case management pilots with ACAS officers being present, digital recording, variations in listing processes and changes in case management procedure. It is believed that they are contributing to the productivity of the Employment Tribunals.

Judicial Mediation.

After the initial pilot in the period 31st July 2006 to 31st July 2007 national rollout started in England and Wales on 1st January 2009. In the first calendar year of national roll-out for those cases where judicial mediation was offered and held, the percentage success rate was 66.5% and the result in net saving of hearing days was 727.

In the first 10 months of this calendar year the equivalent figures are 66% and a net saving of Hearing days of 1381. There is a growing trend of take up of Judicial Mediation and the facility has received considerable support from users particularly from the Law Society and Employment Lawyers Associations. The Law Society is publishing an advisory paper for practising solicitors supporting this scheme.

People and Places

Since the publication of the Senior President's First Annual Report there has been a recruitment exercise for two new Regional Employment Judges: Christine Lee replaces David Sneath (who retired on 30 June 2010) and Carol Taylor will replace Roger Peters (who retired on 31 January 2011).

In addition to the 12 Regional Employment judges currently there are 128 Salaried Employment Judges (of whom 35 are salaried part time working) and 199 Fee Paid Employment Judges. A further 53 Fee Paid Employment Judges were appointed in November 2010 and will be available to sit in the early part of 2011. A recruitment exercise is in hand for 13.5 full time equivalent Salaried Employment Judges. In addition 342 non legal members were recruited and commenced sitting in 2010 bringing the total of non legal members sitting in this jurisdiction in England and Wales to 1565.

Due to the continuing increase in the volume of claims the Employment Tribunals in England & Wales have been expanding the number of venues at which they sit. This has been done not only with the co-operation of the administration of the Tribunals Service but also with the administration in the Courts Service resulting in various different types of premises being used.

Not only does this assist in coping with the volume of claims but also contributes to providing a better service to the public by providing a wider range of locations at which the hearings can be conducted. Whether the opportunity to sit in such a wide range of locations will continue given the closure programme of the Court Service, particularly of Magistrates' Courts, is a matter for the future. The search for alternative premises actively continues.

Employment Tribunal, Scotland: Tribunal President Employment Judge Shona Simon

The jurisdictional landscape

Following upon a dramatic rise in 2009/2010, the number of claims being lodged in the Employment Tribunal in Scotland appears to have stabilised and slightly reduced from the peak of last year. However, this slight fall in the total number of claims received is largely explained by a reduction in the number of "multiple" equal pay claims being lodged. Overall, the workload remains extremely high. It seems reasonable to predict that it will increase further consequent upon the cutbacks resulting from the spending review. As would be expected in the current economic climate, many claims relate to redundancy and failure to consult in respect

of redundancy. In a significant number of cases, the respondent is insolvent, requiring the case to be sisted (stayed) until the claimant obtains the consent of the administrator or liquidator to continue with proceedings. This has an impact on our ability to hear such cases within the target 26 week period. Insolvency has also generated a number of large multiple claims, many involving respondents with a presence in Scotland and England and Wales. The Presidents in Scotland and England & Wales co-operate by using their powers to transfer cases from one jurisdiction to the other to ensure that such claims are dealt with efficiently and in the most appropriate location.

In an effort to maximise the use of accommodation and judicial time, thereby assisting in workload management, a pilot was commenced in January 2010 involving the listing of cases in the evening.

Evening sittings have proved successful and popular with the users. Parties are able to have their cases determined without the need to take time off work. Initially the pilot was scheduled to run for three months but permission has been given to continue with the initiative. These hearings take place in Glasgow on Tuesday and Thursday evenings. A substantial number of one hour and two hour hearings are therefore removed from the day lists, freeing up day sessions for longer cases.

Employment Tribunals (Scotland) have also been involved in piloting digital recording of proceedings in certain hearing rooms in Glasgow. Employment Judges and staff seem to have found no difficulty in operating the equipment and parties appear to have taken the initiative in their stride, with no objections being received to the recording process. The pilot is still ongoing; its outcome will be reported in due course. However, its usefulness is already evident insofar as it provides pertinent and valuable evidence when dealing with judicial complaints relating to the conduct of hearings. Reference to the recording in connection with one complaint recently, which involved an allegation of judicial bias, proved beyond doubt that the allegation was not well founded with the recording also making it possible to reach a conclusion about the allegation more quickly than would otherwise have been the case.

The Employment Tribunal in Scotland has also participated in the introduction of the 'lean' programme to the Glasgow office. Since the roll out there have been regular meetings between the judiciary and 'lean' agents to discuss staff suggestions and proposed changes to working practices and procedures as a result of lean. The exchange of ideas is encouraged through the use of a Suggestion Board by both clerks and judiciary.

A number of working practices have been reviewed since the introduction of ‘lean’ working including the referral of interlocutory work to judges, clerking at conference calls and listing. A review of the Standard Operating Procedure for clerking has increased consistency and efficiency in the use of clerking and judicial time during and at the end of Hearings. An agreement was reached on when clerks, who also perform the casework role in Employment Tribunals, would be required to attend at hearings. This has reduced the number of interruptions to their desk work. The judges also reviewed the procedure for listing case management discussions; shorter case management discussions are now listed without consulting parties as to availability. This has resulted in a reduction in the clerical and judicial time involved in listing.

Judicial mediation continues to be offered in suitable cases by 8 trained mediators. Although the number of cases being mediated is still relatively small, the success rate is around 65% and increasing, with a significant number of tribunal hearing days being saved. Feedback from parties has been very positive about this initiative and we hope that it will be possible to continue to offer this alternative form of dispute resolution in appropriate cases.

We continue to manage a large numbers of equal pay claims submitted by employees of

local authorities and the NHS. A number of the preliminary issues which have delayed the resolution of these cases now appear to be resolved through decisions of the higher courts. Employment tribunals in Scotland have fixed a number of hearings to consider defences put forward by various local authorities to such claims. In advance of such hearings, or sometimes during them, parties have intimated that settlement discussions are well advanced allowing such hearings to be postponed or cancelled in anticipation of the claims being withdrawn. However, claims are now being lodged in relation to later periods of employment where the issues to be considered are usually different from the earlier claims and so the impact of withdrawals is not apparent from the overall figures. We expect equal pay work to remain a significant feature on the judicial landscape for several years to come. The ability to deal with this type of work efficiently, effectively and with a high level of consistency has been greatly assisted by having specialist judiciary and a dedicated equal pay administrative team.

The complexity of the law continues to generate a number of appeals to the upper courts, not just within the realm of equal pay. By way of example, a decision of an Employment Tribunal was recently upheld by the Court of Session in relation to a matter of territorial jurisdiction, specifically that an employee of a company

based in Aberdeenshire, who worked solely in Libya but had a permanent residence in England was entitled to claim unfair dismissal, relying upon the Employment Rights Act 1996. (**Ravat v Halliburton Manufacturing Services Limited [2010] CSIH 52**) Changes in employment legislation proceed apace. The Equality Act has been passed and some of its provisions have been implemented with effect from 1 October 2010. While the Act aims to harmonise existing provisions, it also changes the law in certain material respects. Specific training has been provided for all Employment Judges and members to prepare them to interpret and apply the new provisions.

People and places

In 2010, five new fee paid employment judges have been recruited and 48 new lay members, all of whom have now been trained. In January 2010 a new Vice-President, Susan Walker, was appointed. Due to pressure of work, the Employment Tribunal is now operating on a full time basis in Inverness as well as from our main offices in Glasgow, Edinburgh, Aberdeen and Dundee.

Chapter 5: Cross border issues

Northern Ireland: HHJ (John) Martin

Recently there has been considerable administrative reform in relation to tribunals in Northern Ireland.

The Northern Ireland Court Service, a Department of the Lord Chancellor, has for many years administered the Office of the Social Security Commissioners and Child Support Commissioners as well as the Pensions Appeal Tribunals. Recently it has taken over administrative responsibility for a number of Departmental tribunals, including the Appeals Service Tribunals (Social Security, Child Support etc), the Lands Tribunal, the Criminal Injuries Appeals Panel and the Care Tribunal. In addition any new tribunal being formed will in future come under the direct aegis of the Court Service.

In addition the Northern Ireland Court Service has been renamed the Northern Ireland Courts and Tribunals Service, and the new title makes clear that its role and responsibility is now wider. Since 12 April 2010, when policing and justice in Northern Ireland were devolved, the new Service is no longer a Department of the Lord Chancellor but has now become an agency of the new Department of Justice for Northern Ireland. Steps are being taken to bring other

Departmental tribunals under the Service's administrative responsibility and these will include the Industrial Tribunals and the Fair Employment Tribunal.

The Northern Ireland Courts and Tribunals Service also administers, on behalf of the Lord Chancellor, United Kingdom-wide tribunals, including those for tax and immigration and asylum.

However, there still has been no substantive tribunal reform, equivalent to the United Kingdom reforms instigated since the Leggatt Report, in relation to Northern Ireland tribunals.

On 23rd June 2010, a conference entitled 'Advancing Tribunal Reform' was held in the Royal Courts of Justice in Belfast.

The primary purpose of the conference was to launch the publication of a report of research undertaken by Brian Thompson from the University of Liverpool and Grainne McKeever from the University of Ulster called 'Redressing Users' Disadvantage – Proposals for Tribunal Reform in Northern Ireland'. The research was commissioned by the Law Centre (Northern Ireland) and was funded by the Nuffield Foundation. Speakers included Sir Declan Morgan, the Lord Chief Justice of Northern Ireland, David Ford, MLA, the

Minister for Justice for Northern Ireland, Richard Thomas, the Chairman of the Administrative Justice & Tribunals Council in Great Britain, Professor Dame Hazel Genn, as well as the researchers themselves.

The Minister indicated that he had agreed with the Lord Chief Justice and the Ombudsman to establish a reference group to map the tribunal system in Northern Ireland. Once that work had been completed options for more fundamental reform would be developed.

The Lord Chief Justice indicated that there had to be:

- a formal recognition of the judicial independence of the tribunal judiciary;
- statutory provision for a leadership role for the tribunal judiciary;
- possible extension of the Lord Chief Justice’s role as President of the Northern Ireland Courts to be extended to tribunals judiciary;
- protection for the tribunal judiciary in terms of welfare, training and guidance.

The Lord Chief Justice was of the view that the present lacuna brings difficulties for the tribunal judiciary. He had attempted to alleviate some of those difficulties through the establishment of a Northern Ireland Tribunal Presidents’ Group (under the chairmanship of Lord Justice Coghlin),

a Judges’ Council, including three tribunal judiciary members (under the chairmanship of Mr Justice Gillen) and the inclusion of a tribunal representative on the Northern Ireland Courts and Tribunals Agency Board.

The Reference Group, referred to by the Minister, has now been established. In addition, the Law Centre (NI) has secured additional funding to commission research to look, firstly, at how the information and advice needs of appellants can be more effectively met prior to tribunals and, secondly, to examine the specific structural needs for tribunal reform in advance of legislation being introduced in Northern Ireland.

Scotland: Shona Simon

The most significant tribunals development from a Scottish perspective is the continuing forward movement of the plan, on the part of the Scottish Government, to create a Scottish Tribunals Service. In a debate in the Scottish Parliament on 30 September 2010 the Scottish Cabinet Secretary for Justice, Mr Kenny McAskill, announced that a Scottish Tribunal Service (STS) was to be formed on 1 December 2010. Initially it would embrace five tribunals which are already devolved to Scotland but he went on to say that this was “just the first small step on a big journey. The real prize is for all tribunals in Scotland to form an integral part of the Scottish justice system.

That will take several years, but we now have a golden opportunity to make it happen.” During the debate it was made clear that the likely date for completion of the project, which it is envisaged will involve administrative and judicial devolution of the Scottish component of reserved tribunals currently supported by the Tribunals Service, was 2015.

Norman Egan, formerly Operations Director (Scotland and the North) has been appointed as the first Chief Executive of the new STS.

In the early days of discussions about tribunal reform attention was focussed principally on the devolution of the administrative support service for tribunals dealing with reserved law. However, increasingly attention has turned to the judicial implications of devolution.

During the course of the debate in the Scottish Parliament Mr McAskill made it clear that the Lord Chancellor had embarked on discussions with him and with the Lord President about the prospect of the judicial leadership for all tribunals operating in Scotland transferring to the Lord President. He went on to say: “For the first time, devolved and reserved tribunals can be part of a coherent Scottish system with clear judicial independence and leadership.”

The nature and extent of the changes which may be required to the judicial structure of tribunals in Scotland (both devolved and reserved) is being actively considered. The Scottish Committee of the Administrative Justice and Tribunals Council issued a discussion paper on this topic in June 2010 to which responses were required to be lodged by 30 September. A further paper, based on what has emerged from this engagement, will follow, designed to further government thinking on the matter. It is understood that a more formal Scottish Government consultation exercise will take place thereafter although the timescale for that is not yet clear.

Wales: Elisabeth Arfon-Jones

The devolved tribunals administered by the Welsh Assembly Government (WAG) are administered in the way that sponsoring departments administered tribunals in England prior to the coming into being of the Tribunals Service. This is cause for concern because the separation of powers is a powerful constitutional safeguard against interference by the executive with the judicial process. The formation of the Welsh Committee of the Administrative Justice Council, chaired by Sir Adrian Webb has been a positive step in moving forward tribunal reform, in Wales. Its “Review of Tribunals Operating in Wales” included recommendations designed to promote a more integrated and coherent system,

responsive to the needs of users and above all to establish an independent and impartial tribunal administrative justice system in Wales. Recommendations included establishing a focal point for administrative justice in the department for the First Minister and Cabinet and ensuring that the selection processes for the appointment of tribunal members in Wales are open, fair, merit based and all made by the Lord Chancellor or Welsh ministers.

Appropriate amalgamation of Welsh tribunal jurisdictions was recommended by the Committee as was the improvement of cross-jurisdictional collaboration. The increasing need for Welsh tribunal judiciary to work together on issues of mutual interest and concern was stressed. The benefits of cross-ticketing and assignment as well as economies of scale in terms of resources and in particular in the field of estates need to be exploited. 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.

The Association of Welsh Judges is actively considering extending its membership to tribunal judges as well as to the courts system judges. I see that as an opportunity for greater integration and welcome this move. The Welsh Forum of Tribunal Judges, chaired in the past by Jim Wood, has been

a useful means of getting together tribunal judges and that is now in the process of being re-instated so that there can be meaningful cross-jurisdictional dialogues and joint activities where appropriate.

The Committee's recommendation as to the role to be played by WAG has political dimensions into which arena I do not propose to descend!! However, clarity of roles is crucially important as it is vital to set proper boundaries of activities and responsibilities. It is crucial that the Lord Chief Justice and the Senior President of Tribunals are able to have a meaningful liaison with WAG.

All Welsh tribunals are obliged to adopt a common Welsh Language Scheme. Training, appraisal and resolution of judicial complaints are other areas where consistency is key. There are potential economies of scale in delivery which can be developed where there are common interests.

A useful development has been the welcome establishment by the Lord Chief Justice of a Judges Council Committee for Wales (JCCW). Chaired by the Lord Chief Justice with Lord Justice Pill as his deputy, its membership is wide-ranging with very senior members of the judiciary amongst its members. I am personally delighted that the Welsh tribunal judiciary is represented on it and I am privileged to have attended its inaugural meeting. The aim of the Committee is to establish a process whereby

there can be meaningful interface between WAG and other bodies concerned with justice in Wales. Communication channels between WAG and the National Assembly of Wales and the judiciary of England and Wales need to be established and maintained. The Committee is to provide advice to the Lord Chief Justice, the Judicial Executive Board and the Judges' Council on inter alia: "the implications for the administration of justice for Wales arising from new policies, proposals or legislation emanating from either London or Cardiff; establishing and maintaining relationships between the senior judiciary, and the Welsh Assembly Government and the National Assembly for Wales; establishing and maintaining relationships between the senior judiciary, the Association of Welsh Judges and other bodies with an interest in administration of justice in Wales; and membership of other groups and bodies where Welsh issues relating to administration of justice in Wales might fall to be considered."

The essence of tribunal justice is providing easy access to court users on as local a level as is possible. Bearing in mind 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 last year of the Upper Tribunal, Administrative Appeals Chamber 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, Mental Health Review Tribunal and Special Educational Needs Tribunal. The new administrative court office opened in April of last year and is proving a great success.

All the involved bodies and committees 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 and in my view multi-jurisdictional co-operation is key.

Chapter 6 Committees and Working Group

Tribunals Procedure Committee: Chairman Mr Justice (Paul) Walker

The Tribunals Procedure Committee in 2010 has been involved in both the making of new rules and the monitoring and revision of existing rules. An enormous amount was achieved in 2008 and 2009 in a relatively short period. Inevitably there were aspects of the Rules which had to be left over for further consideration. Our 2010 programme of work has included looking again at some of these aspects. When doing so – as with all our work – we seek, as required by section 22(4) of The Tribunals, Courts & Enforcement Act 2007, to exercise our rule making powers with a view to ensuring justice, accessibility, fairness, timeliness, efficiency and simplicity (both in expression and their operation).

Two changes in membership of the TPC have taken place. First, I have succeeded Lord Justice Elias as chairman. The TPC is deeply indebted to Lord Justice Elias for his guiding hand through the crucial run up to, and initial period after, the coming into force of relevant provisions of the TCEA. Second, on expiry of her term of office Carolyn Kirby, President of the Mental Health Review Tribunal for Wales, did not seek re-appointment. We acknowledge with gratitude her substantial input on all aspects of our work.

Simon Cox has been appointed in her place and we welcome him to the TPC.

We continue to be guided by the principles identified by Lord Justice Elias in paragraph 47 of the Senior President's 2010 report: 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.

Our work since February 2010 has included an entire set of new rules for the Lands Chamber of the Upper Tribunal. We have also produced new rules to allow for appeals in MP expenses cases in the First-tier Tribunal Tax Chamber, and to make various revisions to existing rules in that Chamber and others. All these new rules have been shaped by experience over the previous two years as we seek to streamline and simplify while always ensuring that the resulting procedures are fair. Consultation continues to be a fundamental part of the rule making process. Points made by consultees have been invaluable in assisting us to identify errors and potential improvements. Whether or not the responses have resulted in a change to what was proposed, they have often made an important contribution to the robust

discussion and lively debate which have been features of our meetings. Consultation on the Upper Tribunal Lands Chamber Rules drew a particularly broad range of responses from users in all areas.

As in 2009 our work has been subject to considerable time pressures. A degree of time pressure will of course always be present. That pressure must not, however, override the requirement to give proposed rules proper consideration. Nor can it override the requirement in paragraph 27 of Schedule 5 to TCEA to consult others where appropriate. Those parts of government responsible for proposing new rights of appeal, or alterations to existing rights of appeal must have these requirements well in mind when they consider the timetable for their proposals.

The volume of work continues to be very substantial. On occasions it has called for specialist expertise from First-tier and Upper Tribunal judges. Particularly substantial contributions were made by George Bartlett QC (President of the Lands Chamber of the Upper Tribunal) along with Peter Lane (Upper Tribunal IAC), Colin Bishopp (Upper Tribunal Tax & Chancery Chamber) and Roger Berner (First-tier Tribunal Tax Chamber). I am very grateful to all the judges who helped us, to TPC members, and to supporting lawyers and civil servants who have given unstintingly of their time in Committee,

on sub-committees set up to deal with particular matters, and generally monitoring the operation of the rules in practice. We are committed to keeping the rules under review – and for that purpose we welcome all suggestions for improvement.

Tribunals Judicial Executive Board (TJEB) and its sub-groups

The first Senior President's report in February 2010 marked the end of the formative stage of the First-tier and Upper Tribunals. As such there followed a period of relative calm in our judicial governance with more emphasis on the operational aspects of the new structures. That work was taken up through both the joint meetings (of TJEB and the Tribunals Service Executive team) and the newly formed Tribunals Judicial Activity Group.

However the creation of HMCTS and the proposed future changes to judicial structures require that we look again at both our own policies on various issues and how they relate to those of our colleagues in the courts. TJEB will therefore be looking at a number of these areas over the coming months including appraisal, assignment and career development. We are also working towards integrating tribunals judiciary more fully into the Lord Chief Justices'

governance arrangements principally through the Judges Council and its sub-committees.

Tribunals Judicial Activity Group: Chairman HHJ (Phillip) Sycamore

The Tribunals Judicial Activity Group was created to consider and discuss via a separate forum, the judicial and operational issues of the four largest First-tier Tribunal Chambers/jurisdictions: Immigration and Asylum; Employment; Health, Education and Social Care and Social Entitlement. Though the group is not a decision making body, that role sits with the joint TSET/TJEB meeting, it was realised, a year into the new structure, that the issues arising from the jurisdictions in these particular Chambers have a significant impact on the Tribunals resources collectively and individually. This JAG allows a more focussed discussion about areas such as budgets, performance, resource allocation and introducing and sharing best practice, which feeds into and helps steer the joint TSET/TJEB meetings.

The Group meets on a quarterly basis and comprises the four First-tier Tribunal Chamber Presidents (as above), the Chief Executive of the Tribunals Service, the Director of the Tribunals Judicial Office and the North and South TS Regional Directors. Its terms of reference include supporting the Senior President to carry out

his statutory responsibilities, informing decision making and working towards a consistent approach particularly by introducing and sharing examples of good practice. The two main focus areas in recent meetings have been exploring and understanding judicial efficiencies in the context of wider savings and prioritising judicial recruitment requirements. The group has now added judicial forecasting to its remit following the winding up of the Appointments Group.

Tribunals Judicial Communications Group: Chairman Judge (Alison) McKenna

This year the group has adopted new terms of reference, which reflect the challenges of communications across the new Tribunals landscape following the TCEA. The aims and objectives of the group now recognise the need to establish lines of communications between Tribunals' Judiciary and Members in the new structure, in addition to considering how we are understood by the outside world. The group's membership now includes representatives from all Chambers and Pillars within the Tribunals family and has formal links with the MOJ Security of Information group and with the Tribunals Judicial Information Technology Group.

The group’s Chairman, Alison McKenna, has worked closely with the Senior President’s Office in organising the Senior President’s Conference and producing this Annual Report. The group has had oversight of the migration of citizen-facing material from the Tribunal Services’ websites to DirectGov and BusinessLink, although the detailed work has in each case been carried out by jurisdictional representatives.

Tribunals Judicial Publications Group: Chairman HHJ (Robert) Martin

This Group 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.

In 2010 responsibility for meeting the tribunals’ judiciary’s information requirements moved from the Tribunals Service to the Ministry of Justice’s Library and Information Services, which already supplies publications to the courts judiciary. The move prefigures the convergence of the courts and tribunals judiciary.

Tribunals Medical Advisory Group: Chairmen HHJ (Robert) Martin and Dr Jane Rayner

This Group advises the Senior President of Tribunals on issues relating to medically qualified members of the First-tier Tribunal. In total there are 899 medically qualified members spread across 7 jurisdictions.

Over the past year the Group has advised the Senior President on the implications of the introduction by the General Medical Council of the licence to practise and produced a competence framework for use in the appraisal of medical members.

Tribunals Judicial Diversity Group: Chairman HHJ (Phillip) Sycamore

The Tribunals Judicial Diversity Group was created in June 2010 in specific response to the report of the Advisory Panel on Judicial Diversity chaired by Dame Julia Neuberger. Their remit is to advise the Senior President in his role as a member of the Task Force on Judicial Diversity (which is considering implementation of the package of reforms recommended by the Advisory Panel).

The group reports to the Senior President on the implications for the Tribunals Judiciary and the opportunities for collaborative working with the courts. The group also identifies practical measures that could be taken by the Senior President to implement the recommendations of the report; recommending a planned and costed programme of measures to increase judicial diversity. Since its formation the group has been working closely with Judicial Office of England & Wales, which supports the Courts judiciary, and Ministry of Justice policy leads, along with other professional groups (for example the Law Society) to promote the benefits of judicial office to under represented groups. Outreach events such as the Law Society's 'Meet the Judges' have proved successful with positive feedback from attendees in the quality of the judges representing the tribunals and courts. A recent seminar in Birmingham, aimed specifically at women, and comprising of groups from ILEX, solicitors and barristers was again well received with considerable positive feedback for the judges who outlined their personal paths to judicial office and the challenges they faced.

There has also been work undertaken in conjunction with Judicial Office in reviewing the Job Shadowing scheme to reflect the

changing needs of the tribunals and courts judiciary. Included in the Advisory Panel's recommendations is that for preparatory (ie pre-appointment) training and that will form a part of the work undertaken in the future by the integrated judicial training organisation which is currently being set up.

Measuring the progress of initiatives has always been important. It has been an enormous (and as yet unfinished) task to update the records of all tribunal judges and members. Tribunals Judicial Office has worked with local administrators and has now reconciled central records with locally held data. Completion of the exercise is scheduled for early 2011.

The Diversity Group plans to continue to focus on the solid foundation which already exists in the tribunals and has identified a number of proposals to assist in supporting the reforms recommended by the Advisory Panel. These include, targeted formal mentoring aimed at Black and Minority Ethnic groups; targeted judicial work shadowing at under represented groups; a 'buddy' scheme with other disabled Tribunals members to demonstrate the different ways of working that are possible; targeting inner city 'non red brick' universities by holding a moot event, judged by a panel of Tribunal Judges. In view of the current economic climate these

proposals will need to be fully costed and ratified by the Tribunals Judicial Diversity Group for final recommendation to the Senior President.

The Tribunals Judicial Information Technology Group: Chairman, Judge Andrew Bano

The Tribunals Judicial IT Group has been reconvened by the Tribunals Judicial Executive Board in order to provide a forum for discussion of IT strategy between the tribunals’ judiciary, the Tribunals Service and the Ministry of Justice Information Communication Technology organisation (MoJ ICT). The Group includes judiciary from tribunals both within and outside the Tribunals Service.

The Group has embarked on a useful and constructive dialogue with MoJ ICT with regard to the Tribunal Service’s aim of rationalising the large number of different IT and case management systems in use as a result of the assimilation into the Tribunals Service of tribunals previously administered by several different government departments. Those discussions have thrown up a number of urgent practical issues, particularly with regard to the best way of providing tribunal judges with day-to-day IT support.

We look forward to exploring further with MoJ ICT how best use can be made of IT to provide secure methods of communication and electronic access to reference material, and of how best to use the scarce IT resources which are available to support the Senior President in fulfilling the duty imposed by section 2(3)(d) of the Tribunals, Courts and Enforcement Act 2007 to have regard to “the need to develop innovative methods of resolving disputes... brought before tribunals”.

