



SENIOR PRESIDENT
OF TRIBUNALS

Senior President of Tribunals' Annual Report

February 2012

Introduction	5
Chapter 01 Upper Tribunal Chamber Reports	11
Administrative Appeals Chamber	11
Chamber President: Mr Justice (Paul) Walker	
Tax and Chancery Chamber	15
Chamber President: Mr Justice (Nicholas) Warren	
Immigration and Asylum Chamber	17
Chamber President: Mr Justice (Nicholas) Blake	
Lands Chamber	21
Chamber President: George Bartlett QC	
Chapter 02 First-tier Tribunal Chamber Reports	24
Social Entitlement Chamber	24
Chamber President: His Honour Judge Robert Martin	
Health, Education and Social Care Chamber	29
Chamber President: His Honour Judge Phillip Sycamore	
War Pensions and Armed Forces Compensation Chamber	34
Chamber President: Judge Andrew Bano	
Immigration and Asylum Chamber	35
Chamber President: Judge Michael Clements	
Tax Chamber	37
Chamber President: Colin Bishopp	
General Regulatory Chamber	39
Chamber President: Judge Nicholas Warren	
Chapter 03 Employment	42
Employment Appeal Tribunal	42
Chamber President: Mr Justice (Nicholas) Underhill	
Employment Tribunal (England & Wales)	43
President: David Latham	
Employment Tribunal (Scotland):	47
President: Shona Simon	
Chapter 04 Cross-border issues	51
Northern Ireland:	51
Dr Kenneth Mullan	
Scotland:	52
Shona Simon	
Wales:	54
Libby Arfon-Jones	

Chapter 05	Committees and working groups	58
	Tribunals Procedure Committee	58
	Chair: Mr Justice (Paul) Walker	
	Tribunals Judicial Executive Board	59
	Tribunals Judicial Activity Group	60
	Chair: His Honour Judge (Phillip) Sycamore	
	Tribunals Judicial Training Group and the Judicial College	60
	Chair: Professor Jeremy Cooper	
	Tribunals Judicial Communications Group	63
	Chair: Judge Alison McKenna	
	Tribunals Judicial Publications Group	64
	Chair: His Honour Judge Robert Martin	
	Tribunals Judicial Medical Advisory Group	64
	Chair: His Honour Judge Robert Martin and Dr Jayne Rayner	
	Tribunals Judicial Diversity Group	65
	Chair: Judge Sehba Storey	
	Tribunals Judicial IT Group	67
	Chair: Judge Andrew Bano	

Court of Appeal etc

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

Upper Tribunal

Employment Appeals Tribunal

President:
Mr Justice Brian Langstaff
(to December 2011
Mr Justice Nicholas Underhill)

Administrative Appeals Chamber

President: Mr Justice Paul Walker
(Mr Justice William Charles w.e.f. 4th April 2012)

(First instance jurisdiction: forfeiture cases and safeguarding of vulnerable persons. It has also been allocated some judicial review functions.)

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

First Tier Tribunal

Employment Tribunal (England and Wales)

President: Employment Judge David Latham

Employment Tribunal (Scotland)

President: Employment Judge Shona Simon

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

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

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,
- Environment

Tax Chamber

President: Judge Colin Bishopp

Jurisdictions include:

- Direct and indirect taxation,
- MPs Expenses

Immigration and Asylum Chamber

President: Judge Michael Clements

Immigration and Asylum

Land, Property and Housing Chamber

Acting Chamber
President Designate: Siobhan McGrath

(timetable and content to be decided)

Key: United Kingdom Great Britain England and Wales England only Scotland only

Introduction

This is my third and last report as statutory Senior President of Tribunals and therefore an appropriate point to reflect on my tenure. In April I shall take up my appointment as a member of the Supreme Court. I have been closely associated with the tribunals world since August 2004, when I was nominated as “Shadow” Senior President. During that time I have developed a deep respect for the work of the tribunals, and those who serve in it, as judges or administrators. Leggatt’s defining theme, that tribunals are a central part of the justice system, is no longer controversial. The essential features of the relationship of the Upper Tribunal with the higher courts have been authoritatively declared at the highest level.¹ The integration of the administration of courts and tribunals, which took effect last April, is another important milestone in the process.

Looking back

The end of my term as Senior President offers a good opportunity to look back. My appointment as Shadow Senior President coincided with the publication of the Government’s policy statement (in response to the Leggatt report) on the future of tribunals and administrative justice, in the July 2004 White Paper “Transforming Public Services: Complaints, Redress and Tribunals.”² In my speech to that year’s Council

on Tribunals conference I looked ahead to a “quiet revolution” in the tribunals’ world. That I believe has been achieved. I am happy to adopt the words of the Northern Irish UT Judges (responding to their own Consultation Paper on tribunal reform there):

“The implementation of the Tribunals Courts and Enforcement Act 2007 has been an undoubted success establishing a tribunal system which is underpinned by the essential characteristics of independence, coherence, user-focus, single administration, cost-effectiveness, independence of judicial appointment, emphasis on judicial training, common procedural rules, and permissive cross-ticketing.”

I am proud that the radical transformation of the tribunals structure has been completed without major public controversy, or disruption to services, but with important gains in efficiency, productivity and access for users, and substantial financial savings.³

In judicial terms, the most significant development has been structural reform under the Tribunals Courts and Enforcement Act 2007. The new First-tier and Upper Tribunals has provided a flexible two-tier structure which, since November 2008, have absorbed over 30 individual tribunals as well taking on a number

1 See *Cart v Upper Tribunal* [2011] UKSC 28; *Eba v Advocate General for Scotland (Scotland)* [2011] UKSC 29

2 Cm 6243

3 Annual Report and Accounts 2010-11 and 2009-2010. <http://www.justice.gov.uk/downloads/publications/corporate-reports/hmcts/tribunal-service-annual-report-10-11.pdf>; <http://www.justice.gov.uk/downloads/publications/corporate-reports/hmcts/TS-AR-09-10-WEB-final.pdf>

of new jurisdictions. A vital unifying element, as proposed by Leggatt, was the introduction of a common set of procedural rules across the whole system. The introduction of the new posts of “tribunal judge” and “tribunal member” has enhanced flexibility, allowing judicial resources to be assigned internally to meet changing business needs and to provide opportunities for career development.

The wider agenda

This is also a good opportunity to look back to the wider agenda set by the 2004 White Paper. Here perhaps there is more work to be done. The White Paper ended with an assurance that it’s “more radical approaches” should be “piloted and evaluated to make sure that they really will deliver the changes for the user which we seek”. This was seen as a task for all government departments working together.

It was to include, as series of immediate initiatives, and aspirations for the end of a five year period:

- “
 - a commitment across government to raise the standard of decision-making;
 - a Better Information Project, to raise the standard of decision letters;
 - a Proportionate Dispute Resolution Project;
 - with the voluntary sector, an Enhanced Advice Project,
 - a Shared Accommodation Initiative;
 - research into Unmet Legal Needs in

administrative and employment justice; and

- a new Code of Practice under which Government will consult the Council on Tribunals on new legislation.

AND IN FIVE YEARS FROM NOW...

The public will have the benefit of:

- better decisions;
- clearer communications;
- fast, fair and easily triggered review of decisions by departments; and
- an independent, accessible, flexible and authoritative dispute resolution system, tailored to the needs of the individual.⁴”

At the AJTC conference in 2009 I looked back to those aspirations and asked “how did we do?” I think the answer I would give today is the same – “mixed”. There has been good progress in some areas. For example,

Great progress has been in rationalising accommodation. Since 2004, when individual tribunals kept to their own buildings or hired rooms, there have been great strides in sharing accommodation between tribunals as well as with the courts. The pace has increased with the formation of Her Majesty’s Courts and Tribunals Service. I am pleased that there is greater awareness that the needs of tribunals users extend to the built environment – suitable accommodation

⁴ Paragraph 12.13 Cm 6243

for a court hearing may be excessively formal and daunting for a tribunal user.

With regard to improving first instance decision making there is less progress to report. I said in 2009 that this part of the White Paper is “largely unfinished business”. In my report last year I mentioned a number of DWP initiatives to improve decision-making in social security. However hugely increased workloads (due to economic factors as well as changes to benefits and assessment regimes) have masked any reduction in appeals that might have resulted.

The White Paper aspired to a new type of organisation “which will not only provide for formal hearings and authoritative rulings where these are needed but will have as well a mission to resolve disputes fairly and informally either by itself or in partnership with the decision-making department, other institutions and the advice sector”.⁵ It is this area of the White Paper agenda where least progress has been made.

There is not, nor should there be, any assumption that “one size of justice fits all”. Tribunal users vary hugely from individuals challenging their benefit entitlement to multi-national corporations arguing over tax liabilities of millions of pounds. Users vary in their ability to understand and to express themselves (whether in writing or orally). All need a fair, efficient and affordable system which is adapted to their particular needs. I hope my successors

will be able to look at different ways of working. Possibilities might include –

- On line information and call centres (in collaboration with advice services)
- Multiple points of access to lodge an appeal/application—by telephone, on line/in writing or in person
- Simple “triage” of the appeal/application – by appropriately trained (and perhaps legally qualified) staff to identify what is missing from the appeal/application and offer options for resolution
- A range of alternative resolution options offered by judges or trained staff, including explanation, early evaluation, and mediation; and a choice of decision-making options, on the papers, using video-links or other technology, or full oral hearing.

Closer working with the courts

The merger of the administration of the courts and tribunals took place formally on 1st April last year. Since its formation I have been sitting on the HMCTS Board, as my own nominee on behalf of tribunal judges, alongside the Senior Presiding Judge, John Goldring, as nominee of the Lord Chief Justice. I was pleased also that Francis Dobbyn was appointed to the HMCTS Board as a non-executive director providing some welcome continuity with the former Tribunals Service Management Board. The Board is chaired by Bob Ayling who brings

⁵ Paragraph 4.21 Cm 6243

wide-ranging experience both of the law, and of management in the wider world. The Board is designed to provide an effective, independent means of overseeing the administration of the courts, while holding the balance between the distinct, constitutional interests represented, respectively, by the Lord Chancellor and the Lord Chief Justice. I am very encouraged by the progress that has been made already.

The past year has also seen further strengthening of ties between the tribunals and the courts. The Lord Chief Justice and I continue to work closely on issues common to all. As Senior President, I attend the Judicial Executive Board as a full member, and I also attend the Judges' Council. There is a Tribunals Committee of the Judges' Council. At my invitation, George Bartlett succeeded Stephen Oliver as chair of that committee, where he is joined by representatives of the First-tier judges and members, nominated through the Tribunal Judges' Forum. Tribunal judges are also represented on the Judges Council committees.

One of the principal recommendations of the Neuberger report on Judicial Diversity was for the development of a single judicial career encompassing both courts and tribunals. This was an acknowledgement of the fact that generally tribunals have a better record than the courts in attracting women and minority groups into the judiciary, and of the need to provide flexibility across the whole system. Extensive work has been put into updating our judicial

database, so that we are now able to begin to extract reliable information about the make up of the tribunals' judiciary. Early indications are that over 67% of our judges are from a solicitor rather than a barrister background, that women make up around 42% of office holders, and that those identifying themselves as from a black and minority ethnic background make up over 10% of the judicial workforce. I look forward to early enactment of the legislative changes necessary to give full effect to the Neuberger recommendations.

On the administration side, there is also continuity; Peter Handcock was the first Chief Executive of the Tribunals Service and one of the chief architects of the structure we have today. With his breadth of understanding and experience across courts and tribunals he is an ideal Chief Executive of the HMCTS. Since the formation of the HMCTS, Kevin Sadler has moved into the new structure as Director of Civil, Family & Tribunals. Kevin continues to attend meetings of the TJEB Liaison group which replaced the TSET/TJEB meetings when the courts and tribunals were unified. This link between the judiciary and the executive has proved invaluable for the successful integration of courts and tribunals systems.

The AJTC

In my last report, I touched on proposals to abolish the Administrative Justice and Tribunals Council. Legislation to bring about that

abolition is now on the statute book, although some further parliamentary processes are needed before this abolition becomes a fact. As I said in my report last year, the AJTC, like the Council of Tribunals before it, has played a key role in the reform of tribunals, both as a critical friend and as a doughty champion when needed. It will be much missed. An important part of its new role under the 2007 Act was its duty to keep under review the administrative justice system as a whole. This encompassed not just tribunals, but also other elements of the system, such as the administrative court, and the Parliamentary and Local Ombudsmen. I am very concerned that this joined-up approach will not be replicated in whatever the Government chooses to put in its place.

The Judicial College

Last year I gave substantial coverage to judicial training. At that time, a project was taking forward the recommendations of Lord Justice Sullivan's working group, and the proposals for the creation of the Judicial College were more or less in place. The College is now fully established, led by my colleague Lady Justice Hallett. As my nominee, Nick Warren, President of the General Regulatory Chamber, has become the tribunals representative on the Board. He will also chair the Tribunals Committee. This will replace both the former JSB Tribunals Committee, and the Tribunals Judges Training Group, formerly chaired by Jeremy Cooper. I record my thanks to

Jeremy for chairing that group, and also for his contribution to the creation of the Judicial College and congratulate him on his recent appointment as Director of Training for Tribunals following a competition for that post. Under the leadership of that group, training in tribunals has maintained a consistently high standard. During the last year, 274 training events were delivered to almost 10,000 delegates. Tribunal judges have a great deal to offer to the new combined Judicial College.

Current news

I would like to record my thanks to Nicholas Underhill for the leadership of the Employment Appeal Tribunal and to congratulate Brian Langstaff on his appointment in succession. Nicholas will have a continuing role in tribunals, as he has kindly agreed to chair a committee reviewing the procedural rules in the Employment Tribunal. Paul Walker is due to stand down as President of the Administrative Appeals Chamber of the Upper Tribunal. I am grateful to Paul not only for his leadership of the Chamber but for his chairmanship of the Tribunals Procedure Committee. I would like to congratulate Mr Justice (Bill) Charles on his appointment as Paul's successor as President of the Administrative Appeals Chamber.

Following on from Lord Justice Jackson's report on Costs in courts, I asked Mr Justice Nicholas Warren to lead a small group to carry out a more limited review of the costs regimes

applicable to tribunals operating in England and Wales. The resulting report is comprehensive and informative, and proposes some useful reforms. I am grateful to Mr Justice Warren and to the Costs Group for their efforts.

Meanwhile, the tribunals structure continues to grow. Work is underway to create a “property chamber” of the first-tier tribunal which will comprise the Residential Property Tribunal Service, Agricultural Land Tribunals, the Adjudicator to the Land Registry, and in due course the Valuation Tribunals.

I have asked Siobhan McGrath, the Senior President of the Residential Property Tribunal Service, to serve as Acting Chamber President (designate), to join with George Bartlett (President of the Upper Tribunal Lands Chamber) in leading the judicial contribution to the process. In due course the Lord Chancellor will ask the Judicial Appointments Commission to select a permanent Chamber President.

Finally...

As I come to the end of my time as Senior President. I pay tribute to the unstinting support I have had from the Chamber Presidents and other judicial leaders, and to the skill, hard work and loyalty of officials across the whole tribunals system. This was particularly brought home to me last year, when during the riots, the Employment Tribunal hearing centre in Croydon, Surrey was damaged by fire. I visited Croydon in November and saw at first hand the commitment of judges and staff, working as a team, to maintain service to users in the most difficult of circumstances.



Robert Carnwath
Senior President

The format of this report is similar to last year and in the ensuing chapters I have asked the Chamber and Tribunal Presidents, and those chairing specialist sub-groups to give accounts of their own work in their own words.

Chapter 1

Upper Tribunal Chamber Reports

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

The jurisdictional landscape

The Administrative Appeals Chamber (AAC) now has responsibility for twenty-six appellate and first-instance jurisdictions whose geographical scope in many cases is UK-wide. Seventeen jurisdictions arise by way of second appeal from the First-tier Tribunal. Also in relation to the First-tier Tribunal the AAC has two jurisdictions which may arise UK-wide from references by the First-tier Tribunal: one is an enforcement jurisdiction and the other is a jurisdiction which the First-tier Tribunal may invoke in the event that it sets aside its own decision. Appeals and references from tribunals and other bodies comprise seven jurisdictions. Two of these – concerning references in social security forfeiture cases and appeals from Traffic Commissioners – cover England, Wales and Scotland. Appeals against decisions of the Independent Safeguarding Authority arise in England and Wales. Appeals also come from tribunals based in Wales (the Mental Health Review Tribunal for Wales and the Special Educational Needs Tribunal for Wales), Scotland (the Pensions Appeal Tribunal) and Northern Ireland (the Pensions Appeal Tribunal as regards assessment issues).

Four Chambers¹ give rise to our seventeen second-level appeal jurisdictions from the First-tier Tribunal. Fifteen of these jurisdictions are described in last year's annual report. Many of them have been extended with the introduction of new appeal rights. The two new jurisdictions are Alternative Business Structures and Environment, both of which are dealt with at First-tier Tribunal level by the General Regulatory Chamber. They will be dealt with in the AAC by our Consumer and Environment judicial group – one of the specialist groups also described in last year's report. During 2011 judges from the group – which also deals with consumer credit – formed a three judge panel at short notice in order to determine an appeal² on an issue as to the validity of bills of sale which had been decided by the First-tier Tribunal as a preliminary point.

Our core work remains appeals and applications for permission to appeal from the Social Security and Child Support jurisdiction of the First-tier Tribunal Social Entitlement Chamber throughout England, Wales and Scotland. This accounts for some 80-90 per cent of our caseload, the vast majority of it dealt with

1 The General Regulatory Chamber (except for charities cases), the Health, Education and Social Care Chamber, the Social Entitlement Chamber and the War Pensions and Armed Forces Compensation Chamber

2 *Log Book Loans Ltd v OFT* [2011] UKUT 280 (AAC)

entirely on paper.³ In conjunction with this, however, the amount of judicial time spent on cases in our non-SSCS jurisdictions has been steadily increasing.

Many of these cases, like the bills of sale case mentioned earlier, involve complex issues and most of them will involve an oral hearing. Where an appeal is from the Mental Health Review Tribunal for Wales or the Special Educational Needs Tribunal for Wales, the Pensions Appeal Tribunal in Scotland or the Pensions Appeal Tribunal Northern Ireland the oral hearing will take place in the home country concerned.

During 2011 we have held an increasing number of hearings, many of them outside London, concerning decisions of the Independent Safeguarding Authority (ISA). Exceptionally the AAC hears these cases as a first-level appellate body, with a jurisdiction on fact as well as law. They involve appeals by those barred from working with children and/or vulnerable adults under the Safeguarding Vulnerable Groups Act (SVGA) 2006. In *SJB v ISA* [2011] UKUT 286 (AAC); *XY v ISA* [2011] UKUT 289 (AAC) and *SB v ISA* [2011] UKUT 404 the AAC has analysed the transitional provisions for

transfer of cases to ISA and the legal framework, structure and procedures of ISA in carrying out its functions. Factors relevant to grant or refusal of permission to appeal have been considered in detail in *RD v ISA* [2011] UKUT 299 (AAC).

In the ISA cases and when hearing appeals from Traffic Commissioners we are much assisted by our specialist members. Specialist members play a particularly important part, too, in information rights cases transferred on a discretionary basis from the First-tier Tribunal to the Upper Tribunal. This option is used for cases which may be particularly complex or sensitive. In one such case we welcomed Mr Justice Blake who sat with Andrew Bartlett QC and Rosalind Tatam to decide a number of important issues.⁴

We have continued to deal with a substantial number of judicial review claims. Most have concerned Criminal Injuries Compensation decisions of the First-tier Tribunal in England and Wales. The effect of the practice direction of 29 October 2008 by the Lord Chief Justice of England & Wales is that these claims must be brought in the AAC. Other judicial review cases come to the AAC as discretionary transfers, often because the AAC has expertise in the subject matter and is able to deal with the matter more flexibly. An example during 2011 concerned a challenge to the refusal to discharge

³ While the proportion of SSCS appeals involving an oral hearing is small, the numbers remain substantial, often with significant points of law involved. A prominent example during 2011 was *Glasgow CC v AL (HB)* [2011] UKUT 354 (AAC), where a decision of a three judge panel presided over by Lord Brailsford gave the first judicial analysis of current Scottish law on mental capacity to contract.

⁴ All Party Parliamentary Group on Extraordinary Rendition v Information Commissioner [2011] UKUT 153 (AAC)

a patient from section 2 detention of the Mental Health Act 1983 on a nearest relative's application. There is no right of appeal in those circumstances, although there would be a right if the patient had been detained under section 3 MHA 1983. Accordingly the challenge was brought by judicial review in the Administrative Court in London, which transferred it to the Upper Tribunal so that it could be dealt with urgently by judges of the AAC's Mental Health Judicial Group.

Another example of our ability to act speedily concerns the AAC's special educational needs jurisdiction. The First-tier Tribunal's decision had named a school providing a 52 week residential placement in the pupil's statement at an annual cost of some £200,000. On 26 October 2011, the pupil's mother launched judicial review proceedings in the Administrative Court for enforcement of the decision, and the local authority lodged an application for permission to appeal against the decision and for a stay. At 5pm on Monday 31 October the authority's representatives sent the Upper Tribunal an order of Sales J made earlier that day. The school had said that it could not keep a place for the pupil after 2 November. Sales J ordered that unless the Upper Tribunal ordered a stay by 3pm on 2 November, the decision was to be complied with. The papers were referred to the AAC lead judge on 1 November. A registrar researched relevant points, liaised with the parties, and ensured that gaps in the evidence and submissions were

filled. A clerical officer ensured that necessary administrative procedures were speedily complied with. The judge was able to complete a fully reasoned decision refusing permission to appeal and the application for a stay, which was faxed before the 3pm deadline on 2 November.

Tribunal Reform

The UK government has foreshadowed proposals which would affect the geographical scope of the Upper Tribunal. The Tribunals, Courts and Enforcement Act 2007 preserved the cross-border jurisdiction in social security and child support cases throughout Great Britain. One of its most valuable reforms was the introduction of a UK-wide role for the Upper Tribunal. In the AAC our cross-border functions have enabled us to take a cohesive approach to the second-level appeal role not only in SSCS cases but also in jurisdictions as wide-ranging as information rights and appeals against Traffic Commissioners. Our belief is that the loss of these cross-border jurisdictions would have a serious adverse impact on the development of both substantive and procedural law along with a serious adverse impact on the efficiency with which second-level appeals are dealt with.

Judicial studies

The AAC's judicial studies programme included a tour both "front of house" and "behind the scenes" at the Supreme Court, at which Lady Hale kindly gave a presentation and answered

questions from AAC judges. The main event this year was an all day symposium on Employment and Support Allowance (ESA), appeals in respect of which form a major part of the AAC's caseload. Professor Richard Berthoud set the scene with a stimulating analysis of the overall trends over time in terms of incapacity benefit claimant numbers, while District Tribunal Judge Hugh Howard and Dr Jane Rayner discussed the issues facing the First-tier Tribunals dealing with ESA appeals. Professor Malcolm Harrington, who has carried out an independent review of the ESA scheme, also discussed his findings and proposals for the way forward.

People and places

In June 2011 His Honour Judge John Martin QC retired as Chief Social Security Commissioner in Northern Ireland and as an AAC salaried judge. Fortunately we retain his expertise and knowledge as he remains a fee-paid judge of the AAC. Following a Northern Ireland Judicial Appointments Commission competition, Dr Kenny Mullan, also a salaried judge of the AAC, was appointed to the role of Chief Commissioner in Northern Ireland, sworn in by the Lord Chief Justice of Northern Ireland on 2 June 2011. A new Northern Ireland Commissioner has recently been appointed, Mr Odhrán Stockman, who has at the same time become a judge of the Upper Tribunal assigned to the AAC.

Upper Tribunal Judge Elisabeth Jupp retired as a salaried judge at the end of 2011. In her

case, too, we will not lose her expertise and knowledge as she remains a fee-paid judge of the AAC.

Two fee-paid judges of the AAC, Frances Burton and Christopher Whybrow, retired during 2011. We are grateful to them both for their significant contributions to our work on appeals from Traffic Commissioners and appeals in the SSCS jurisdiction respectively.

At the start of 2012 the chamber had fifteen London based salaried judges (including the Chamber President), two salaried judges based in Edinburgh and two salaried judges in Northern Ireland who combine their AAC functions with their roles as Chief Commissioner and Commissioner respectively. The judicial work of the chamber is also carried out by teams of visiting rota judges for SSCS work in London and Edinburgh, and by other UT judges assigned to the AAC. In that regard we welcomed the President of the Lands Chamber, George Bartlett QC, who has been assigned to the AAC to assist in our new Environment jurisdiction.

Our judicial work is supported by a team of specialist Registrars led by Jill Walker in London, Christopher Smith in Edinburgh and Niall McSperrin in Belfast. There were two new senior operational managers appointed to the AAC administration teams this year, Clare Bennett in London and Terry Stewart in Edinburgh. Gillian McClearn continues to be operational manager in Bedford House, Belfast.



At the end of October 2011 a much-desired event took place: the London judicial and administrative bases, which had been located in separate buildings, both moved to purpose-built accommodation on the 5th floor of the new Rolls Building in Fetter Lane near the Royal Courts of Justice. The London office has long been struggling with an outdated database that is difficult to operate and is of limited functionality. Partly for this reason a backlog of non-urgent cases has been a regrettable feature of 2011. While the office move has involved a degree of disruption, the benefits of having judicial, registrar and clerical teams co-located in the Rolls Building will, we hope, play a part in ensuring that the backlog is eliminated before data starts to be transferred to a new database in 2012.

The Senior President visited the AAC in the Rolls Building on the 21 November to see us in our new London home and was warmly welcomed by judges, Registrars and staff.

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

Financial services cases

In last year's Annual Report, I described the transfer into the Chamber of the work of the Financial Service and Markets Tribunal (FINSMAT) and the Pensions Regulator Tribunal (PRT). There has been a steady flow of work which has been dealt with by the judges

and members of the Chamber. Two substantial sets of references to the Chamber have been made to the Chamber concerning the amount of compensation payable to shareholders in Northern Rock and Bradford & Bingley on their nationalisation in 2008 following the financial crisis on 2007-08. The former has been heard by a panel consisting of myself, another judge and a member. In October, we gave our decision dismissing all applications and upholding the independent valuation of the valuer appointed pursuant to the statutory scheme. The latter set of references have not yet been heard.

There has been little work in the pensions jurisdiction (where we hear references from the Determination Panel of the Pensions Regulator). I mentioned in last year's report one case from Northern Ireland: this has not yet been concluded. As President of the Chamber, I have, sitting alone, decided one reference from the decision of the Determination Panel. This concerned the imposition of a contribution notice under section 38 of the Pensions Act 2004; I reversed the decision of the Panel. This was a case of some significance in providing guidance about the extent of the Panel's powers in relation to this particular type of notice.

Sir Stephen Oliver retired as President of the Tax Chamber and as a full-time judge of the Tax and Chancery Chamber at the end of March 2011. He then ceased to be the Principal Judge of the Tax and Chancery Chamber dealing with financial services cases. His

successor as President of the Tax Chamber, Judge Colin Bishopp, has taken on that role. Further assistance is now provided with the appointment of Tim Herrington who moved from his post as chair of the Regulatory Decisions Committee of the FSA to become a full-time judge of the Chamber bringing with him a particular expertise in financial services matters.

Charity cases

I also mentioned in last year's report two related cases which were to come before the Tribunal concerning the charitable status of private schools. These have now been heard by a panel of 3 judges presided over by myself as President of the Chamber, sitting with Judge Alison McKenna (the Principal Judge in Charity matters in the General Regulatory Chamber and a judge of the Upper Tribunal) and Judge Elizabeth Ovey (NCN [2011]UKUT 421 (TCC)). We have also received one further reference from the Attorney-General raising questions about the effect of the "public benefit" requirement in the context of trusts for the relief of poverty. We are awaiting a decision on this case.

Tax Appeals

The bulk of our work, however, continues to comprise tax appeals. There continues, as reported last year, to be steady flow of appeals and references passing through the system and our workload in tax appeals is very much as

predicted. We have dealt with a very wide range of cases, some raising very complex issues of law and involving very large sums of money. In the VAT field, the judges of the Chamber have made a number of references to the European Court of Justice.

I commented last year that the jurisdiction to hear appeals from HMRC as a first-instance tribunal had been and would continue to be sparingly exercised, and that has continued to be my policy. I noted that it is a useful jurisdiction since it enables a tax appeal and a related judicial review application to be dealt within in one hearing by the same judges sitting in the same tribunal. Consideration was given by me, sitting with Judge Avery Jones, to the Tax Chamber and the Tax and Chancery Chamber sitting together to hear a tax appeal and a related judicial review. The tax appeal could not be transferred to the Upper Tribunal since one party had refused to allow this and the judicial review was not within the jurisdiction of the First-tier Tribunal to hear. In the event, we declined to adopt this procedure which, on an examination of the facts, was inappropriate. It remains undecided whether there is in fact power for the two Chambers to sit together in this way.

I have already mentioned the retirement of Sir Stephen Oliver as President of the Tax Tribunal. We have not said good-bye altogether as he continues to sit part-time as a fee-paid judge. I will say more about Sir Stephen's huge

contribution to the Tax Tribunals in next year's report by which time he will have finally retired. But we have said goodbye to John Avery Jones who retired in April after many years superb service as a Special Commissioner and then as a judge of the First-tier Tribunal and the Upper Tribunal. His contribution has been outstanding. I would like to record my own thanks and admiration for all that this giant in the tax world has brought to the work of the Tribunal.

Judicial review

I said last year that a small number of judicial review applications in tax cases had been transferred to the Chamber from the Administrative Court of the High Court. As I noted, 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. Following the retirement of Sir Stephen, Judge Colin Bishopp has been authorised so that he, along with the Chancery Division judges, are able to hear these applications. The Chamber has not, in fact, heard any substantive applications this year, although some procedural matters have been subject to oral hearings. In practice, these applications are often adjourned pending the outcome of a related substantive tax appeal. The difficult question of what matters can be dealt with by the Tax Chamber in the context of a tax appeal and what matters can be dealt with only pursuant to an application for judicial review remains unresolved.

Our judiciary and members

At the end of the period of this report there were only 3 full-time judges holding office in the Tax and Chancery Chamber – Colin Bishopp, Theodore Wallace and David Demack, the last of whom sits principally in Manchester dealing with first instance case in the Tax Chamber. This is clearly an inadequate number of full-time judges. A competition has been held and Roger Berner, previously a Judge in the First-tier Tribunal Tax Chamber, Greg Sinfield and Tim Herrington are now in post.

Administration

There have been a number of changes in the personnel in charge of the administration of the Chamber. Sharon Sober remains in charge of the small support team in Bedford Square. Their workload has increased but, even with the loss of a typist, they continue to provide an efficient service to the public and to the judiciary. I would like to express my gratitude to them.

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

This report covers the period of Upper Tribunal Immigration and Asylum Chamber (the Chamber)'s activities from the beginning of October 2010 to the end of September 2011. It thus completes the period of its first year and

moves beyond the transitional arrangements in place in February 2010.

Whilst the statutory jurisdiction has remained unchanged during this period, internal arrangements have led to change in how judges spend their time. In February 2010 there was a backlog of outstanding applications for reconsideration made to the High Court under s.103A Nationality Immigration and Asylum Act 2002 as amended. These have now been cleared. Applications lodged after 14 February 2010 are applications for permission to appeal. The task of determining First tier permission to appeal applications has been shifted over the course of the year to a group of First tier judges. They have been trained by Upper Tribunal judges at Field House in accordance with arrangements agreed between the President of the First-tier Tribunal and Principal Resident Judge (PRJ) Paul Southern to ensure appropriate degree of care and scrutiny of these applications. This programme continues to roll out beyond the main hearing centres in London, with the result of freeing up judicial time to concentrate on renewed applications for permission to appeal to the Upper Tribunal, directions in pending appeals and substantive determinations of such appeals in the manner considered appropriate.

Second, a small number of judicial review applications of disputed age assessments by local authorities have been the subject of a discretionary transfer from the Administrative Court to the Upper Tribunal for determination.

These arrangements follow the more fact sensitive approach to such cases resulting from the ruling of the Supreme Court in *A v London Borough of Croydon* [2009] UKSC 8. Hearing these applications in the Upper Tribunal engages the expertise of Upper Tribunal judges in child asylum claims. We have adopted the practice of listing early for directions and requiring the parties to disclose relevant immigration decisions. Early indications suggest that the Upper Tribunal may require the local authority seeking to maintain its assessment to engage with the Home Office to reach a consensus view. Taken together these factors offer the opportunity for speedier and more effective decision making of all disputes relating to a putative child's identity.

The best interests of children and the extent to which such interests should drive judicial assessments in immigration appeals has been a major theme of the case law. The Chamber was fortunate to have substantially anticipated the decision of *ZH (Tanzania)* [2011] UKSC 4 in a number of its Article 8 decisions in the preceding six months. Since then it has had to consider how the decision of the CJEU in Case 34/09 *Ruiz Zambrano* 8 March 2011 applied to cases where a non citizen parent faces removal either with or from a UK citizen child. Cases such as *Omotunde (best interests – Zambrano applied – Razgar)* [2011] UKUT 247 and *EA (best interest of a child) Nigeria* [2011] UKUT 315 have addressed the evaluation of such factors in

the context of irregular immigration, criminality and other relevant countervailing factors.

The Chamber has kept very much in touch with the fast moving world of EU free movement law with respect of other issues. The decision of the CJEU in Case C-186/10 *Oguz v SSHD* July 2011 on a reference from the Court of Appeal gave broad confirmation of the Upper Tribunal's own approach in *EK (Ankara Agreement) Turkey* [2010] UKUT 425 IAC. The problem of retained rights of residence was addressed in *Sansam (EEA) (Syria)* [2011] UKUT 165 IAC; that of the meaning of spousal residence in *PM (EEA-spouse-residing with) Turkey* [2011] UKUT 89 and the vexed question of other family families led the Chamber to make a reference to the CJEU in *MR (EEA) Bangladesh* [2010] UKUT 449 and guidance to First-tier judges as to how to proceed in the interim in *Moneke (EEA OFMs) Nigeria* [2011] UKUT 341 IAC.

In the field of asylum, notable country guidance decisions have included *HM (Article 15 C) (Iraq)* [2010] UKUT 331, *BA (Demonstrators in Britain) Iran CG* [2011] UKUT 36; *EM returnees Zimbabwe CG* [2011] UKUT 98; *KK (Nationality North Korea) CG* [2011] UKUT 92; *HS (Palestinian return to Gaza) CG* [2011] UKUT 124, *SW (lesbians HJ applied) Jamaica CG* [2011] UKUT 251.

The Chamber held a seminar with a representative sample of users to discuss issues arising from the Country Guidance system.

A Presidential Guidance note was issued in July 2011 explaining the criteria used for the reporting of cases (Presidential Guidance Note 2011 No 2).⁵

A Joint Presidential Guidance Note 2010 No 2⁶ has been issued with respect to the assessment of Children, Vulnerable Adults and other Sensitive witnesses. Further the Chamber participates in the Family Justice Council and in that capacity has prepared a guidance note on immigration law for family judges, and participated in the creation of an information sharing protocol permitting the speedier release of family court documentation to immigration judges where appropriate.

Both chambers now restrict the circumstances where anonymisation is used to cases where it is strictly necessary. The Chamber has issued its own guidance on its approach to permission to appeal, (Presidential Guidance Note 2011 No 1⁷).

On the 17 October 2011, The First –tier Tribunal and Upper Tribunal (Chambers) (Amendment) Order 2011 and the Direction of the Lord Chief Justice made under s.18(6) of the

5 <http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/immigration-and-asylum/upper/guidance-note-no2-reporting-decisions-of-the-utiac.pdf>

6 <http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/immigration-and-asylum/upper/ChildWitnessGuidance.pdf>

7 <http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/immigration-and-asylum/upper/guidance-note-no1-permission-to-appeal-to-utiac.pdf>

Tribunals Courts and Enforcement Act 2007 came into effect. This enabled the Chamber to receive applications for judicial review of decisions of the Secretary of State that further representations did not amount to a fresh asylum or human rights claim within the meaning of Part 5 of the Nationality Immigration and Asylum Act 2002. Permanent judges of the Chamber have been trained in the principles of fresh claim judicial reviews and a panel of judges considers urgent applications lodged by 4.30pm and renewed applications for permission to bring judicial review.

Throughout the year the Chamber has been supported by visiting judges from the Administrative Court, the Outer House of the Court of Session and the High Court of Northern Ireland and the President is most grateful to the President of the Queens Bench Division, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland for the provision of such distinguished judges.

Early in 2011 the Chamber was saddened to learn of the tragic and untimely death of Senior Immigration Judge Susan Ward who is sadly missed by her colleagues.

In addition to the President and two non-statutory Vice Presidents, the Chamber now consists of 33 judges based in London and seven Resident Judges located out of London. I am particularly grateful to Mark Ockelton, Vice President, who amongst his many duties has led

on judicial review hearings and the work of the Chamber out of London; Elisabeth Arfon-Jones, Vice President, who has convened the Judicial Welfare Committee, Paul Southern who has performed the demanding role of the PRJ of the Upper Tribunal, Upper Tribunal Judge Peter Lane who has contributed both on questions of policy and in the Tribunal Procedure Rules Committee; Upper Tribunal Judge Hugo Storey who has led the team of Country Guidance Convenors, Upper Tribunal Judge Andrew Grubb who has continued to be the training judge for the Chamber, and all those who have served on the committees and other allocated functions that have enabled the Chamber to develop its work. The Chamber's personnel has been strengthened by the appointment of Deputy Judges (now standing at 31) and more recently six new permanent Upper Tribunal judges. After consultation in December 2011 a joint Presidential Guidance note was issued indicating that henceforth judges would be known by their statutory title of Upper Tribunal Judge rather than their courtesy title of Senior Immigration Judge.⁸

We were pleased to welcome Heather Nelmes as the manager for Field House, and so far seem to have emerged from the process of re-organisation being undertaken by HM Courts and Tribunal Service without any diminution to efficiency. The work of the Chamber in a time

⁸ <http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/immigration-and-asylum/upper/joint-presidential-guidance.pdf>

of considerable reorganisation and budgetary restraints would not have been possible without the informed assistance of Vicky Rushton, and other members of the secretariat of the Joint President's Office.

Our information systems are highly developed and I am also grateful to George Damalas and Rebeccah Sheen and their team at the Legal and Research Unit that has ensured immigration judges receive weekly E-newsletters; monthly Legal and Research Unit updates; and now six volumes of the Immigration Appeal Reports yearly keeping them abreast of case law throughout the UK and the European Courts.

International relations have continued to be an important part of the work of the judges of the Chamber in attending conferences and training sessions in the EU and beyond. The Chamber works closely with the International Association of Refugee Law Judges and a good delegation of judges attended the 7th World Conference in Slovenia. The President has delivered papers on various aspects of the Chamber's work to the Irish Refugee Council, Dublin; Commonwealth Law Conference Hyderabad India, the European Immigration Law Network in Paris, the joint ALBA BEG Conferences Athens, and the IARLJ World Conference Slovenia.

Lands Chamber: Chamber President George Bartlett QC

The jurisdictional landscape

The Lands Chamber, which came into existence in June 2009, has continued to exercise substantially as before the first-instance and appellate jurisdictions of the old Lands Tribunal. Some significant changes will occur, however, when a new First-tier Chamber, the Property Land and Housing Chamber comes into existence, probably in November 2012. The new Chamber will succeed to the jurisdictions of the tribunals from whom the Lands Chamber at present hears appeals, the Leasehold Valuation Tribunals (which deal with leasehold enfranchisement valuations, service charge disputes and a range of other landlord and tenant matters), the Residential Property Tribunals (which hear appeals from orders made under the housing legislation in relation to unfitness and other matters) and, subject to a decision to this effect, the Valuation Tribunal for England (VTE) (in respect of rating appeals). It will also incorporate the jurisdictions of the Rent Tribunals and Rent Assessment Committees, the Agricultural Land Tribunals and the Adjudicator to the Land Registry. Appeals from these tribunals (and from the VTE in council tax cases) at present lie to the High Court. After transfer, appeals will be to the Lands Chamber (except for appeals from the Adjudicator, which

will lie to the Tax and Chancery Chamber). Administration of the tribunals is being transferred to HMCTS from the Department of Communities and Local Government and the Department of Environment, Food and Rural Affairs (except in the case of the Adjudicator for whom HMCTS already provides administrative services). If, as expected, the VTE's jurisdictions are transferred to the new chamber, HMCTS would also succeed to the administration currently exercised by the Valuation Tribunal Service.

Substantial work is involved in arranging for the transfers and the procedural provisions that will be required, and the Acting President Designate of the new Chamber, Siobhan McGrath, and I, together with heads of the tribunals to be transferred, have been providing the judicial input. The new structure will open the way to a rationalisation of the first instance jurisdictions, enabling, to such extent as may be appropriate, the transfer of jurisdictions and cases between the two Chambers. In due course I would expect the Lands Chamber to become primarily appellate in function, with much of its current first-instance work moved to the First-tier Property Land and Housing Chamber. This would happen, however, only after the necessary expertise was available there and only after full consultation with users. At the outset a more limited transfer is envisaged. This would include a limited transfer to the Lands Chamber of some major cases at present heard by the LVTs and, if it is transferred, the VTE.

In the course of 2011 a working party under Mr Justice Warren, President of the Tax and Chancery Chamber, produced a report on costs in tribunals for the Senior President. At present in all jurisdictions, with the exception of appeals from LVTs and RPTS, the Lands Chamber has full power to award costs, and it does so in accordance with principles set out in its Practice Directions. The Warren Report recommends that in future all Lands Chamber jurisdictions (with the exception of compulsory purchase compensation and restrictive covenant cases) should be subject to a standard no-costs regime. Depending on the outcome of public consultation, it is proposed to implement these recommendations through amendments to the Lands Chamber Rules.

In June 2011 the Law Commission published its report "Making Land Work: Easements, Covenants and Profits à Prendre" (Law Com No 327). Among its principal recommendations for reform in these important areas of real property law is the recommendation that the jurisdiction of the Lands Chamber should be extended to enable it to modify and discharge easements and profits created post-reform and the new "land obligations" that under its proposals would replace covenants both positive and restrictive. It also recommends that the Lands Chamber should have power to make declarations as to the effect of an instrument when the need for a declaration arises in proceedings before it for modification or discharge.

The Localism Act 2011 contains important amendments to the law of compensation for the compulsory purchase of land. These relate to the assumptions as to planning permission that fall to be made when valuing land for this purpose. It replaces the current statutory provisions with provisions that are substantially in accordance with the code recommended by the Law Commission in “Towards a Compulsory Purchase Code: (1) Compensation” (Law Com No 286, December 2003), which was produced under the supervision of Lord Justice Carnwath and reverses the effect of the decision of the House of Lords in *Spirerose v Transport for London* [2009] 1 WLR 1797. In addition, and again in accordance with the recommendations of the Law Commission, the Act provides that appeals against certificates of appropriate alternative development should lie to the Upper Tribunal rather than, as now, to the Secretary of State for Communities and Local Government. This will enable the Lands Chamber to determine such appeals, as may seem appropriate, either in advance of or as part of the determination of compensation.

People and places

In the course of 2010 two circuit judges, Her Honour Judge Karen Walden-Smith and His Honour Judge Nigel Gerald, were assigned to the Lands Chamber to augment the other circuit judges (HHJ Reid QC, HHJ Mole QC, HHJ Huskinson and HHJ Alice Robinson)

and the Chancery Division judge Mr Justice Morgan, who have continued to hear cases in the Chamber.

Chapter 2

First-tier Tribunal Chamber Reports

Social Entitlement Chamber: 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 and Child Support (SSCS). The Principal Judge of AST is Sehba Storey. The Principal Judge of CIC is Tony Summers. SSCS is managed by a Board of 7 Regional Tribunal Judges chaired by the Chamber President.

The Jurisdictional Landscape

In SSCS the most significant development continues to be the rise in the intake of appeals. The following table shows the recent and forecast trends.

Annual Intake of SSCS Appeals

2008-09	242,800
2009-10	339,200
2010-11	418,500
(forecast)	
2011-12	421,600 ⁹
2012-13	483,400
2013-14	576,700
2014-15	644,000

Actual figures for 2008-09 to 2010-11 taken from Annual Tribunal Statistics Report for 2010-11 available at <http://www.justice.gov.uk/publications/statistics-and-data/tribunals/annual-stats.htm>

The principal driving forces behind the increase up to 2013 are the impact of the economic recession and the introduction of employment and support allowance as a replacement for incapacity benefit. The Government's Welfare to Work programme envisages the reassessment of entitlement to benefit of some 1.5m recipients of incapacity benefit over a 3 year period from April 2011. In 2013 the planned replacement of disability living allowance by a new benefit, the personal independence payment, will entail the reassessment of some 1.7m recipients of disability living allowance, again over a 3 year period. Forecasting the number of appeals that may result from these reforms is, understandably, far from an exact science. The proportion of claimants whose benefit will be removed or reduced on reassessment can only be roughly estimated: similarly, the propensity to appeal of those adversely affected can only be surmised.

The 2010 Senior President's Annual Report described the judiciary's 3-fold strategy to address the increasing intake, namely promoting alternatives to tribunal hearings, expanding judicial capacity and improving productivity.

Looking at the issue from the wider perspective of administrative justice, the starting-point had to be inducing the Department for

⁹ Taken from HM Courts and Tribunals Service Business Plan 2011-2015 - <http://www.justice.gov.uk/downloads/publications/corporate-reports/hmcts/hmcts-business-plan-11-15.pdf>

Work and Pensions to improve its standards of decision-making, so that fewer decisions needed to be challenged by way of appeal. The immediate focus was to prompt and support the Department to adopt a critical and continuing examination of the integrity of its decisions when faced with the prospect of an appeal. Evidence from the Tribunal contributed to 3 influential reports,¹⁰ which highlighted the Department's lack of effective reconsideration of its decisions as a missed opportunity to divert disputes away from the Tribunal.

Encouragingly, DWP has begun a number of programmes designed to improve the quality of its decision-making. A "super-reconsideration" initiative, facilitated by the Tribunals Service, resulted in 7,000 employment and support allowance cases under appeal being revised by the Department in the claimants' favour.

The second strand of the strategy has been to expand judicial capacity. In May 2010 the number of judges and members in SSCS stood at 1,664. 95% were fee-paid. Although the high proportion of fee-paid judiciary affords some elasticity of supply, the scale of the increasing workload made it unrealistic to assume that there was sufficient spare capacity to populate

the higher level of sittings required. In 2009-10 the Tribunal had run 30,954 sitting days. In 2011-12 the target is 45,000. Taking into account that the annual turnover of SSCS judges and members, mainly through retirement, was about 7%, substantial recruitment was necessary.

The major source of recruitment has been through open competitions run by the Judicial Appointments Commission. These have brought in 167 new judges and 286 new medically qualified members. The drawback to JAC competitions is that it can take the best part of a year from initiating a recruitment exercise to the successful candidates being in post. A faster but smaller scale route is by way of assigning existing judges and members from other Chambers within the First-tier Tribunal. SSCS has secured assignments from every other Chamber. The end result has been to increase the complement of SSCS to 1,766 judges and members at September 2011, with a further 283 newly appointed office holders taking up post in December 2011.

The expansion of judicial numbers and improvements in judicial productivity have delivered the following output:

Annual Clearances (Disposals) of SSCS Appeals

2008-09	245,500
2009-10	279,300
2010-11	380,200
(projected)	
2011-12	460,000

¹⁰ Second Report of the Work and Pensions Committee "Decision making and appeals in the benefits system", HC 313.

"An Independent Review of the Work Capability Assessment" by Professor Malcolm Harrington. November 2010

"Right First Time". Administrative Justice and Tribunals Council, June 2011

Actual figures for 2008–09 to 2010–11 taken from Annual Tribunal Statistics Report for 2010–11 available at <http://www.justice.gov.uk/publications/statistics-and-data/tribunals/annual-stats.htm>.

Notwithstanding the substantial increase in the number of SSCS appeals cleared by the First-tier Tribunal, the proportion of onward appeals coming before the Upper Tribunal has dropped both in percentage terms (0.47% in 2009–10, 0.32% in 2010–11) and absolute numbers (from 1308 to 1212).

In the **Criminal Injuries Compensation** jurisdiction, there has been some fluctuation in the level of intake of appeals, while the volume of clearances has remained fairly stable. Over the past 3 years, intake has averaged 3,000 appeals a year and clearances have been on the increase. However, since April 2011 there has been a major change in the composition of the caseload. While the bulk of the caseload comprises appeals against decisions of the Criminal Injuries Compensation Authority (CICA) on claims brought by victims of violent crime under statutory, tariff-based schemes that were first introduced in 1996, there has remained a small number of cases brought under the earlier pre-tariff scheme. In 2011 the Ministry of Justice released funds to CICA to move forward these 134 outstanding, pre-tariff cases, with a target of finalising them within 18 months. Compensation in the pre-tariff cases is assessed on common-law principles.

Most involve applicants who have suffered catastrophic injuries during early childhood. In many of these cases, quantum is estimated to exceed £1m. In one recent case, the award exceeded £4m. Because of the complexity and importance of these cases, a Tribunal of 3 judges is convened to hear them. The consequent demand on judicial resources has inevitably led to an increase, though slight, in the waiting-times in tariff appeals.

In tariff appeals, effective use of the case management powers conferred by the Procedure Rules has resulted in more efficient use of judicial resources. Using the power in Rule 27 for the Tribunal to make a decision which disposes of the proceedings without a hearing, over 20% of appeals are now determined by a single judge on the papers. It is rare for a party to challenge the single judge's decision by exercising their right to apply for the decision to be reconsidered at a hearing. One consequence of effective case management is that only the more complex appeals are heard by a full Tribunal of 3 members.

Challenges to the Tribunal's decisions in CIC cases are made not by way of appeal but by judicial review. Since 2008 such judicial review proceedings have been dealt with by the Upper Tribunal. About 100 applications for permission to apply for judicial review were made in 2010–11. The decision of the First-tier Tribunal is quashed in a small minority of cases.

In the **Asylum Support** jurisdiction, the intake of appeals rose in the first part of 2010-11 as UKBA's "legacy programme" progressed. Under this programme UKBA had pledged to determine all outstanding asylum applications made prior to March 2007 by the summer of 2011. The Tribunal's performance kept pace with the programme by introducing innovative measures to increase judicial capacity, such as out of hours hearings.

**Annual Clearance of
AST appeals**

2008-09	2,000
2009-10	2,800
2010-11	4,200

The demanding deadlines that apply in this jurisdiction (filing notice of appeal within 3 days of the decision being challenged; the response filed within 3 days of receiving the notice of appeal; 1 – 5 days' notice of hearing; full judgment within 3 days of the hearing) militate against backlogs accruing.

As the volume of appeals declined in the later part of 2010-11, the substantial cross-ticketing of judges within the Chamber has meant that AST fee-paid judges could be redeployed to SSCS work.

AST has made increasing use of video-hearings for detained appellants and those too vulnerable to attend the hearing-centre. As it is a UK-wide jurisdiction, the facility has particularly helped appellants who live in Northern Ireland. The link is also used to allow appellants to have access

to legal advice from the Asylum Support Appeals Project. With UKBA decision-makers distributed across the country, the video-link allows decision-makers to present their own case.

In the past 12 months there have been 6 applications for permission to bring judicial review proceedings against AST decisions. Applications are dealt with by the Administrative Court. In five of the cases, the application was refused, withdrawn or settled by UKBA. In the sixth, the application has not yet been determined.

People and Places

In SSCS 2 Regional Tribunal Judges, Jim Wood (Wales and the South-west) and Ken Kirkwood (Scotland) retired at the end of 2011. Nick Warren, Regional Tribunal Judge for the North-west, has moved to take up the post of President of the General Regulatory Chamber.

In CIC, David Cook stepped down as Legal Adviser, on his appointment as a Queen's Bench Master. He is replaced by Christine Dodgson. Ian Walker retired as Training Adviser, having organised a very successful annual conference in 2010. He is succeeded by Jane Reynolds.

CIC currently has 72 judges and members. All save the Principal Judge are fee-paid. An exercise was launched by the Judicial Appointments Commission in December 2011 to recruit specialist members to meet a shortfall due to retirements over recent years.

Interesting Cases

Asylum support

In *AS/11/02/26112*, the Principal Judge (AST) considered the practice of the Secretary of State for the Home Department in dealing with applications for accommodation from persons on temporary admission to the UK. Section 4(1)(a) of the Immigration and Asylum Act 1999 confers a power on the Secretary of State to make full board accommodation available. The position of the Secretary of State is that she will only exercise the power in “exceptional circumstances” but has not published any guidance on what might constitute an exceptional circumstance. The Tribunal drew upon the principle of law that public authorities must act in a fair, open and transparent manner, and found that the Secretary of State could not demonstrate the validity of her decision in the absence of published guidance. (It is understood that the Secretary of State is now reviewing her powers with the intention of publishing her policy.)

In *AS/11/04/26681* the Principal Judge (AST) rejected an argument that filing an application with the European Court of Human Rights for “interim measures” (interim relief) automatically triggered entitlement to accommodation under s.4(2) of the 1999 Act, and instead set out a list of conditions that had to be met before entitlement could be accepted.

Social Security and Child Support

Stewart v Secretary of State for Work and Pensions, Case C-503/09 (ECJ, 21.7.11) is one of several recent decisions from the European Court of Justice, dealing with the compatibility with EU law of residence and presence conditions attached to GB social security benefits. In this case, Ms Stewart, a British national who has Down’s Syndrome moved with her parents to Spain. Her claim to incapacity benefit was refused on the ground of her absence from GB. The Court ruled that, while it could be legitimate for a Member State to require there to be, for the purpose of entitlement, a genuine link between a claimant and the State, the particular presence requirements set by DWP could not be imposed.

In *CPAG v Secretary of State for Work and Pensions* [2010] UKSC 54 the Supreme Court rejected the Secretary of State’s argument that he was entitled to recover overpayments of benefit under common law. Lord Brown said, “Part III of the (Social Security Administration) Act 1992 provides not just for an express entitlement to recover overpaid benefits in cases of misrepresentation or non-disclosure, but also for the whole process of determining the facts relevant to such entitlement, including making provision for appeals to a tribunal.”

Criminal Injuries Compensation

In *Jones v First-tier Tribunal* [2011] EWCA Civ 400 the Court of Appeal considered whether a person who had committed suicide by throwing himself in front of a lorry, resulting in injury to the driver of another vehicle, had caused a “criminal injury” within the meaning of the scheme. The Court remitted the case to the First-tier Tribunal to reconsider in the light of the Court’s judgment but it appears likely that the matter may go to the Supreme Court.

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

The jurisdictional landscape

The Health, Education and Social Care Chamber (HESC) consists of four jurisdictions. Two jurisdictions cover cases in both England and Wales, those of Care Standards (CS) and Primary Health Lists (PHL). Two cover cases in England only, Special Educational Needs and Disability (SEND) and Mental Health (MH). The Chamber President, His Honour Judge Phillip Sycamore and two Deputy Chamber Presidents provide the judicial leadership for the Chamber. Deputy Chamber President Judge John Aitken has responsibility for Care Standards (CS), Special Educational Needs and Disability (SEND) and Primary Health Lists

(PHL). Mental Health (MH), the fourth largest jurisdiction in the First-tier Tribunal) is led by the Deputy Chamber President Judge Mark Hinchliffe supported by Principal Judge John Wright.

Jurisdictional changes

Jurisdictional changes in the past year include a new power of appeal in SEND where a Local Authority does not amend a statement of special education needs on review each year. Whilst this specific route of appeal has not increased significantly it has led to a 30% overall increase in appeals as statements are redrawn more frequently. Also, a transfer of Social Worker registration and discipline from the General Social Care Council to the Health Professions Council means almost 50% of cases heard by the care standards jurisdiction will cease.

The mental health jurisdiction saw an increase in receipt of cases of more than 3% from 2009–10 to 2010–11, which was mostly due to an increase in Community Treatment (CTO) applications and referrals, fast-moving changes in patients’ status under the Mental Health Act that trigger new rights of application and automatic referrals to the tribunal, and an increased use of section 2 assessments even where the patient is well known to mental health services. Judicial and administrative managers are working together to deal with this increase, particularly in this time of competing pressures on the resources available.

In mental health there has been a continuing improvement in the performance of the work of the administrative support centre in Leicester. The centre's managers and staff have made excellent progress and together with the jurisdiction's senior judiciary have tackled a range of problems such as the receipt of late reports from doctors and hospitals, last minute cancellation of hearings and poor compliance with case management decisions. The duty judge scheme, whereby salaried tribunal judges work in situ with staff in the Leicester administrative offices answering queries and dealing with urgent matters, has brought many benefits to patients, users, staff and judges themselves. Better case management has reduced the number of adjournments by more than half whilst at the same time, improving the quality and timeliness of the written evidence submitted by parties. Two years ago the adjournment rate was around 20%, this is currently reduced to 7% in the Annual Statistics Report which is very good news for patients, as a recent *AJTC/CQC Report* into patients' experiences before the tribunal has made clear. Recent achievements and improvements in the mental health jurisdiction's performance were outwardly recognised with a series of visits to the Leicester offices by the Ministry of Justice Permanent Secretary Sir Suma Chakrabarti KCB and several non-executive HMCTS Directors including chairman Bob Ayling. Their interest and recognition was greatly appreciated.

Interesting cases

The mental health jurisdiction has seen a number of interesting cases this year. The Upper Tribunal, Administrative Appeals Chamber permitted a case (see *AH v West London MH NHS Trust* (2011) UKUT 74 (AAC)) to be held in public (cases are generally held in private). Where public hearings are considered it is important to keep in mind the need to keep confidential medical evidence and hospital records as private as possible and to be innovative in deciding how such hearings will be facilitated e.g. use of videolink in appropriate cases. This openness is also consistent with the policy of the Lord Chief Justice to promote transparency in the administration of justice.

In a separate case, the Court of Appeal has ruled that tribunals cannot impose conditions on a conditional discharge that would have the inevitable consequence of depriving a patient of their liberty. This decision overturns a recent Upper Tribunal decision and re-instates the earlier jurisprudence that the tribunal had followed for many years; see *SoSJ v RB & Lancashire Care* [2011] EWCA Civ 1608.

Using the Review powers

The mental health jurisdiction also continues to review its decisions, issuing a periodic digest of common errors made to learn from the experience of colleagues who are faced with difficult legal questions. This digest is available to all tribunal judges and members in the Law Library section of the members' private website.

Innovations

Because mental health hearings are predominantly held in hospitals rather than hearing centres (unlike other tribunal jurisdictions), use of secure email is of particular importance. Over 90% of judicial office holders in the mental health jurisdiction have currently signed up for a secure email account, which is provided by the administration to send case papers to panels in good time for the hearing. Work is taking place to roll its use out to key stakeholders such as the N.H.S, the Law Society and the mental health lawyers, which will save both time and money when sending papers and correspondence.

All future training lectures for CS, SEND and PHL will be recorded and where permission is given and they are considered suitable they will be made available on the web for all users who wish to look at particular topics. In addition, a series of legal update and procedural lectures will commence after SEND users' meetings, this will incur no cost to the jurisdiction but will offer a chance for users' groups to access expert knowledge for dissemination to all users.

The SEND jurisdiction has seen a number of innovations this year including:

- HESC was an early adopter of a pilot scheme to use the skills of legal advisors (qualified lawyers who provide legal advice to magistrates) from local magistrates' courts, when dealing with standard box work

requests in the SEND jurisdiction. The main benefits expected were consistency in orders produced and having a daily legal presence in the administrative office in Darlington to respond to requests and queries from staff and applicants. The pilot began at the end of June initially for 6 months with 2 legal advisers working on a rota basis to provide cover 5 days a week spending 5 days on tribunals business and the following week 5 days in magistrates' courts. It was decided that the legal advisers in the pilot scheme would adopt the title Registrar when working on tribunals business and retain the name legal advisers when they work in magistrates' courts for consistency in the different jurisdictions and to define the roles.

- Increased mediation uptake due to the inclusion of a letter from the Deputy Chamber President to make appellants aware of this opportunity; however it is hoped to increase the uptake by piloting a directed mediation information call to the mediators to enable appellants to make an informed choice about this option. Parents will be required to call a firm of independent mediators to discuss how mediation works, before deciding upon whether they wish to take part I mediation.
- Provision of a LEAN event to Local Authorities who have few appeals and are consequently hesitant and inefficient which will be aimed at improving their procedures

and thus their dealing with us and appellants [Lean working describes a methodology, based on 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 wasteful activity from a system and concentrate effort on what matters to the user and improves their experience of the organisation.]

- Following the adoption of a new computer system, we will begin to report upon matters such as late settlement of cases with the ability to identify those areas where concession is made repeatedly enabling improvement in executive decision making, an important aim of Tribunals identified within the Leggatt report.
- Provision of an expedited service for appellants whose children are to change school in September so that a final decision can be made in time for the new school year. This year it is hoped to include all phases of transfer rather than concentrating on the secondary transfer phase.

In addition, Care Standards have agreed memoranda of understanding with Ofsted, the Care Quality Commission and the Department of Education to ensure that those cases which have resulted in an appellant having his business closed on an emergency basis can obtain a final hearing within 10 working days.

Lastly, Primary Health Lists and Care Standards share a digest of cases heard at first instance published twice each for the assistance of users, though some paper copies are available, the document is placed on the jurisdiction's section of the Justice website <http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/care-standards/care-standards-digest-1.pdf>.

People and places

HESC welcomed three new salaried tribunal judges this year. Meleri Tudur became SEND lead judge in January; Hamish Hodgen joined Mental Health in April and Melanie Lewis transferred from the First-tier Tribunal IAC to HESC in September 2011 sitting primarily in SEND but also in CS, and PHL.

The chamber has benefited from both cross-ticketing and assignment this year allowing both cross jurisdictional and cross Chamber sitting. "Assignment" is the statutory term used to describe the function of locating a judge or member within the tribunal structure by placing him or her in a chamber. "Ticketing" is a non-statutory term used to describe the function of authorising a judge or member to undertake a defined category of judicial work within a chamber. "Cross-ticketing" is an expression sometimes used to describe authorising a judge or member, who is ticketed to undertake work within one jurisdiction in a chamber, to undertake work in a different jurisdiction in that chamber.

Following “expressions of interest” exercises, two salaried mental health tribunal Judges were cross ticketed to sit in SEND and six fee paid HESC judges (two in mental health, two in care standards and two in primary health lists) were cross ticketed to sit in the SEND jurisdiction. Following a further expressions of interest exercise, over twenty judicial office holders have been assigned to sit in mental health cases.

Eight mental health salaried tribunal judges have been authorised to sit in Restricted Patients cases in January 2011 and an additional four salaried judges were authorised in December 2011, which allows these expert and professional full-time mental health judges to take some of the caseload from those already authorised to hear Restricted Patient cases. These are Circuit Judges and Recorders the former who, in consultation with their Presiding Judges, give the jurisdiction 15 to 20 days a year from their busy Crown Court schedules to hear this vital work as well as Recorder QCs.

Thirty specialist members have been recruited to the SEND jurisdiction, and five members have been transferred using the Senior President’s assignment policy from other jurisdictions to maintain the expertise level and to replace retiring members.

Five dentists have been recruited to PHL to replace not only those retirements but also to sit on any appeals arising from the extension of CQC powers to Dental practices from April 2011.

Administrative support

The administrative offices for the SEND, CS and Primary Health Lists jurisdictions at Mowden Hall, Darlington were relocated recently. Although still within Mowden Hall, staff have moved to better offices within the complex.

Following the integration of HMCS and the Tribunals Service in April and the resultant reorganisation of the administrative regional structures, all four HESC jurisdictions now come under one senior administrative manager (previously mental health came under a different regional area). Jason Latham took up the post of Civil, Family and Tribunals National Back Office Manager in the summer. His remit includes both HESC administrative centres and both Karen Early, senior operational manager for mental health and Kelly Swan, senior operational manager for CS, SEND and PHL report to Jason, which is a welcome streamlining of the administrative management.

War Pension and Armed Forces Compensation Chamber: Chamber President Judge Andrew Bano

The main feature of the Chamber's jurisdictional landscape this year has been the new Armed Forces Compensation Scheme, which came into force in May 2011 in order to implement the recommendations of the Boyce Review. The 2011 Scheme has introduced a number of important new concepts, affecting particularly compensation for the most serious types of combat injury.

In accordance with our integrated judicial studies arrangements, judicial training in the new scheme was carried out for members of this Chamber and for members of the Pensions Appeal Tribunals in Scotland and Northern Ireland at a training conference which was held in Edinburgh. The conference followed an earlier tri-jurisdictional training event in Belfast which was devoted exclusively to a study of different types of psychiatric injury, which are an increasingly prominent feature of our work.

The success of our integrated judicial studies arrangements owes much to the efforts of our first Judicial Studies Co-ordinator, Judge Kenneth Mullan, who was appointed Chief Social Security Commissioner and President of the Pensions Appeal Tribunal in Northern Ireland in June 2011 in succession to His Honour Judge John Martin QC.

We congratulate Judge Mullan on his new appointment and record our thanks to him for his work in establishing the new judicial studies co-ordinator post. Judge Mullan's successor in this role is Doctor Patricia Moultrie, who sits as a fee-paid medical member both in the WPAFCC in England and Wales and in the PAT in Scotland. We wish her every success in this important work.

The Chamber has taken full advantage of the more flexible procedural rules which were introduced under the TCEA 2007 in dealing with the challenges presented by appeals brought by ex-service men who may have been exposed to ionising radiation during the atomic bomb tests of the 1950s. Rather than being heard separately, as was the practice under the previous rules, a block of ionising radiation cases is being case managed by one judge who will also preside at the hearing of the appeals. The complex scientific evidence and national security issues in these cases have given rise to difficult case management issues, but the decision of the Upper Tribunal in *LS v Lambeth (HB)* [2010] UKUT 456 (AAC) has provided a speedy means of testing the legal principles underlying case management directions in cases of this kind without the need to wait until the cases have been finally heard, or resorting to separate proceedings for judicial review. Other cases involving common issues of fact, notably those arising out of the deaths of former merchant seamen from septicaemia, are also being case managed and heard together.

Immigration & Asylum Chamber: Chamber President Judge Michael Clements

Immigration and Asylum continues to be a topic generating wide public and political interest.

The prediction of workloads remains an imprecise science however, HMCTS and UKBA have worked together to provide more accurate forecasts of likely workloads and matching court and judicial profiles. There has been a steady reduction of appeals received into the First-tier Tribunal Immigration & Asylum Chamber. In 2008-09 we had 188,700 receipts. This year (2011-12) it was forecast at around 140,000 although actual receipts from April 2011 to September 2011 showed a further reduction giving an estimated projection to March 2012 of approximately 125,000 appeals. Although there has been difficulty in some Embassies and High Commissions in processing work due to political unrest in those countries we are assured that there is presently no backlog of work at overseas posts and in-country processing centres. Appeals for all case types have seen a decrease with the largest downturn in managed migration, entry clearance and family visit visa work.

In addition, the introduction of fees in December 2011 may have a further significant impact on our workload. It is anticipated that the number of appeals may reduce by approximately 12% compared to the forecast for 2012-13.

This year the first tier has published guidance regarding the grant of bail.¹¹ This has radically changed the way we deal with renewals of bail hearings and reaffirms the basis on which bail should be granted. Bail Application receipts in 2010-11 amounted to 10,864 of which 93.21% were listed within 6 days.

Presidential guidance has been published on the subject of preserving the anonymity of appellants and witnesses.¹² This was accompanied by comprehensive training notes for Immigration Judges. I take the opportunity to thank the Training Judges for their continued help and support in preparing the training notes and delivering training at the hearing centres.

There has also been joint Presidential guidance with the Upper Tribunal regarding the procedures relating to children and vulnerable adults,¹³ the title to be afforded to Judges of the First-tier and Upper Tribunal,¹⁴ and guidance as to fee awards.¹⁵

11 <http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/immigration-and-asylum/lower/bail-guidance-immigration-judges.pdf>

12 <http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/immigration-and-asylum/lower/guidance-2-2011.pdf>

13 <http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/immigration-and-asylum/lower/ChildWitnessGuidance.pdf>

14 <http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/immigration-and-asylum/upper/joint-presidential-guidance.pdf>

15 <http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/immigration-and-asylum/upper/joint-guidance-4-fee-awards.pdf>

We have again supported the Upper Tribunal by the Resident Judges and Designated Judges sitting in the Upper Tribunal on a regular basis, as well as arranging for deputies of the Upper Tribunal who are also salaried First-tier judges to sit in the Upper Tribunal as required. We offer our congratulations to those First-tier Judges who were successful in the Upper Tribunal competition most of which have now taken up their positions.

There have been two First-tier Asylum and Immigration Chamber JAC competitions this year. The first was for five Designated Judges who have now been appointed; two in London, one in Scotland and two in the English provinces. A fee-paid competition has now been completed and it is intended to appoint 18 fee-paid First-tier Judges now, most of whom will be assigned to the Hatton Cross hearing centre. It is intended that these judges will be trained in January 2012 and begin sitting shortly thereafter.

Developments in Scotland, Wales and Northern Ireland continue to be of huge interest to HMCTS especially for those tribunals which are at present national chambers.

The Immigration and Asylum Chamber judiciary over the years has acquired a wealth of skills dealing with one of the more difficult jurisdictions. A substantial number of our judiciary also sit in other tribunals, as well as in Courts at both Deputy District Judge and Recorder level. We aim to utilise these various skills and identify good practice.

Developmental panel sittings have been reintroduced, enabling Designated Judges to sit with members of their groups. These sittings provide mutual feedback of good judicial skills and determination writing. Through the developmental panels we hope to attract volunteers from amongst both full-time and part-time Judges to act as mentors and to be recognised as such at their hearing centres as reference points for judges seeking advice, information or informal training.

Whilst the Upper Tribunal and First-tier Tribunal separated in February 2010 I am pleased to report there are still a number of joint training courses. There continues to be close liaison between the Presidents and I would particularly thank Mr Justice Blake for his support.

Despite the inevitable impact of the recent changes and budgetary constraints judicial performance remains the main focus for the First-tier. Pilot schemes including the giving of extempore judgements, Saturday sittings, and case management reviews by papers, attendance or telephone are all yet to be fully evaluated but show promise.

We shall be looking again at the digital audio recording which is closely linked to the giving of extempore judgements which has in turn reduced promulgation times. It also provides greater protection for judges against complaints of misconduct and bias.

Since the implementation of the Upper Tribunal, applications to the First-tier for permission to appeal have been dealt with by the Upper Tribunal in Field House and determined by the Judges of the Upper Tribunal sitting as First-tier judges. In January 2011, with the consent of the Senior President and the active support of the President of the Upper Tribunal a pilot was commenced with selected salaried judges of the First-tier being trained to deal with this work. Further judges of the First-tier are now being trained and it is intended that in the February 2012 this work will fully devolve into the First-tier.

Finally I would like to pay particular thanks to Judge Libby Arfon-Jones, acting President of the First-tier Immigration & Asylum Chamber until April 2011, as I now see how quietly and efficiently she dealt with the formidable challenges especially the transfer of the AIT into the First-tier and Upper Tribunals. I wish her well in her new judicial undertakings.

Tax Chamber: Chamber President Judge Colin Bishopp

I begin by recording my gratitude to Sir Stephen Oliver for the legacy he left to me when he retired as President of the Tax Chamber in April 2011, and I succeeded him. A measure of that legacy is that although, two years into a new system which represented a radical change to

the manner in which tax appeals had previously been handled, and when the time to take stock had arrived, I have identified very little which warrants a change.

Until very recently our intake of tax appeals was running at a steady but slowly increasing rate (our intake of MPs' expenses appeals has remained static at zero). We are now experiencing a noticeable increase in tax appeals, it seems because of a change in HMRC's approach to reviews of their decisions in those cases in which relatively small amounts of tax, or the more modest penalties, are in issue. The proportion of the new appeals we receive which raise the same issue as existing cases, some proceeding in this Chamber, others in the Upper Tribunal or the courts, has also increased markedly, with the result that, currently, as many as two thirds of our entire case-load is stood over behind lead appeals. The individual groups of stood-over appeals may comprise a dozen or even fewer, but some extend to hundreds of cases. The issues range from whether golf club green fees attract VAT to the tax treatment of complicated schemes involving offshore funds.

A continuing problem, one we have faced for several years, is finding the resources, in judges, members and accommodation, to enable us to deal with the large number (still in the hundreds) of so-called missing trader appeals we have. These cases were mentioned in Sir Stephen's report last year; we have recently

been hearing as many as five such cases at a time. They are very demanding: most last two, three or even more weeks; they require large hearing rooms; the volume of documentation is enormous; and the decision-writing is very demanding. One real, and for us very welcome, benefit of the reform of the tribunals and, more recently, the merger of the courts and tribunals services is that hearing rooms of an adequate size and with suitable facilities are now relatively easy to obtain, but we have a continuing difficulty in finding sufficient judges and members who can devote the necessary time to such long cases.

Fortunately some relief is at hand. As in previous years, judges of the Tax and Chancery Chamber of the Upper Tribunal have also sat in the Tax Chamber, and their doing so has considerably eased the pressure. However, as Mr Justice Warren has mentioned in his report about the Tax and Chancery Chamber, a number of retirements in relatively quick succession has led to a marked shortage of salaried judges, and in consequence to a recruitment exercise for that Chamber, to which was coupled the recruitment of more salaried judges of this Chamber. Overall, the salaried judge-power of the two Chambers will have increased by five by the end of 2011 to a total for both Chambers, including the Presidents, of 11.

Numerically, the bulk of our workload comprises appeals which would formerly have been heard by the General Commissioners.

part, to be gaining the confidence of those who were accustomed to the very informal atmosphere of the Commissioners. One element of our approach (enshrined in our rules) has been to categorise our appeals in order, among other things, that the procedural requirements imposed on the parties are proportionate to the money at stake. I have embarked on some minor adjustment of the categories (some has been forced by legislative changes, but others have been made in the light of experience), and am issuing what I hope will be clearer and simpler guidance, with a view to increasing our “user-friendliness” and making sure that our procedures are no more formal and demanding than they need to be.

Inevitably, an increasing intake of new cases coupled with the standing-over of large numbers of those same appeals, sometimes for several years, has had an impact on our ability to see cases through from start to finish within overall target times. However, our record in the smaller cases, very few of which are stood over, remains good, and if those cases are taken in isolation we are performing well. We are conscious that when lead cases are decided, we may have large numbers of the cases now stood over behind them to process to a hearing, but we are confident we will be able to do so.

We have a good team of judges and members, and are supported by an excellent, committed staff. My first six months as President have been a real pleasure.

General Regulatory Chamber: Chamber President Judge Nicholas Warren

My first duty is to record the retirement of John Angel to whom thanks are due for nursing the GRC into existence. He spent more than two years as Acting President and had judicial responsibility for abolishing more than half a dozen diverse tribunals to form the chamber as well as for the introduction of a new jurisdiction arising from civil sanctions in environmental protection. John now remains with us as Principal Judge (Information Rights).

The GRC continues with its varied but comparatively small caseload. There has been a significant increase in information rights appeals, probably related to improved productivity in the Office of the Information Commissioner. By contrast the Local Government Standards caseload has declined. It appears that the government's signal that it intends to repeal the legislation has led local committees to seek to deal informally with the less serious incidents.

Environment cases have been delayed pending UK government discussions on the use of civil penalties. This moratorium does not affect matters controlled by the Welsh Assembly which has introduced some new appeal rights.

In October the Council for Licensed Conveyancers became an approved regulator

for the delivery of legal services through “alternative business structures”. Appeals will lie to the GRC against their licensing decisions.

Is the GRC anything more than an oddity – a place to park cases which do not seem to belong elsewhere? It certainly looks different from the great chambers of, for example, immigration and social entitlement. It must work differently too – and a rationale for its workings is beginning to emerge.

First, it does make sense to have a place where new smaller jurisdictions can “start off”. In the past, it has often been necessary to create a new tribunal when Parliament created a new right of appeal with that tribunal at risk of later isolation especially if work was less than predicted.

Now the GRC can offer an immediate home. Administrative staff are in place. There is a judicial structure, with links to mainstream tribunal training, and other forms of support. There is access to premises, IT systems, and a set of procedural rules.

The GRC must therefore develop an expertise in the efficient introduction of new rights of appeal, especially from regulators. This means strong links with the MoJ's new jurisdictions team.

Early discussions on the nature of an appeal right can be helpful. Although the regulator will be in some sense an arm of the state, they will often be unfamiliar with appeal systems. There may be a tendency to reduce the risk

of challenge by restricting the right of appeal. Might this merely, however, stimulate expensive judicial review challenges or encourage wasteful argument as to whether particular arguments could be fitted in to particular grounds of appeal? The GRC can advise on the appeal rights proposed.

It will be essential also to enable the regulator to use the appeal system with confidence. In ordinary cases, we should be true to the **Leggatt** ideal that it should not be necessary for parties to pay for legal representation. We should reach agreement on the content of responses, minimising the amount of extra work the regulator will have to do, and encouraging a positive approach to the disclosure of all relevant material.

We need to discuss proportionate solutions to difficulties so that regulators are flexible enough to concede a good case and strong enough to ask for hopeless cases to be struck out.

We need to discuss with the regulator whether any specialist members are required and then cooperate with the JAC for their recruitment. The regulator may also be able to provide suggestions for sources of policy information to be included in our induction training along with the substantive law.

Training is important for established jurisdictions too. In the next two to three years, working through the new Judicial College the GRC will hope to borrow and adopt training

modules, already used by the larger chambers, in skills like judgement writing and questioning techniques. Small tribunals could not develop these alone.

Another advantage for the older jurisdictions, in joining the GRC is to be brought within the supervision of the Upper Tribunal. Until now appeals to the High Court or the Court of Appeal from our tribunals have been rare events. The Upper Tribunal is much more user friendly and I welcome the greater scrutiny this brings to our decisions. It will be some years before the impact of this aspect of tribunal reform can be properly assessed. It may become less common, for example, for previous decisions of the First-tier Tribunal to be referred to in subsequent hearings.

The GRC rules permit the transfer of some charity and information rights cases to the Upper Tribunal. Here too, we are still feeling our way. On the one hand, it seems sensible for such cases as Attorney General references to go straight to the Upper Tribunal. On the other hand, it would be wrong automatically to send upstairs any case involving an important point of law. The parties might be quite satisfied with a First-tier Tribunal decision and, in any event, the development of the law can often benefit from a full decision at first instance.

The GRC generates only a fraction of the case load of the Upper Tribunal. Nevertheless the two Chamber Presidents there involved have been careful to establish proper arms length

channels of communication with the GRC and I am grateful to them for doing so.

The GRC jurisdictions make special demands on administrators who have inherited different working practices from the old tribunals. They have to be flexible and creative whilst still adhering to important common standards. Tribunal staff generally are used to “first time” appellants who need guidance through the system. In the GRC, public authorities who may use the tribunal only four or five times a year may need similar support. With this in mind, we organised a meeting for GRC respondents in May, which was well received.

I wish to thank GRC administrators in London and in Leicester for the way they have met these challenges this year, including the transfer to Leicester of the work relating to Consumer Credit Licences, Estate Agents and Claims Managers. The challenge now is to try to develop a core administrative model. The more we can do in common, the simpler things will be for staff and for the tribunal user. We will start by looking at urgent hearings, the allocation of tribunal members to cases and appeal forms.

Chapter 3

Employment

Employment Appeal Tribunal: President Mr Justice (Nicholas) Underhill

The workload of the Employment Appeal Tribunal (EAT) has continued to increase in the past year, though at a slightly slower pace – 2,048 “potential appeals” received, as against 1,963 in 2009–10. These are described as “potential” because a high proportion – just under 50% – turn out when examined in the initial sift to raise no arguable point of law and so fall outside the EAT’s jurisdiction; and a number of others are out of time or do not proceed for other reasons. The sift process remains essential to the efficient operation of the EAT. A challenge was mounted last year to the vires of the relevant rules in connection with an appeal proceeding in Scotland. We believed that the challenge was ill-founded, and the Ministry of Justice applied to be joined in the proceedings. The challenge was eventually dismissed in June by the Inner House of the Court of Session: see *Francis v Pertemps* [2011] ScotsCS CSIH 40.

As for the disposal rate, the overall total of potential appeals disposed of was 2,003, so that we are just about keeping up with the rate of inflow. As for substantive appeals, the number disposed of was 573, as against 574 last year. That was achieved against a background of substantially fewer sitting days (as a result of

temporary factors affecting the availability of sitting judges).

There have been no marked changes in the distribution of work as between different types of case. Last year I noted that 32% of appeals proceeding to a full or preliminary hearing are concerned with claims of unfair dismissal and 24% with discrimination claims (of which the largest number concerned disability discrimination): the proportions are virtually the same this year. It is worth noting, however, that about 28% of appeals are concerned primarily with matters of Employment Tribunal procedure. Contrary to my over-optimistic prediction last year we have continued to see a number of appeals generated by the Dispute Resolution regime, though the repeal of the 2002 Act means that the end must now be in sight.

There have been some changes of judicial personnel in the current year. Judge Tony Ansell and Judge Robert Reid QC, who have for many years sat with distinction as temporary additional judges of the EAT, have relinquished that role. Partly to compensate, Judge David Richardson is now sitting for half the year.

Three significant pieces of news affecting, or potentially affecting, the EAT all strictly speaking fall outside the period covered by this report; but they should be mentioned here.

First, the Ministry of Justice has given up the lease on Audit House, and the EAT has from mid-December moved to Fleetbank House,

which is just off Fleet Street. Though the premises are unprepossessing from the outside, they offer better working conditions for staff and better facilities for parties. A good deal of work has gone into seeing that the courtrooms are well designed despite the constraints imposed by the building, and I believe that the change will be for the better.

Secondly, my term as President came to an end at the end of the year. I hope that my successor, Mr Justice Langstaff, finds the work as rewarding as I have done. I know that he will be very well supported by the Registrar and Deputy Registrar and their staff.

Thirdly, proposals are likely to be published fairly soon for the future of the EAT (together with other tribunals) in Scotland as a result of the merger of the Tribunals Service with the Court Service of England and Wales. Lady Smith, who as a Judge of the Court of Session hears the great majority of Scottish EAT appeals, is fully involved in the current consultations in her role as Chairman of the Scottish Reserved Tribunals Forum.

Employment Tribunal (England & Wales): President David Latham

The Jurisdictional Landscape

Again this year has seen both additions to and major changes in Employment Law. Many of

the provisions of the Equality Act 2010 were implemented with effect from 1st October 2010 but the transitional provisions were such that the legacy legislation continued to apply in many claims that were either then with the Employment Tribunals or which continued to be lodged with the Employment Tribunals. It is only in recent months that the full effect of the Equality Act is becoming apparent. The majority of new claims are now under the provisions of this new piece of legislation. There were changes in the legislation when compared with legacy statutory provisions. Only time will tell how these are interpreted and have effect. Some provisions of the Act are still to be brought in, although we now understand that a few of these provisions are not to be implemented by this Government. Additionally, the Agency Worker Regulations 2010 came into force on 1st October 2011. Whilst this has caused concern amongst the business community we are yet to see what impact this has on our work. There have been further additional small jurisdictions added to the portfolio that is before the Employment Tribunals and there has been the usual impact of European Law and decisions of the European Court of Justice. Further, the administration of the Gangmasters appeals has now also been transferred to the Employment Tribunal administration.

Trends

It has been said before that Employment Tribunals are a barometer of the British economy. As previously reported, from summer 2008 through to the end of the financial year 31st March 2010 the volumes of claims lodged had increased substantially – both single and multiple claims. This had caused considerable pressures on the system. Since December 2009 the Employment Tribunals had seen a progressive reduction in the intake volume of cases (both singles and multiples) through to the end of the financial year on 31st March 2011. It had not however returned to the pre recession levels of intake of claims. In the financial year ending 31st March 2011 Employment Tribunals in England, Wales & Scotland had an intake of 218,100 claims made up of 60,600 single cases and 157,500 multiple cases. This was an overall reduction of 7.55% from the previous financial year. Fortunately, with the increase of judicial resource now available due to successfully completed recruitment exercises, the Employment Tribunals were able to increase the number of session days held in order to address some of the backlog of cases built up as a result of the volume increase during the recession.

In the first 6 months of this financial year (2011/12) the number of multiple claims has dropped by 19% but the number of single case intake has remained at about the same level or slightly above the equivalent period in the last financial year. The current economic climate

has clearly contributed to this high level of claim receipts. What trend this is showing is not yet clear. The primary volume of work for the Employment Tribunals is the single case intake.

Workload

The budget allocated to Employment Tribunals this financial year has been reduced and therefore there will be an inevitable reduction in the session days sat with a possible consequential effect on performance. The current live caseload in the Employment Tribunals as at 30th September 2011 is 506,800 (England, Wales & Scotland), a further increase on the previous year. However, a substantial proportion of these are multiple cases many of which are Equal Pay or British Airlines cases which are distorting the figures. The numbers of single cases remaining as live caseload has been reducing progressively during the last year.

However the Equal Pay cases which are a feature of the caseload of Employment Tribunals continues to prevail. There are large volumes of National Health Service, Local Authority and Central Government claims which are proving as difficult as always but the number of private sector Equal Pay claims has not increased over recent years. These cases are still exercising the Employment Appeal Tribunal with complex areas of law on appeal. There is currently nothing on the horizon that sees these cases determined and reducing in a short period. We continue to receive new claims in this area.

One other feature of the caseload has been the “airline cases” ie cases linked to or potentially affected by the ultimate outcome of the case of *Williams & others v British Airways plc*. The cases largely repeat the “multiple” intake on a quarterly basis which distorts the figures quite substantially. These cases have recently been the subject of an important European Court of Justice decision but the matter now has to be heard further by the Supreme Court before we can anticipate any conclusion in this area.

Developments

The substantial increase in workload and the constraints on resources has caused the Employment Tribunals to consider many process changes or changes in procedure that would assist matters. Case management is an area of central focus. The use of case management agendas by parties and representatives in advance of case management discussions and as a formatting for case management discussions and their outcome, and further explanatory documents for parties that have been introduced in this year are showing substantial improvements in the way that these matters are dealt with by parties and the amount of information that is agreed and provided to the Tribunal. This is making the process area simpler and contributing to earlier determination of matters either by way of alternate dispute resolution through Acas and others or earlier determination at hearing.

Judicial Mediation

The Judicial Mediation scheme which has been operating for some time in England and Wales continues to be successful with a settlement rate of between 66-70%. There is considerable support from users in what is believed to be an effective alternative form of dispute resolution in addition to the conciliation facilities of Acas and the formal determination by a tribunal. Active Case Management is also making a substantial contribution in this area which is reflected in the disposal rate which has been showing a marked increase over recent times.

People and Places

Since the last Senior President’s annual report two Regional Employment Judge’s have retired (both reappointed as Fee Paid Employment Judges). They are Douglas Crump who retired on 31st March 2011, Fiona Monk was appointed in his stead as Regional Employment Judge in the Birmingham Region with effect from 1st July 2011, and Christopher Tickle who retired as Regional Employment Judge in Bristol on 31st May 2011, Jonathan Parkin was appointed to replace him, again from 1st July 2011. Eight further Salaried Employment Judges were appointed between 1st June 2011 and at the current time although we were not able to fill the full compliment required. A further 53 Fee Paid Employment Judges were appointed in November 2010 which brought the Fee Paid compliment to an effective level. The Salaried

Judge compliment is still short and further retirements have contributed to that shortage.

Sittings restrictions on both Fee Paid Employment Judges and Non Legal Members are matters that are being dealt with at judicial management level on a daily basis in order to mitigate as far as possible the effect on workload. Since the last Senior President's report there have been 7 Fee Paid Employment Judge retirements and 8 Salaried Employment Judge retirements (all of whom have been reappointed as Fee Paid Employment Judges). It is sad to report two deaths of Employment Judges whilst still in "service" being Carole Green in November 2010 and David Leahy in March 2011. The current judicial resource level in England and Wales is 12 Regional Employment Judges as part of a compliment of 383 Employment Judges and 1,491 Non Legal Members.

However the Employment Tribunals have enjoyed the benefit of the expanded Tribunal Service and now the expanded Her Majesty's Courts and Tribunals Service by utilising premises throughout the HMCTS estate. This has been particularly beneficial. The tribunal was able to join in operating from the new premises at Havant (formerly a Magistrate's Court) and has expanded into other venues including Colchester. How these arrangements will in the future operate given the new cluster arrangements implemented as part of the HMCTS administrative structure is yet to

be seen but ongoing discussions between the administration and the judiciary will no doubt resolve any early problems.

Future Developments

Besides the "bedding in" of the new administrative arrangements for HMCTS and the changes envisaged in the structure of the judiciary, details of which are awaited, the Employment Tribunals are currently the subject of a number of Government consultations which may effect their methods of work, jurisdictions, rules, procedure and to a degree their structure and volume of work. A large consultation on Resolving Workplace Disputes closed in April 2011. The Government's response to the consultation has now been published which shows an intention to proceed with many of the proposals consulted upon including early dispute resolution through Acas before a claim is lodged with the Employment Tribunal, with the intention of reducing the number of claims heard at Employment Tribunal. In addition, the Government has asked Mr Justice Underhill to lead a thorough review of the Employment Tribunal Rules (principally Schedule 1 of the 2004 Regulations). Work on that review has started with a report to the Minister expected in April/May 2012. That consultation also indicated that there would be a further consultation on the charging of fees in Employment Tribunals. The consultation has now been published. The closing date for responses to the consultation is March 2012.

There have also been further consultations involving parental rights, working time and equal pay audits. All these consultations will affect the way Employment Tribunals operate, although it is anticipated that the changes will take place over a period of two or three years.

This is a period of great political activity. Those activities will undoubtedly make substantial changes in the medium and long term future of the Employment Tribunals which when coupled with changes that are constantly emanating from Europe, means that the picture for the Employment Tribunals over the next few years is one of change that must be managed whilst continuing to provide as good a service as possible to the public.

Employment Tribunal (Scotland): President Shona Simon

The jurisdictional landscape

Working within the employment tribunal system would not suit those who are averse to change: having faced major (and notably unsuccessful) statutory change to the employment dispute resolution system in 2004, most of which was reversed in 2009 (albeit the legal aftermath continues to be felt, particularly in equal pay cases), we are once again faced with the prospect of significant change, following on from the government’s response, issued in November 2011, to the “Resolving Workplace

Disputes” consultation exercise. Amongst the most significant of the changes to be introduced is the power for unfair dismissal cases to be heard by an Employment Judge sitting alone without lay members (due to be introduced with effect from 6 April 2012, subject to secondary legislation being implemented). In each case a decision will require to be made by an Employment Judge, taking account of the views of the parties, about whether the case is one in which members should be appointed.

In its consultation response the government also confirmed that it intended to proceed with the idea of introducing fees in the Employment Tribunal. While there was no consultation on the issue of whether fees should be introduced into the Employment Tribunal it is nonetheless evident, from user group feedback and other sources, that the idea is a controversial one. Some flesh has now been put on the bones of the fee charging proposal as a result of the consultation paper issued on 14 December 2011, “Charging Fees in Employment Tribunals and the Employment Appeal Tribunal”. There is likely to be considerable debate about a number of the ideas put forward for consideration but it is impossible at this stage, given the limited information available, to predict the impact of the introduction of fees upon the jurisdiction as a whole, including the possible impact on caseload. What is certain, however, is that Employment Tribunals will continue to be newsworthy for this reason, amongst others, in the coming year.

Cases/trends

When one considers statistical information regarding performance for the last two complete reporting years a positive picture emerges, which supports the proposition that both staff and judiciary have continued to perform to a high standard. While the overall number of cases accepted by Employment Tribunals (Scotland) to March 2011 held fairly steady the number of judicial session days increased by almost 14% on the previous year. Performance, in terms of the key performance indicators, significantly improved. An offer of Hearing was made within 26 weeks of receipt of the claim in 88% – similar to the previous year) of cases; a Hearing actually took place in 70% of cases within the target period and judgments were issued within 4 weeks of a Hearing in 79% of cases.

Perhaps unsurprisingly, cases relating to unfair dismissal and redundancy continue to form a large part of the workload of Employment Tribunals in Scotland. There has been a marked rise in the number of cases in which it is alleged that employers have failed to inform and consult in redundancy situations. However, there have also been significant increases in unlawful deduction of wages claims and in cases involving allegations of age discrimination, sex discrimination and breach of the Part Time Worker Regulations.

There continue to be a significant number of multiple claims arising out of insolvency situations, many of which involve claims

being lodged in Scotland and in England and Wales. There has been regular liaison and close cooperation between the ET Presidents north and south of the border regarding transfer of cases to a single location with a view to ensuring that they are handled in the most efficient way possible, bearing in mind the needs and interests of all parties concerned.

The large volume of equal pay claims against local authorities and the NHS in Scotland (around 60,000 as at October 2011) continues to make significant demands upon resources and to generate interesting points of law and procedure. In *City of Edinburgh Council v Wilkinson and Ors* [2011] CSIH 70 and *North and Ors v Dumfries and Galloway Council* [2011] CSIH 2 the Inner House of the Court of Session considered the fundamental question of the characteristics which had to be displayed by male employees for them to be appropriate comparators in these cases (issue currently under appeal to the Supreme Court). In *Aitchison and Ors v South Ayrshire Council* [2011] CSIH 72, also now under appeal to the Supreme Court, the Inner House had to consider whether provision of lists of names on a CD amounted to specification “in writing” of the names of employees with a grievance about equal pay and whether it was necessary for all those on such a list to actually have such a grievance or if it was enough that some of them simply might or should have such a grievance.

Overall, the progress of equal pay cases through the system has remained slow, as a result of the

number of preliminary and procedural points which have been raised on behalf of parties and which, once decided, are appealed. One only has to look at reported decisions of the Employment Appeal Tribunal for evidence which supports this contention. However, some progress has been made over the last year in terms of considering the substantive issues raised by this mass litigation. Hearings have been fixed over the last year to consider the defences put forward by a number of local authorities to these claims and to consider challenges to some of the job evaluation schemes adopted by local authorities. Many of these cases involve painstaking analysis of very detailed evidence including expert opinion.

More generally, despite the repeal of the 2004 dispute resolution regime, a considerable amount of judicial time (within and outwith the context of hearings) is still taken up in dealing with procedural issues. For example, if one was to look at the number of equal pay claims in Scotland there would appear to have been a rise of several thousand in the past few months. However, that relates to a challenge by a respondent to the use of the multiple claim form for submission of claims on the basis that it was alleged the relevant claims did not arise out of the “same set of facts” (Rule 1(7) Employment Tribunal Rules of Procedure). This led to the same claims subsequently being resubmitted (thereby creating thousands of duplicate claims) on individual claim forms, pending a judicial determination (now delivered) on the matter.

Other cases that illustrate the scope (and sometimes high profile nature) of employment tribunal work in Scotland include a successful claim by two lesbian police officers for discrimination and harassment; an appeal against a prohibition notice served by the Health and Safety Executive against an individual preventing him working as a fairground engineer; a case involving consideration of whether a football coach in a high profile Scottish team was constructively dismissed when he was told he would no longer pick the under-19 team; a claim brought by a man alleging he had been discriminated against on the ground of his wife’s pregnancy and an unfair dismissal claim brought by a civilian police support worker who was dismissed when it was found that he had not disclosed to the police the whereabouts of his brother for whom there was an arrest warrant.

Innovations

Evening sittings continue to be run successfully in the Glasgow Employment Tribunal. These run from 5.30 to 7.30 on two evenings a week and have been an effective means of freeing the day lists for longer, more complex cases, as well as being popular with employers and employees who do not need to take time away from the workplace during the day to attend a hearing. Although this initiative originally was directed at unrepresented parties, several representatives have indicated a willingness to attend in the evening and the list is no longer restricted to unrepresented parties.

Judicial mediation has continued to be offered in appropriate cases involving discrimination complaints which have been listed for a hearing of three days or more. The success rate has steadily improved to over 70% in 2010/2011 with 90 hearing days being saved from 19 mediations. The scheme continues to be well received by participants and will be extended to a limited range of more complex unfair dismissal cases in the coming year.

Particular emphasis has been placed in the last year on active case management. All discrimination cases across Scotland are individually managed by a salaried Employment Judge. This approach has been extended, on a pilot basis, to all unfair dismissal cases handled in the Glasgow office. While such an approach is inevitably resource intensive, both judicially and administratively, given the volume of orders and correspondence generated, it is considered to be time well spent. It has been well received by users, many of whom have indicated that such active management led to earlier settlement of cases in which they were involved.

On the principle that economic circumstances are such that we must do all that we can to maximise efficiency, with a view to providing the best possible service to users, the LEAN approach to streamlining processing has continued to be actively pursued, with judicial support. A further project which it is hoped will improve administrative efficiency even further is the ongoing development of administrative

standard operating procedures across Great Britain; the Glasgow ET office is one of a small number of sites which has recently piloted a range of newly devised procedures which will be rolled out to all ET offices, with judicial support, in 2012.

People and Places

In essence, the judicial workforce has remained largely stable over the last year, with two vacancies arising for salaried Employment Judges both of which have been filled. While we continue to operate on a full time basis from four main centres across Scotland, and part time from another (as well as using Sheriff Courts in remote locations), we do face judicial and administrative problems arising from lack of space. We have to rely regularly in the Glasgow ET office on using any free accommodation in other tribunals close by, on using office space as makeshift hearing rooms and have had to transform two tribunal retiring rooms into judges' offices. On a regular basis, with great good humour and imagination, and with the cooperation of the judiciary and parties, solutions are found to space problems so that justice may be delivered, avoiding the unpalatable alternative of a hearing being cancelled due to lack of accommodation. For this, and for their unfailing diligence in a time of uncertainty and pressure caused by economic stringency, the judiciary and staff of the Employment Tribunals in Scotland should be commended.

Chapter 4:

Cross-border issues

Northern Ireland: Dr Kenneth Mullan

HHJ John Martin QC retired from the post of Chief Social Security and Child Support Commissioner for Northern Ireland on 1 June 2011. Following a recruitment exercise conducted by the Northern Ireland Judicial Appointments Commission (NIJAC), Dr Kenneth Mullan was appointed to be Chief Social Security and Child Support Commissioner for Northern Ireland and President of the Pensions Appeal Tribunals (Northern Ireland) and was sworn into office by the Lord Chief Justice for Northern Ireland on 2 June 2011 and remained a Judge of the Upper Tribunal assigned to the Administrative Appeals Chamber.

Following a further recruitment exercise by NIJAC, Mr Odhran Stockman was appointed as a Social Security and Child Support Commissioner for Northern Ireland and Deputy President of the Pensions Appeal Tribunals (Northern Ireland). Mr Stockman was sworn into office on 17 October 2011 when he also became a Judge of the Upper Tribunal. He has been assigned to the Administrative Appeals Chamber.

As previously noted, the Northern Ireland Executive, at its meeting on the 18 November 2010, agreed to the transfer of statutory responsibility for the administration of tribunals currently sponsored by a number of

NI Departments to the Department of Justice (DOJ).

This endorsement was described as “... a significant step which ultimately provides for a more independent tribunals service, removing the sponsorship role from decision making departments, and allowing for a more integrated (Northern Ireland Courts and Tribunals) Service”.

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

This Order transfers the following tribunals to the DOJ (through the NI Courts and Tribunals Service) from 1 April 2011:

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

The Charities Tribunal and NI Valuation Tribunal also transferred to the DOJ on 1

April but they are not included in the Transfer of Functions Order as there are no statutory functions to transfer.

Given the time constraints of the legislative programme and Budget 2010, officials were unable to reach agreement on the budgets to transfer in respect of The Appeal Tribunals; the Rent Assessment Panel (DSD) and the Industrial Tribunals and Fair Employment Tribunal (DEL). It is planned that these tribunals will statutorily transfer to DOJ at a later date, to be agreed.

The NI Courts and Tribunals Service now has statutory responsibility for 12 tribunals. It also has administrative responsibility for a further 2 tribunals which are managed on behalf of the Department for Social Development. There are currently 116 members of staff from NICTS and DSD working in tribunals.

The majority of tribunals are based in the Hearing Centre in Bedford House. The remaining tribunals are located in Corn Exchange Building, the Royal Courts of Justice and Cleaver House.

The Lord Chief Justice of Northern Ireland and the Minister for Justice for Northern Ireland agreed to establish a reference group to map the tribunal system in Northern Ireland. The Reference Group, referred to by the Minister, has now been established, has commenced its initial work and has presented an interim report to the Minister.

In addition, the Law Centre (Northern Ireland) 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 attendance at tribunals and, secondly, to examine the specific structural needs for tribunal reform in advance of legislation being introduced in Northern Ireland. Two further research reports have now been completed.

Lord Justice Coghlin held a meeting of his Tribunal Presidents Group (TPG) on 11 May 2011 to review an initial draft of the research report on proposals for tribunal reform in Northern Ireland. Due to the further elections to the Northern Ireland Assembly which took place in May 2011, progress on this issue has been stalled at Departmental level. The TPG discussed the proposals set out in the further paper and resolved to continue to highlight the requirement for commitment to definitive action to take matters forward.

Scotland: Shona Simon

The creation of HMCTS and the announcement that the courts and tribunals judiciary in England and Wales are to be united in a single “judicial family” under the leadership of the Lord Chief Justice creates a constitutional problem of some magnitude – what is to be done so far as reserved tribunals operating in Scotland (and for that matter, Northern Ireland) are concerned, given the court system

in Scotland is entirely separate from that in England and Wales, and what is to be done with regard to the judicial leadership arrangements for reserved tribunal judiciary operating in Scotland? All concerned immediately recognised that it would be constitutionally inappropriate for the Lord Chief Justice to take on that role in relation to judges of any type who are based and dispensing justice in Scotland.

Even before these questions arose as a result of developments in England and Wales, much anxious consideration had already been given to the most effective way of developing a tribunal system in Scotland which would assist tribunals dealing with devolved law to become “Leggatt compliant”. As reported last year, this has resulted in the creation of a Scottish Tribunal Service (STS), which came into operation in December 2010. The STS currently provides administrative support to six devolved tribunals. A consultation paper is expected to be issued by the Scottish Government early in 2012 which will set out proposals for discussion dealing, amongst other matters, with judicial leadership for the devolved tribunals’ judiciary (the likely proposal being that the Lord President of the Court of Session would take on this role, as he does currently for the courts’ judiciary in Scotland) and structural issues such as whether tribunals should be grouped together in any way for administrative and judicial purposes (as most tribunals in England and Wales have been through the creation of the First Tier Tribunal and the chambers within it). The Scottish

Government’s forthcoming consultation paper cannot deal with reserved tribunal matters since legislative competence in relation to them still lies with the UK Parliament. However the current Scottish Government has made it clear that it would wish, in the longer term, to bring reserved tribunals operating in Scotland into a Scottish tribunal system and one might predict that the forthcoming Scottish proposals will take into account the possibility of the reserved tribunals joining the new system at some point in the future.

The coincidence of tribunal reform in Scotland occurring at the same time as the reorganisation proposals emerged in relation to courts and tribunals in England and Wales might be seen by some as presenting a rare opportunity to engage constructively with the desire to create an integrated Scottish tribunal system at the same time as solving the constitutional issues which have arisen, given the plans that are being pursued in England and Wales. It is understood that discussions are underway between relevant officials in Scotland, on the one hand, and England and Wales on the other, about the undoubtedly complex and extensive range of issues which will need to be addressed in connection with future devolution including how best to retain the benefits of cross border working and cooperation in areas such as judicial training, tribunal procedure and implementation of tribunal rules. The first clear indication of the Ministry of Justice’s position with regard to devolution of reserved tribunals

is expected to emerge in Spring 2012, that being the predicted timing of a consultation document it is expected to issue, the main thrust of which will be proposals in connection with courts and tribunals' judiciary in England and Wales but which it is understood will also set out the Ministry's position in relation to devolution of Scottish reserved tribunals.

There is the possibility that responsibility for providing administrative support for reserved tribunals will devolve to the Scottish Government prior to any judicial devolution. In the meantime, HMCTS continues to provide administrative support to reserved tribunals in Scotland. The HMCTS Board does not have direct responsibility for Scottish tribunal matters; the Senior President, together with the Chief Executive of HMCTS on the administrative side, remains directly responsible for ensuring effective performance and for providing appropriate leadership and support. Clearly, however, decisions on policy and strategy made by the HMCTS Board may well have an impact so far as reserved tribunals are concerned. In order to ensure that there is an effective channel of communication a Scottish Reserved Tribunals Group has been established chaired by Lady Smith, a Court of Session judge, who is also the EAT judge in Scotland. She has been nominated to carry out that role by the Lord President (with the agreement of the Senior President) as part of a wider tribunals' remit which she has been given by him. The group is made up of senior reserved tribunals' judiciary in Scotland together with the HMCTS

Director (Scotland), Norman Egan, who is also the Chief Executive of the Scottish Tribunal Service. The main role of the group will be to ensure that the Senior President and Head of Civil, Family and Tribunals are alerted to Scottish concerns in relation to matters being considered by the HMCTS Board so that these concerns can be effectively relayed to the Board. Looking in the opposite direction, the group provides a communication channel for the Senior President and the Head of Civil, Family and Tribunals in terms of engaging with Scottish reserved tribunals' judiciary in order to gather views on possible developments being considered in England and Wales which may have an impact in Scotland.

As things stand, the two consultation documents referred to above are awaited with great interest, and with hope that over the course of 2012 what the future holds with regard to the devolution of reserved tribunals will become much clearer. The worst of all worlds would be to have continuing uncertainty.

Wales: Libby Arfon-Jones

The tribunal landscape in Wales remains complex. The exercise of devolved powers has had an impact on administrative justice in Wales and the opportunity to input a special tribunals perspective into any judicial response to consultations issued by the Welsh Government has been much welcomed. Tribunal representation on the Association of Welsh Judges has been appreciated as has membership

of the Judges' Council Committee for Wales (JCCW), chaired by the Lord Chief Justice with Pill LJ as his deputy. This high level committee is able to ensure a meaningful interface with the Welsh Government and engage with significant issues which may arise.

Some tribunals operating in Wales are UK or GB-wide tribunals; others are devolved with responsibility for them resting with the national government. Whilst Wales has no separate justice system as do Scotland and Northern Ireland, nevertheless, because some devolved tribunals in Wales are administered by the Welsh Government itself, in one sense part of the justice system has undergone a process of devolution in Wales.

The reserved tribunals are now part of Her Majesty's Courts and Tribunals Service (HMCTS) formerly the Tribunals Service (TS) presided over by Carnwath LJ as Senior President of Tribunals. Albeit administered from London, there is strong regionalisation of many of these UK wide tribunals in Wales. This regionalisation ensures that Welsh sensitivities and differences can be accommodated meaningfully; not least linguistic considerations.

In January 2010 the Welsh Committee of the AJTC published the report of its Review of Tribunals Operating in Wales. The Review was initiated in order to test whether observations that the tribunals system in Wales was complex and fragmented were reflected in reality. The Welsh tribunal landscape was complex

and fragmented, consisting of a patchwork of tribunals which had evolved in an ad hoc way prior to devolution which resulted in a lack of coherent structure and strategic development planning. The Review published recommendations designed to promote a more integrated and coherent system of administrative justice, responsive to the needs of users and above all to establish an independent and impartial tribunal administrative justice system in Wales.

The most pressing issue was the lack of separation of powers between devolved tribunals and the body whose decision was being appealed. Unfortunately, the Review discovered that most Welsh tribunals were not sufficiently independent from the departments or agencies whose decisions they were considering. For non-devolved tribunals, this situation had been largely, although not entirely, addressed by the creation of the then Tribunals Service (now part of Her Majesty's Courts and Tribunals Service) as an executive agency of the Ministry of Justice charged with administering tribunals.

In relation to the key finding for the need for separation of powers, it must be noted that in Wales there is currently no equivalent to the Ministry of Justice as justice is not devolved. Given the relatively small size and scope of Welsh tribunals (for the time being, at least), it did not appear that a separate executive agency would be the most economical or efficient solution. Instead, the Committee recommended that responsibility for all Welsh

tribunals should be transferred to an area of the Welsh Government which had no specific responsibility for any of the government decisions under dispute – the then Department for the First Minister and Cabinet, ensuring tribunal independence and also creating a focal point for administrative justice and tribunals in Wales.

In March 2010 the Welsh Government agreed to create a post to manage the implementation of the recommendations made in the Review, and subsequently established the Administrative Justice and Tribunals Unit. The Unit was initially located within the Department for the First Minister and Cabinet, but has since moved to the Permanent Secretary's Division. In November 2010 the Welsh Cabinet approved an Action Plan for the implementation of the recommendations made in the Review it chose to pursue the core recommendations as a priority. The Action Plan explained that in keeping with the Review, staff working to support tribunals but based within policy divisions would transfer, with the relevant budgets, to the Unit.

On 1 April 2011, the Special Educational Needs Tribunal for Wales, the Registered School Inspectors Appeals Tribunal and the Registered Nursery Inspectors Appeal Tribunal all transferred to the Unit. In the first half of 2012, it is anticipated that responsibility for the administration of the Adjudication Panel for Wales, the Mental Health Review Tribunal for

Wales, the Agricultural Lands Tribunal and the Residential Property Tribunal will all transfer to the central Unit.

Two tribunals, the Independent Review of Determinations Panels for both adoption and fostering and the Board of Medical Referees, which are currently outsourced, will be examined prior to the end of the current outsourcing arrangements. The Forestry Committees for Wales and the Independent Social Services Complaints Panels are currently in the process of being reformed, obviating the need for these panels in their present format.

Three tribunals whose administrative support is not currently provided by the Welsh Government are the subject of an in-depth feasibility study they include the Valuation Tribunals for Wales, School Admission Panels and School Exclusion Panels.

The Traffic Penalty Tribunal will be excluded because the Traffic Management Act 2004 provides that enforcement authorities must provide administrative support.

The Welsh Committee's latest Annual report was published in November 2011. It reported on what had changed, noting with regret that some concerns raised in its 2010 report had yet to be addressed.

Mindful of the AJTC's recommendations for greater co-operation and collaboration between tribunals, a Welsh Tribunals Contact Group (WTCG), consisting of both reserved

and devolved tribunal judges, has been set up, chaired by me as the Senior Tribunals Liaison Judge for Wales.

Margaret McCabe and her colleagues have provided valuable administrative support. The terms of reference are below. To date it has focussed particularly on the issue of joint training. There are clearly other areas and activities which are of mutual interest and concern where an agreed approach is not only mutually supportive but hopefully can exploit economies of scale. Such areas may include appraisals, complaints, diversity issues and cross-ticketing.

Open appointments on merit and training are problematic, with political sensitivities and practical funding considerations. Without doubt, however, multi-jurisdictional co-operation is key.

The proper training of the judiciary in the courts and tribunals of England and Wales is a statutory responsibility for both the Lord Chief Justice and the Senior President of Tribunals. Safeguarding a high standard of judicial performance is key to maintaining public confidence in the administration of justice and consistency of training throughout tribunals is crucial. The Judicial College, which came into existence on 1 April 2011, is committed to providing high quality training. Although the College is only directly responsible for the judges and members of reserved tribunals across England and Wales, it is clear that devolved tribunals in Wales need to be supported to the

same extent as their judicial colleagues who sit in non-devolved tribunals. It is worth noting the fact that onward rights of appeal from devolved Welsh tribunals lie to the Upper Tribunal, whose judges have UK wide jurisdiction and benefit from the training provided by the Judicial College. Despite troublesome funding issues, I hope there will be a satisfactory outcome which ensures that legal and non-legal members of devolved Welsh tribunals enjoy the benefits of training afforded by the Judicial College. I welcome the setting up of a Welsh training Committee within the Judicial College, a decision also welcomed by Welsh tribunal judges. I note that the Welsh committee will be chaired by a High Court Judge and that the committee will liaise, inter alia, with the tribunals Committee. I very much hope that MoJ and Welsh Government officials can work together to this end despite the current financial pressures.

At the Legal Wales Conference in October last year, the First Minister announced that the Welsh Government would launch a public debate on the issue of a separate legal jurisdiction for Wales. A consultation document was issued on the 9th December 2011 entitled "Inquiry into the establishment of a separate Welsh Jurisdiction?" The deadline for responses was 3rd February. Fast moving changes herald an interesting time ahead. Whatever those changes bring, the independence of the judiciary from government must be safeguarded.

Chapter 5

Committees and working groups

Tribunal Procedure Committee: Chairman Mr Justice (Paul) Walker

The Tribunal Procedure Committee (TPC) in 2011 has made major rule changes in a number of areas. The Upper Tribunal Rules in England and Wales have been amended by the Tribunal Procedure (Upper Tribunal) (Amendment) Rules 2011 to cater for “Fresh Claim” judicial reviews under section 53 of the Borders, Citizenship and Immigration Act 2009, along with consequent provision for amendments in judicial review claims which may affect whether the claim can or should remain in the Upper Tribunal. The First-tier Immigration and Asylum Chamber Rules have been amended United Kingdom wide by the Tribunal Procedure (Amendment) Rules 2011 to cater for the government’s introduction of fees for Immigration and Asylum cases. In addition the TPC has reviewed a number of aspects of the existing rules.¹⁶ When doing so – as with all our work – we seek, as required by section 22(4) of TCEA, to exercise our rule making powers with a view to ensuring justice, accessibility, fairness, timeliness, efficiency and simplicity (both in expression and their operation).

During the year Regional Tribunal Judge Nick Warren was appointed President of the General

Regulatory Chamber of the First-tier Tribunal. On appointment he stood down from his role as First Tier Tribunal Judge on the TPC. I express my thanks to him for the considerable amount of work he has undertaken for the TPC with energy, enthusiasm and expertise. The Lord Chief Justice of England & Wales has appointed Simon Ennals to fill the vacancy which arose, 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 during the period to April 2011 is described in more detail in our Annual Report 2010/11. Since then, in addition to the rule changes mentioned above, considerable work has been done on rules for the proposed new Property, Land and Housing Chamber of the First-tier Tribunal, and on a long overdue new set of rules for the First-tier Tribunal Immigration and Asylum Chamber.

Consultation continues to be a fundamental part of the rule making process. Points made by consultees have been invaluable in assisting us

¹⁶ Including the rules concerning forfeiture cases in the Upper Tribunal in Great Britain, which have been amended by the Tribunal Procedure (Upper Tribunal) (Amendment) Rules 2011

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 proposed Upper Tribunal rule amendments was particularly valuable. It led us to conclude that for the time being there should continue to be restrictions on representation rights in “Fresh Claim” judicial reviews, but that this should be kept under review and reconsidered in due course.

As in 2009 and 2010 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 Peter Lane (UT Immigration and Asylum Chamber) and Mungo Deans (First-tier Tribunal Immigration and

Asylum 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

TJEB is chaired by the Senior President and the membership comprises the Chamber and Pillar Presidents and Chairs of the supporting sub-groups. The cross-border ties have been strengthened with Lady Anne Smith joining TJEB as the Lord President’s nominee for tribunal issues in Scotland. TJEB has also had several visitors over the year including HMCTS Board Chairman, Bob Ayling and Alison White, a non executive member.

TJEB meetings are generally preceded by a meeting of the TJEB Liaison meeting (which replaced the joint TSET/TJEB meeting when HMCTS was formed and TSET disbanded). That meeting continues to focus on cross jurisdictional operational issues with regular agenda items including performance and finance. Kevin Sadler, Greg Watkins, Rachel

Wood and Norman Egan represent the administration at these meetings.

During the period of this report, TJEB has continued to consider a range of both policy and practical issues that affect the tribunals' judiciary including the personal security of judges and members (Lord Justice Gross, chair of the Judges' Council Committee on Judicial Security attended the October meeting to listen to concerns); the Judicial College strategy and Governance structure. The judicial away day in 2011 concentrated on understanding the new MoJ and HMCTS structures as well as fostering closer ties between courts and tribunals judiciary. Reports on the activities of the various TJEB sub-groups are given on the following pages.

Judicial Activity Group: Chairman His Honour Judge (Phillip) Sycamore

The Tribunals Judicial Activity Group is a focussed discussion group consisting of the presidents of the four largest First-tier Tribunal Chambers/jurisdictions: Employment; Health, Education and Social Care, Immigration and Asylum; and Social Entitlement. It meets on a quarterly basis with the Director and Deputy Director HMCTS Civil, Family and Tribunals and the Senior President's head of office and policy advisor. Meetings take place prior to TJEB to provide a more focussed steer on key

issues such as performance and judicial resource allocation. Since April, they also consider ways of working within the integrated HMCTS structure, highlighting competing pressures and sharing best practice.

The two main focus areas for 2011 have been to identify and agree a composite pack of management information to give a clearer basis to the group's discussions with agreed definitions whilst preserving the differences between jurisdictions. The Judicial Activity Group also provides a steer to HMCTS Judicial Workforce Planning officials on judicial recruitment and forecasting issues and requirements prior to wider consultation and agreement of the yearly Judicial Appointments Commission recruitment programme.

Tribunals Judicial Training Group and the Judicial College: Professor Jeremy Cooper

In the financial year April 2010-11 the total number of tribunals' judicial training events held across the Tribunal Service was 274. The number of delegates attending training events over this period was 9,768, which provided tribunals' judicial office holders with 12,705 days of training in total. Tribunals' training is currently delivered on both a residential and non-residential basis throughout the UK using both public sector estate (e.g. MoJ courts/

tribunal offices) and external venues which are sourced at competitive rates through the MoJ’s contracted venue finder. There is provision in the College’s budget to cover the costs of hiring external venues and also where appropriate to cover other delegate costs such as modest refreshments and overnight accommodation.

Throughout the period of this report tribunals’ training has been planned and delivered at a jurisdictional level under the general oversight of the Tribunals Judicial Training Group (TJTG) which met bi-monthly for this purpose. The range and scope of our training events reflects the differing size and complexity of the tribunal jurisdictions. For example, the largest chamber, comprising the Social Security and Child Support jurisdictions received over 425,000 appeals in the course of the year, requiring 89 judicial training events providing over 2,848 “delegate days” of training. The next largest jurisdictions – those housing the Employment Tribunal and the Immigration and Asylum Chamber – also provided extensive programmes of training for their members. The Employment Tribunal ties its training into a carefully structured career development plan, encapsulated in a series of training principles that specifically link progress from fee-paid to salaried status with the training regime. The Immigration & Asylum Chamber training programme is carefully structured around a bi-annual conference attended by all salaried judiciary supplemented by a series of residential refresher events, to which all members are

invited on a rolling programme. The fourth largest jurisdiction – mental health – continues to adopt a different approach whereby all its members are offered a menu of courses at different locations throughout the year, from which they select 2 courses of their choice.

Whatever training model is adopted, the rapidity of changes in the law, the burgeoning workload and continuing major recruitments of judicial office-holders combine to present particular challenges for judicial training planning and delivery. Furthermore, the training programmes required to ensure that judicial office holders remain competent in a jurisdiction with fewer members and relatively few hearings can be very different. But whatever the nature or the size of the jurisdiction, the bottom line remains the same. To quote the Lord Chief Justice writing in the Preface to the 2011 Training Prospectus, “continuing education is now an integral part of the working life of a judge”.

A core principle of the tribunals’ training programmes is that judicial office holders lead and so far as is practicable deliver training. Furthermore experience demonstrates that the best way to learn is to participate, and the style of most tribunal training courses tries to reflect this principle. In a given week, there may be several courses running at the same time in different parts of the country. In small jurisdictions such as the Tax Chamber or Special Educational Needs tribunal, training tends to be provided nationally and jurisdictional judicial

office holders attend the same event from all over the country. In the larger jurisdictions training, though nationally planned and designed, is normally delivered on a regional basis at a variety of venues. Courses run throughout the year.

The majority of judicial office holders receive continuing professional development training annually, although for some fee-paid members, the cycle of training is once every two or three years. Some judicial office holders attend more than one training event in a year depending upon the requirements set within their jurisdictions by their Chamber or Pillar Presidents. All newly appointed judicial office holders, or those who are new to a specific area of work, receive proportionate induction training which is a compulsory precondition of sitting.

The big development in tribunals' training over the past year has been the coming into being on 2nd April 2011 of the Judicial College. The College has brought the training of all judicial office holders in England and Wales (and also many tribunal office holders in Scotland) – 38,000 in total – into a single training organization which is now the central professional learning and development institution for all judges and tribunal members. The idea underpinning this decision is simple: a single training College will both enhance judicial independence and promote public confidence by providing reassurance that all

judicial office holders are trained to common standards, receive up-to-date specialist training, and are able to benefit from cross-fertilisation of ideas within a common training forum. All those who design and deliver training to judicial office holders are de facto members of the College. The College is there to lead, support and enhance the quality of current training programmes as they develop over time.

The likely cost savings the Judicial College will achieve, through resource sharing, the excision of randomly organised course and subject repetition and the achievement of economies of scale in course delivery will provide further benefits. The College will also ensure that the increasing numbers of judges who are appointed to jurisdictions in which they have not sat or who are appointed to a salaried post without any judicial experience are properly trained for those new roles, thereby increasing cross-jurisdictional career opportunities and broadening the ambit of judicial education.

The Judicial College is starting to develop an e-Learning strategy to complement rather than replace face-to-face training. e-Learning seems a highly appropriate method for the delivery of some forms of judicial training in that it allows for real time updating and electronic circulation of training materials. It also allows office holders to complete their training requirements at times that suit their individual needs, removing the high travel costs associated with face-to-face events.

As the College is a new organization, its first task has been to develop a three year strategic plan. The plan is evolutionary rather than radical, building on the strengths of the existing training systems in courts and tribunals, but ensuring at the same time that the College will deliver value for money during a financial period when its resources will decrease. The College’s vision is to become and be recognised as a world leader in judicial education.

The College’s overriding objective is to provide training of the highest professional standard for judicial office holders which satisfies the business requirements of judicial leaders. This means in effect that whilst the Senior President has the formal responsibility for training, it is the Chamber and Pillar Presidents who have subsumed this responsibility as part of their personal stewardship of the quality of justice delivered within their respective jurisdictions. The College intends to work closely with all Presidents in a collaborative and mutually beneficial way.

The second key component of the College’s overriding objective is to assist in the promotion so far as practicable of the professional development of judicial office holders. In carrying out this task, the College recognizes that different judicial office holders require a variety of learning and development methods to meet their professional learning needs. There are, for example, particular features of tribunals – in particular the preponderance of fee paid

members, the range of specialist niche training requirements, and the large number of tribunals’ judicial office holders who are not legally trained – that may require a training approach different from that appropriate for salaried courts’ judges. The professional development of tribunal office holders will in due course be further promoted by the introduction through the College of a parallel academic programme.

Tribunals Judicial Communications Group: Alison McKenna

Over the past year the focus of the TJCG has been on Direct Gov, Business Link, the content of the Tribunals websites and their migration to HMCTS.

Following the merger of TS into HMCTS, we have considered the relationship between TJCG and the Judges Council Communications Group. The aims of the two groups are very similar (to promote the external profile of judges and improve internal communications).

There was perceived to be less need for the two separate judicial groups to meet on a regular basis and a stream-lined structure was proposed whereby the Chair of the TJCG should become a member of the Judges’ Council Communications Committee and provide a short written update on the over-arching communications issues arising from these meetings to TJEB.

Each Chamber/Pillar now has a Communications lead Judge, nominated by the appropriate Chamber President or Tribunal President and who, in addition to a prominent communications role within their own judicial structure, will serve as an ad-hoc consultee on matters of wider import as and when required.

Work is commencing on a proposal for an overarching external web presence which should include an analysis what information our various tribunal users (internal and external) need. Any project which resulted from that would need to have appropriate judicial input from each Chamber/Pillar and the communications lead Judge would be expected to take that role for their own Chamber/pillar.

In coming months, the designated communications leads will be assisting with the development of their own chamber/pillar microsites for judicial office holders on the Judicial Intranet, getting their chamber site content up-loaded and then taking responsibility for keeping it up to date and promoting its use within the chamber as the approved means of communication with its members and Judges.

Tribunals Judicial Publications Group: His Honour Judge (Robert) Martin

The object of the Group, which comprises judicial representatives from each chamber and

pillar and HMCTS information specialists, is to promote ways of improving the efficient supply and distribution of publications, on-line services and other reference materials for judicial use. In 2011 the Group took on an additional role of contributing to the HMCTS budgetary process by overseeing the compilation of bidding for resources. This collective engagement led to savings of £550K against expenditure of £2.67m.

Tribunals Judicial Medical Advisory Group: His Honour Judge (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 1,050 medically qualified members spread across 7 jurisdictions.

The main activities of the Group over the past year have been to develop the schemes of appraisal of medical practitioners who sit as tribunal members, so that they are aligned as closely as possible to the emerging revalidation measures of the General Medical Council, and to promote opportunities for shared training of medically qualified members across the different jurisdictions. Additionally, the Group was able to boost the effectiveness of the Judicial Appointments Commission's recruitment of medical practitioners by building up the

profile of tribunal work amongst the medical profession.

Tribunals Judicial Diversity Group: Sehba Storey

This year the Tribunals Judicial Diversity Group (TJDG) has focussed on expanding membership of the group to include tribunal judges and members of both the First-tier and Upper Tribunals, with particular emphasis on achieving a diverse mix to include proportionate representation of gender, race, disability and sexuality. Progress has been slower than we would have hoped. This is due in part to a change of leadership – as Judge Phillip Sycamore was unable to continue as Chair of the group owing to competing demands on his time – and the non-availability of members to meet as often as we would wish, owing to the need for members to discharge their primary functions as tribunal judges and members.

We have, nonetheless, made considerable efforts during 2011 in extending our outreach work by forging links with schools, colleges and universities, and engaging in “Judicial Conversations”.¹⁷ We have agreed to participate in meetings/seminars organised by professional organisations such as the Law Society, and the Bar Association for Commerce Finance and Industry (BACFI) with the aim of encouraging applications for judicial appointments from

under-represented groups by offering advice and assistance with the application process. We have engaged with senior courts judiciary and we are particularly grateful to Mary Arden LJ, Linda Dobbs J and Professor Kate Maleson of the Equal Justices Initiative¹⁸ for inviting members of the TJDG to participate in their events and discussions on improving judicial diversity.

We recognise that there is much that requires our attention. In particular, we are keen to provide an informal mentoring scheme; small group discussions on how to complete application forms; practice tests with feedback; and mock interviews to those candidates seeking tribunal appointments. In the present financial climate the TJDG lacks the resources to do so. However, we hope to address these further in 2012.

Improving Judicial Diversity

Since the last report, a considerable body of work has been carried out by various groups and individuals towards improving judicial diversity. In the last report, reference was made to the Judicial Diversity Taskforce, which was created in 2010 to oversee the implementation of reforms recommended by the Report of the Advisory Panel on Judicial Diversity (the Neuberger Report).¹⁹

¹⁸ The EJI was established in 2009 to promote the equal participation of men and women in the judiciary in England & Wales by 2015

¹⁹ <http://www.justice.gov.uk/publications/docs/advisory-panel-judicial-diversity-2010.pdf>

¹⁷ Birkbeck College of Law

The Taskforce, of which the Senior President is a member, published their first report, “Improving Judicial Diversity”, in May 2011,²⁰ which concluded that “progress has and is being made in respect of all of the recommendations” of the Neuberger Report. Much of this progress related to the work of the Taskforce and the Judicial Appointments Commission (JAC). The TJDG acknowledges and welcomes this progress but believes that considerably more needs to be done in relation to tribunals, particularly as regards:

- the lack of an adequate and clear career path for judges of the First-tier Tribunal (F-tT) and Upper Tribunal (UT) (Recommendations 1 and 2);
- the absence of pathways for the deployment of tribunal judges in the courts (Recommendations 44 and 47);
- simplification of the assignment process for salaried tribunal judiciary;
- the lack of clarity in JAC advertisements on the nature and extent of the previous judicial or other experience required for some court appointments (Recommendation 22 and 47);
- the format and effectiveness of JAC qualifying tests (Recommendation 26 – 28); and
- the presence of only one commissioner to represent the interests of tribunal judges on the JAC.

These concerns have been raised with the Senior President who has given his support to finding solutions. As a mark of his commitment, he has highlighted the above concerns and the difficulties in career advancement faced by tribunal judiciary in his written submission to the House of Lords Constitution Committee inquiry into the judicial appointment process.²¹ Of particular note is his support for the, proposal put forward by the TJDG that consideration be given to amending section 9 of the Senior Courts Act 1981 (which currently permits circuit judges and recorders to be appointed deputy high court judges) so as to enable senior judges of the Upper Tribunal to undertake work in specialised areas such as immigration and asylum, welfare law and criminal injuries compensation.

It is also to be hoped that parliament will, at the same time, take the opportunity to amend the statutory criteria for judicial eligibility for appointments across the courts as a whole, so that periods spent as a tribunal judge will carry equal weight to judicial service as recorders, district judges and experience in private practice.

The TJDG acknowledge that such a change

²⁰ <http://www.justice.gov.uk/downloads/publications/policy/moj/judicial-diversity-report-2010.pdf>

²¹ <http://www.parliament.uk/documents/lordscommittees/constitution/JAP/Compiled%20written%20evidence131011.doc.pdf>

requires primary legislation, but if achieved, it will provide for greater flexibility between the courts and tribunals, as envisaged by the Tribunals, Courts and Enforcement Act 2007. Given that tribunals are generally more diverse than the courts, the change should also help to improve court diversity whilst at the same time fulfilling the primary recommendation of the Neuberger Report – providing a career path for tribunal judges.

Tribunals Judicial IT Group: Andrew Bano

During the year under review HMCTS carried out a renewal of its IT infrastructure in order to integrate a number of different systems into a single IT platform. The IT Group acted as the point of contact between the project team and the tribunals judiciary and acted as an effective means of resolving the practical problems resulting from a major infrastructure renewal project.

The IT Group is now considering how IT can help to meet the requirement in section 2 of the TCEA 2007 for the need to develop innovative methods of resolution. At a seminar hosted by the MoJ ICT Group in June 2011, judicial representatives from a number of different jurisdictions met to consider ways in which IT can improve access to justice, and work is continuing in order to establish the feasibility of using a system similar to Skype to provide users with remote access to tribunal hearings.

For further information contact:

Simon Carr,
Judicial Office, Room E218,
Royal Courts of Justice,
London WC2A 2LL

e: simon.carr@judiciary.gsi.gov.uk