

SENIOR PRESIDENT OF TRIBUNALS

FIRST IMPLEMENTATION REVIEW

JUNE 2008

INTRODUCTION

1. On 3 November 2008, ("T1 Day") if all goes according to plan, we will reach another very significant milestone in the reform of justice in the United Kingdom. The remaining provisions of Part 1 of the Tribunals, Courts and Enforcement Act 2007 will be brought into force together with a number of related pieces of subordinate legislation. The Upper Tribunal and the First-tier Tribunal created by that Act will come into being and will take over the jurisdictions of a number of existing tribunals. Implementation will take place in two stages:
 - a. T1 day (3.11.08): Upper Tribunal (Administrative Appeals Chamber); First tier (Social Entitlement Chamber¹; Health, Education and Social Care Chamber)
 - b. T2 day (April 2009): Upper Tribunal (Finance and Tax, and Lands); First-tier (Tax and Duties; Lands; General Regulatory).
2. This paper is intended to review to progress towards implementation from the judicial perspective, and to give a provisional indication of the way in which I intend to exercise my functions on some important aspects. More detailed arrangements will need to await the appointment of the Chamber Presidents for the first three chambers, expected in July. The main steps towards implementation are set out at Annex A, although of necessity many of the dates are provisional. I shall issue a further review paper in the Autumn (including in particular more detailed proposals for the working arrangements of the Upper Tribunal).
3. The changes under the Act must not be at the expense of those who use the tribunal system. Service to the user was one of the basic tenets of Sir Andrew Leggatt's review:

"It should never be forgotten that tribunals exist for users, and not the other way round. No matter how good tribunals may be, they do not fulfil their function unless they are accessible by the people who want to use them, and unless the users received the help they need to prepare and present their cases."
4. I believe that the key to realising the benefits of the new arrangements, while maintaining the quality of decision-making and the confidence of users, is to proceed gradually, adapting and building on the strengths of the system as it is, rather than by

¹ This is a provisional title, see annex E for further information

dramatic change. The legal and administrative changes required to establish the new tribunal structure are necessarily complex. However, our aim should be to achieve these changes with as little disruption as possible to the experience of ordinary users. For most purposes I hope that the work of tribunals will continue immediately after 3 November 2008 (“T1-day”) in much the same way as it does before.

5. Although for the time-being our focus must necessarily be on the establishment of the new tribunal structure, it is important that we should not lose sight of the wider objectives set by the 2004 White Paper *Transforming Public Services: Complaints, Redress and Tribunals*, which was summarised in the recent consultation paper *Transforming Tribunals*:

“The 2004 White Paper set tribunal reform firmly in the context of a broad view of administrative justice. Administrative justice is now broadly recognised as a separate part of the justice system in its own right. From the point of view of the person or business in respect of which a decision is made, the administrative justice system generally comprises the whole of the mechanism by which government decisions are taken and, if necessary, re-considered to achieve a fair result. It is not confined to the tribunal part of the process. It covers the initial decision-makers, those who reconsider decisions, Ombudsmen and other independent complaints handlers, the tribunals and the courts, and how the system which they produce as a result of their individual roles functions.”²

6. I strongly support those objectives, and I look forward to the time when, with the new tribunal structure in place, we will have a solid base to pursue the wider agenda.

JUDICIAL LEADERSHIP

ROLE OF THE SENIOR PRESIDENT

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

² *Transforming Tribunals* (2007) Cap 2 para 1

are summarised in Annex B. They are modelled in many respects on those of the Lord Chief Justice under the CRA, including responsibility for representing the views of the tribunal judiciary to Ministers and to Parliament, and for training, guidance and welfare. In addition to the powers under the TCEA, the Lord Chief Justice has delegated to the Senior President certain of his powers under the CRA, notably in relation to judicial discipline of most tribunal judges and members.

8. Unlike the functions of the Lord Chief Justice under the CRA, which are confined to England and Wales, the Senior President's responsibilities may extend to all or part of the United Kingdom, depending on the statutory extent of the each jurisdiction. Furthermore, the office of Senior President is free-standing, as respects his functions under the TCEA. In particular, he is not formally subject to the authority of either the Lord Chancellor or of the chief justices.³ The TCEA requires the Senior President and the chief justices to co-operate on matters of training, welfare and guidance. More generally, I expect to take my lead from the chief justices, as heads of the judiciary in their respective parts of the UK, on matters of common interest, so far as is consistent with my own statutory responsibilities.
9. I attach particular importance to section 2(3) of the TCEA, which is special to this Act, and not based on anything in the CRA. Under it the Senior President is required, in carrying out the functions of the office, to have regard to the need for tribunals to be accessible; for proceedings before tribunals to be fair, and to be handled quickly and efficiently; for members of tribunals to be experts in the subject matter or law of the cases before them; and to develop innovative methods of resolving disputes of the type that come before tribunals. This sub-section of the Act to my mind encapsulates the distinctive characteristics of the tribunal system, which it is my responsibility to maintain and develop.
10. As the senior tribunal judge and as a serving member of the Court of Appeal, I regard it as important that I should sit regularly in both capacities. Recent decisions of the House of Lords have emphasised the important role of the expert appellate tribunals in developing the law and practice in their specialist fields.⁴ The establishment of the

³ I use the expression "chief justices" as a convenient collective term for the Lord Chief Justice for England and Wales, the Lord President of the Court of Session, and the Lord Chief Justice for Northern Ireland: cf CRA s 5(5).

⁴ See eg *Hinchy v Secretary of State* [2005] UKHL 16, [2005] 1 WLR 967 paras 29-30; *Gillies(AP) v Secretary of State* [2006] UKHL2 para 36; *AH(Sudan) v Secretary of State* [2007] 3 WLR 832 para 30.

new Upper Tribunal, as the normal route of appeal for most cases within the tribunal system, provides an unprecedented opportunity to build on the existing case-law of the different jurisdictions and to develop a more coherent approach to the many common themes of tribunal justice.

Scotland, Wales, and Northern Ireland

1. The new tribunal system is a significant provider of justice in Scotland and Wales, and to a lesser extent in Northern Ireland. Each territory also has devolved tribunals. I regard it as of great importance to maintain good relations with the devolved tribunals and devolved administrations. So far as is consistent with the limits of my statutory role, I will work with judicial and administrative agencies to promote as far as possible a consistent approach to tribunal justice across the country as a whole, while ensuring that the services provided by the new tribunals system for which I will be directly responsible are sensitive to the distinctive needs and interests of the different parts of the UK.

JUDICIAL GOVERNANCE

Deputy Senior President

11. The TCEA does not provide for a statutory office of Deputy Senior President. However, the wide powers of delegation in the TCEA enable such an office to be created by the Senior President on a non-statutory basis, to provide support for the performance of his statutory responsibilities. Following my formal appointment as Senior President in November 2007, I invited His Honour Judge Gary Hickinbottom, Chief Social Security Commissioner, to act as Deputy Senior President. I am very grateful to him for taking on this role in addition to his statutory responsibilities in that jurisdiction. He sits on the Tribunals Service Management Board, the Tribunals Service Change Programme Board and the TCE Act Implementation Project Board, and chairs several of the judicial groups (see below). He has regular meetings with the Chief Executive of the Tribunals Service, and provides the principal channel of communication for the judiciary with the senior management.
12. Once the Chamber Presidents for the first three chambers have been appointed, I shall review with them the role of the Deputy Senior President, and the consequent division of responsibilities.

Chamber Presidents

13. Under the TCEA the principal statutory agencies for judicial leadership, below the Senior President, are the Chamber Presidents. I hope that the Presidents of the first three Chambers will have been appointed by July, to give adequate time for discussion and agreement of the division of leadership responsibilities within and between the Chambers. There are current Judicial Appointments Commission competitions for the two first-tier Chambers (Social Entitlement, and Health, Education, and Social Care, as they are currently known). Discussions are also under way for the deployment by the Lord Chief Justice of a High Court judge as President of the Administrative Appeals Chamber of the Upper Tribunal. Until those appointments have been made, the arrangements for judicial leadership can only be provisional.
14. I hope to discuss and agree the leadership arrangements for the remaining Chambers later in the year, in good time for their establishment in April 2009 ("T2-day").

Tribunal Judges' Executive Board (TJEB)

15. The central decision making forum for the tribunal judiciary will continue to be the Tribunals Judiciary Executive Board (TJEB), chaired by me as Senior President or my Deputy. Its terms of reference are set out at Annex C. The membership is designed to include representation of all the jurisdictions within the new structure - by the Chamber Presidents when appointed, and before that by representatives of all the prospective chambers, nominated by me as Senior President with the consent of the relevant jurisdictional leaders. The Chief Executive and other senior Tribunals Service officers attend as required, by my invitation. It meets normally every two months.

Tribunal Presidents' Group (TPG)

16. The Tribunal Presidents' Group was originally formed by Lord Justice Brooke, to assist in the consultations in preparation for the 2004 White Paper. Its membership has expanded by my invitation to include the presidents or judicial leaders of all the tribunals already in the Tribunals Service, or planned to join it, together with some tribunals outside the Tribunals Service with shared interests. It is also attended by the Chairman of the Administrative Justice and Tribunals Council, and a representative of the Forum of Tribunal Organisations. Senior Tribunals Service officers attend by invitation as required. The group provides an informal forum for

information-sharing, discussion and consultation on the progress of the reforms and other matters of interest to the tribunal judiciary. It now meets normally three times a year.

17. With the establishment of the new Tribunals, the majority of the existing statutory offices of the members of the group will cease to exist as such. However, I expect most of the holders to continue in corresponding non-statutory leadership roles within the new chambers (see below). When the first Chamber Presidents have been appointed I will discuss with them, and the members of the TPG, the continuing role (if any) of the group, or its possible replacement by a different form of representative group for the wider judiciary.

TJEB Sub-groups

18. The TJEB is supported by a number of sub-groups, whose Terms of Reference are set out in Annex D.
 - a. Appointments and assignment (TJAG)
 - b. Training (TJTG)
 - c. Appraisal and Welfare (TJAWG)
 - d. Communications (TJCG)
 - e. Publications (TJPG)
 - f. Tribunals Medical Advisory Group (TMAG)
19. This arrangement of groups is non-statutory and can be adapted to meet our changing needs over time.
20. There is also a Forum of Tribunal Organisations, currently chaired by Derek Searby, which was formed to bring together representatives of the various associations representing the interests of different categories of tribunal judges or members.

Training Group

21. I intend to give special attention to training. The Senior President has a statutory duty, within the resources made available by the Lord Chancellor, to make appropriate arrangements for training of judges and members of the tribunals, corresponding to the responsibility of the Lord Chief Justice for the courts. Within the court system, judicial training is almost entirely provided through the Judicial Studies Board (JSB), which is chaired by a Lord Justice (now Maurice Kay LJ). Arrangements

within the tribunal system are less uniform. Most of the tribunals within the Tribunals Service make their own arrangements for specialist judicial training, and use the JSB for certain types of more general training. The Tribunals Service has made available a centralised judicial training budget and has agreed that it will, subject to the rules of government accounting and any requirements the Ministry of Justice may have, allocate it in line with priorities set by the Senior President, advised by the Judicial Training Group. The combined training budget of the tribunals within the Tribunals Service runs to over £4 million. As already noted, I have established a Tribunal Judges' Training Group (chaired by Professor Jeremy Cooper) to advise me on training arrangements, and on the allocation of the budget. I deal below with its relationship with the JSB.

JUDICIAL LEADERSHIP WITHIN CHAMBERS

Upper Tribunal

22. Leadership of the Upper Tribunal will be provided by the Senior President and the Chamber Presidents. The President of the first Chamber (Administrative Appeals) is expected to be a High Court judge, nominated by the Lord Chief Justice after consulting me.
23. The existing appellate jurisdictions of the Social Security and Child Support Commissioners will be transferred to the new Administrative Appeal Chamber. The existing Commissioners will become "Upper Tribunal Judges" within that Chamber.
24. The AAC will also acquire jurisdiction in appeals from the other first-instance jurisdictions within SEC and HESCC, replacing the appellate (or judicial review) jurisdiction of the High Court. This work would be carried out by Upper Tribunal judges, or by High Court or other circuit judges, subject to arrangements to be agreed with the Lord Chief Justice. The LCJ has set up a working group under Stephen Richards LJ (including the Deputy Senior President) to advise him on the relationship of the Upper Tribunal with the High Court.
25. In order to provide specialist expertise to support the other Upper Tribunal judges, especially in the early development of the Upper Tribunal, arrangements are being made for judicial leads from the existing tribunals to become Deputy Judges of the Upper Tribunal. This will require careful handling to safeguard the impartiality of the appeal process. However, I believe that the potential conflicts can be managed.

Generally I see considerable advantages in formal and informal interchange between the two levels. I have asked the Deputy Senior President to lead the development of the working arrangements for the Upper Tribunal, in consultation with the judicial leaders directly affected. He will be able to build on his experiences as both Chief Social Security Commissioner, and deputy judge of the Administrative Court. I shall be reporting further on working arrangements for the Upper Tribunal in my next review.

First-tier

Jurisdictional leads

26. Although the Chamber President will have overall responsibility for the judicial leadership of the Chamber, I regard it as important to seek where possible to maintain continuity of leadership within the various specialist jurisdictional groups, particularly during the transitional period. This will also help to reassure tribunal members and users that the specialist skills and collegiate traditions of the different groups are not being sacrificed. It will be important in due course to encourage interaction between groups, and breaking down of artificial barriers, and to exploit the opportunities presented by cross-ticketing and assignment, in line with the Leggatt objectives, but I see this as an evolving process.

27. Accordingly, I hope that the leaders of the existing jurisdictions will be willing to retain their leadership roles within the new Chambers for the time-being as “Principal Judges” (see below “Judicial Titles”). I will consider in due course with the Chamber Presidents whether it is desirable to provide for statutory appointments of Deputy Chamber Presidents (following JAC competitions). I see advantages in delaying that process, both in the interests of continuity, and to allow the new structures time to settle down, so that we have a clearer picture of the need (if any) for such statutory posts in the longer term. Although, these positions will initially be non-statutory, their status will be reinforced by making the holders also judges of the Upper Tribunal. The Chamber President will also be able to ensure (by delegation of specific responsibilities, e.g. training, complaints etc) that they have the necessary powers to continue their existing roles for the immediate future. I would expect the Chamber President and Principal Judges, with any others selected by the Chamber President, to form a senior judicial management team for the Chamber.

Other leadership posts

28. All the tribunals which are transferring into the new structure have some kind of judicial leadership posts. In the smaller tribunals this may be simply a President or equivalent; in the larger tribunals there are also regional chairs or the equivalent and other non-statutory posts. Judicial leaders, like all other judges, must be offered judicial posts in the new structure but the statutory framework does not distinguish between different types of judicial posts within an existing tribunal. My intention is that the delegation powers in the TCEA should be used to ensure that for the time being judicial leaders at all levels can continue to maintain expertise in their jurisdictions and continue with their present leadership roles as far as is consistent with the legal structures. The detailed arrangements will be subject to discussion with the Chamber Presidents when appointed.

REGIONAL JUDICIAL LEADERSHIP

29. The Tribunals Service is now structured into two regions (North and South), each of which consists of three areas. These provide the basis for the planning of the new Administrative Support Centres (ASCs) which are intended in due course to deal with much of the work of the larger tribunals on a regional or area basis. The details of the programme will be reviewed in consultation with the TJEB, in the light of experience of the current Pathfinder ASC project in Birmingham, due to open in October. In addition to ASCs, over the next 18 months multi-jurisdictional hearing centres (MJHCs) will be developed. As their name suggests, these will provide facilities for hearings in a wide variety of jurisdictions, in major urban centres.
30. Some of the larger tribunals (such as the Social Security and Child Support Appeal tribunals and the Employment Tribunals) have regional judicial structures, although the geographical units upon which these are based differ from one other (and also differ from the Tribunals Service regions and areas referred to above). In any event, judicial structures in the past have generally tended to be jurisdictionally rather than regionally based. As a first step towards promoting cross-jurisdictional working, last year Area Liaison Forums (ALFs) were set up in respect of each of the Tribunal Service areas. These comprise representatives of the judiciary in each area, together with the Area Manager and other important area administrators. The ALFs report directly to the senior levels in the tribunals judiciary and administration. Whilst each ALF has developed in its own way and at its own pace, I believe that these forums have been useful in identifying and resolving local issues.

31. We need to give further consideration to developing these arrangements, having regard in particular to their relationship with the new chambers structure, and to the need to safeguard the roles of the smaller tribunals. I shall be discussing this further with the new Chamber Presidents and representatives of the other jurisdictions, and with the Tribunals Service. In the meantime I would be grateful for information or views from tribunal members on any practical issues that have already been encountered or may arise in the future.

JUDICIAL AND JURISDICTIONAL IDENTITIES

Maintaining specialist identities

32. The move to the new statutory framework under the TCE Act needs to be presented to tribunal users in a way which is clear and legally correct, while reassuring them that the special features of the individual jurisdictions will not be put at risk. With some exceptions the change to the new statutory framework does not create new appeal rights and for most users there will be no visible change in either the way in which their cases are dealt with or the people who deal with them. It is important that users, their representatives, the higher courts and public authorities are reassured that there will be no diminution in specialist expertise. From the user's point of view there is no need in normal correspondence to know about the statutory structure created by the TCEA or even the names of the new chambers as such . On the other hand, it would be misleading to continue to use the old names for institutions or offices which have been abolished as a consequence of the Act. Most users only come to a tribunal once in their lifetime and so are likely to be unfamiliar with the existing names. Representatives and public authorities will of course be familiar with the existing names, but should be more able to adapt to change.

33. I believe that these competing objectives can be reconciled by a principled but flexible approach. I see no merit in preserving existing titles for their own sake. They show little consistency, reflecting as they do the varying historical and political circumstances in which the tribunals were created. Some are entirely apt (for example, Gambling Tribunal); others are convoluted (for example, Social Security and Child Support Commissioners) or potentially misleading (for example, Pensions Appeal Tribunal, a term which masks its essential link with the armed services). I would like to adopt a consistent set of descriptive titles. My proposals are set out in Annex E. I would expect these titles to be used where appropriate in correspondence

or other documents where it is necessary or desirable to highlight the particular specialist jurisdiction.

34. There has been some discussion as to whether we should preserve the term “tribunal” for individual jurisdictions (eg “Gambling Tribunal”), at least for some purposes⁵. The justification is that users would be reassured by the continuity of these familiar names, even if only on an informal basis. Alternatives such as “panel” have been proposed. On balance, if a distinctive jurisdictional term is needed, my preference would be for the word “panel”, which focuses attention on the expertise of the membership, rather than on an institution which in legal terms will have ceased to exist. Usages will no doubt evolve. I see no reason to be over-prescriptive at least in the early stages, but equally I do not think it appropriate or necessary to give my official endorsement for any particular non-statutory terminology.
35. In any event, I see an important distinction between documents which have legal force and which should therefore reflect the statutory framework and terminology, and other documents where flexibility and non-statutory language may be acceptable. Thus, for example, a tribunal determination or decision should refer to the First-tier Tribunal or the Upper Tribunal, and to the appropriate chamber. The judges and members should be referred to as “Judge X” and “Mr/Mrs/Ms/Miss Y” without any non-statutory titles or reference to judicial titles they may hold in other tribunals (eg “employment judge.”). On the other hand, letters from Tribunals Service officials to appellants, or from tribunal judges to officials, may use whatever language will carry the message most clearly. Communications need to be consistent with the legislation but do not need to go into any more detail than is necessary for the recipient to understand what is being communicated. I shall be guided by the Communications Group as to the development of a consistent approach to such matters.

Judicial titles

36. The same general principles should apply to judicial titles. Formal documents should contain the correct statutory title – Judge of the First-tier Tribunal or Judge of the Upper Tribunal. However, it is important that those who hold judicial leadership positions also have a judicial title which shows their role when dealing with others. In

⁵ It is to be noted that the draft Composition Order (under TCEA Sch 4 para 15 – see below) uses the word “tribunal” is also used to describe the membership for an individual hearing. (e.g. “If the decision of the tribunal is not unanimous, the decision of the majority will be the decision of the tribunal...”)

deciding on appropriate judicial titles I regard it as important to bear three things in mind. First to continue the old titles (such as President, Deputy President and Chairman) could cause confusion with the new offices of Chamber President and Deputy Chamber President. Secondly it is important that titles are explicitly judicial, which is not true of many of the current titles. Using a proper judicial title helps to reinforce the standing of the tribunal system as part of the independent judiciary. Thirdly, complicated, unwieldy or inconsistent titles are unhelpful to everyone.

37. With those considerations in mind I propose that a judge with a leadership role for a particular jurisdiction is known as “Principal Judge” coupled with a reference to the jurisdiction. This title has the virtue of combining clarity with uniqueness. There are no similar titles in the courts or tribunals. So, for example, the jurisdictional lead for the asylum support jurisdiction would be “Principal Judge, Asylum Support” and her deputy would be “Deputy Principal Judge, Asylum Support”. These titles would typically be used when acting on behalf of a group of judges, for instance in dealing with government officials, or by tribunal staff explaining to a user the position of a judge who dealt with their case (*“Your application for an extension of time has been considered by the Principal Judge (Land Registration) and has been refused.”*)
38. I propose that regional and district chairmen or their equivalents be known as “regional tribunal judge” and “district tribunal judge” with references to jurisdiction as appropriate.
39. There should be no change in the manner of addressing tribunal judiciary in the hearing rooms. They will continue to be called “Sir” or “Madam”. This mirrors the universal practice throughout all tribunals, including the Employment Appeal Tribunal, which is commonly presided over by High Court and Circuit Judges. Letters to the judiciary from the administration should commence “Dear Judge” unless the people concerned are on first-name terms.

KEY RELATIONSHIPS

THE TRIBUNALS SERVICE

Statutory duties

40. The Lord Chancellor is required by the TCEA to ensure that there is “an efficient and effective system” to support the carrying on of the business of the tribunals” (TCEA s

39). The Tribunals Service is the principal means by which he performs this statutory duty. The Tribunals Service is an Executive Agency of the Ministry of Justice and forms part of the Access to Justice Group within the Ministry. It is headed by a Chief Executive who is also the agency accounting officer. The Chief Executive is responsible to the Lord Chancellor for the performance of his powers and duties under the Act.

41. As already explained, the office of Senior President is a free-standing office, with distinct statutory responsibilities under the Act. However, by contrast with the Lord Chief Justice's Judicial Office, I have not thought it necessary to establish a separate organisation for this purpose. Under arrangements agreed with the Chief Executive, I am supported by my own team within the Tribunals Service ("the Tribunals Judicial Office" or TJO). The TJO provides, or co-ordinates the provision of, support for all my functions as Senior President. The head of my office is a member of the Tribunals Service Executive Team ("TSET") and the office represents my interests on another TS groups as necessary. It is clearly understood that the loyalties of the TJO, on both policy and operational matters, are solely to me as Senior President, and through me to the tribunals judiciary.

Partnership

42. From the outset I agreed with Peter Handcock, first Chief Executive of the Tribunals Service, that the relationship between him and myself as Senior President should be one of partnership within a single organisation. By contrast with the court system (under the "Partnership framework"), we have not hitherto thought it necessary to formalise this relationship or to establish a joint board under an independent chair. The agency's senior body is the Tribunals Service Management Board which is chaired by the Chief Executive, and includes the Service's executive and non-executive directors. Although I am represented on the Board, it is accountable through the Chief Executive to the Lord Chancellor. It acts in parallel with the Tribunal Judges' Executive Board (see above), which is accountable to me as Senior President.
43. In practice there is a close working relationship between the tribunals judiciary and the administration at all levels. Informal arrangements between myself and the Chief Executive ensure that wherever appropriate our respective interests are represented on the each other's committees or working groups, both national and regional. I see

no reason at present to alter these arrangements, but I have agreed with the Chief Executive that they may be revisited if it appears desirable in the light of experience.

44. Arrangements have been agreed with the Chief Executive for the judiciary to be involved in the process of agreeing the resources to be made available for tribunals in pursuance of the Lord Chancellor's duties under section 39. These are set out in Annex F. I am grateful to Colin Bishopp (Special Commissioner of Tax) for agreeing to act as the representative of the TJEB in discussions with the Tribunals Service under these arrangements.

Access to Justice Directorate

45. Under the reorganisation of the Ministry of Justice in Spring 2008, the responsibilities of the Department have been organised into five Groups. The Tribunals Service comes within the Access to Justice Group. Peter Handcock has become its first Director General. The Access to Justice Group is responsible for all the delivery agencies which the Ministry provides for the justice system, including the Her Majesty's Courts Service, the Tribunals Service, the Legal Services Commission, the Office of the Public Guardian, and many others. As Senior President I meet periodically with the Director General and his senior staff. It will be a TJO responsibility to ensure that the interests of the tribunal judiciary are fully represented in the policy development of the Group.

THE COURT JUDICIARY

46. Although the Senior President is established as a separate statutory office, I regard it as essential that I should work closely with the chief justices and the court judiciary on all matters of common interest. Courts and tribunals should be seen as interdependent arms of a single system of justice. There is any event no clear division. Judges from the courts already sit regularly in a number of tribunal jurisdictions. The TCEA formalises this practice by making certain categories of court judges *ex officio* members of the First-tier and Upper Tribunals.
47. This working relationship is reflected in a number of formal and informal arrangements, for example:
 - a. I have regular informal meetings with the Lord Chief Justice and other senior judges. I am invited to attend meetings of the *Judges' Executive Board*

whenever necessary for the purpose of discussing issues of relevance to tribunals.

- b. The tribunal judiciary is represented on the *Judges' Council* (by three members), and on its *Tribunals Sub-committee*, and on other sub-committees and working groups established by the Council (for example, the working group on Judicial Conduct under Pill LJ).
- c. At my request, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland have appointed senior court judges to represent the interests of tribunal judges (of both devolved and non-devolved jurisdictions), and to chair a *Tribunal Judges Forum* in each country.
- d. The tribunal judiciary are represented on various working groups established by the Lord Chief Justice on different issues (for example, the *Judicial Appointments Group* under Lord Justice Leveson).
- e. The *Richards Working Group* (under Lord Justice Stephen Richards), of which the Deputy Senior President is a member, is examining issues concerning the relationship between the Upper Tribunal and the High Court, including the deployment of High Court judges to sit in the Upper Tribunal.
- f. The *Judicial Complaints Office* provides support for me in exercising the disciplinary functions in respect of tribunal judges delegated to me by the Lord Chief Justice under the CRA.
- g. The *Judicial Communications Office* provides assistance and advice to tribunal judges in their relations with the media.

48. I intend to build on these arrangements in order to strengthen still further the links between the judiciary at all levels.

EXTERNAL BODIES

49. Many external bodies have an impact on the work of the tribunal judiciary. In this paper I mention three which are particularly relevant to the performance of my duties as Senior President.

Judicial Studies Board

50. The JSB has its own Tribunals Committee, chaired by a High Court judge (currently Mr Justice Langstaff), a Tribunals Training Director (Mark Hinchcliffe) and supporting staff. The chair of the Judicial Training Group of TJEB sits on the Tribunals Committee of the JSB. There are already well-developed links between the Tribunals

Committee and individual tribunal jurisdictions. Shortly after my appointment as Shadow Senior President in 2004, I invited the JSB to carry out an evaluation of the existing training arrangements, and to report to me. This work is now largely complete, and has provided a comprehensive (and generally very encouraging) picture as a base for future planning.

51. With the advice of the TJTG, I have given consideration to how best to discharge my statutory responsibilities within the new system. One possibility would have been to follow the courts by in effect delegating this responsibility to the JSB. However, after detailed discussions with the JSB and others, I have decided on a more incremental approach. This would build on the strengths of the training arrangements already in place, while developing our links with the JSB both for the provision of actual training in certain areas (particularly those common to courts and tribunals), and more generally for continued evaluation of the effectiveness of our training programmes. In line with this approach the JSB's Tribunals Committee has adopted a Tribunals Training Strategy, which is set out in Annex G, and which I am happy to endorse.

Judicial Appointments Commission

52. High-quality appointments are essential in providing an expert and accessible service to the public. Maintaining and improving the diversity of the tribunal judiciary is particularly important, not least because many of our users are from ethnic and religious minorities or come from potentially disadvantaged groups of society. Following the CRA reforms, most appointments of tribunal judiciary are now made by the Lord Chancellor following selection by the Judicial Appointments Commission (JAC). As already noted, I have established the TJAG to lead on this aspect of our work, including advising on the balance between new appointments and assignment (see below), and maintaining links with the JAC. I also have regular informal meetings with the Chair of the JAC and the Chief Executive, and the Deputy Senior President meets the JAC Director of Tribunal Appointments on a monthly basis.
53. Tribunal judges are involved in the JAC processes in a number of ways:
- a. We work with the Tribunals Service in forecasting the need for appointments, to provide a basis for agreeing with the JAC programmes for future competitions.
 - b. Specialist judicial input is required for various tasks in relation to individual competitions, for example:

- i. defining job descriptions and requirements for individual offices;
 - ii. acting as referees for applicants;
 - iii. drafting qualifying tests for the JAC;
 - iv. participating in paper sifting and in interview panels;
 - c. Under the CRA we are statutory consultees for JAC recommendations before they are referred to the Lord Chancellor.
 - d. Judge Goolam Meeran represents tribunal interests as my nominee on the JAC Diversity Group.
 - e. Representatives of the tribunal judiciary are involved in liaison or working groups with the JAC, the court judiciary and officials responsible for the judicial appointments process in the MoJ.
54. I welcome the efforts of the JAC to create an independent and principled framework for judicial appointments; and I am grateful for the close working relationship we have been able to develop with Commissioners and staff. However, there is no doubt that cumulatively the judicial tasks, important as they are, place considerable demands on the time of the senior tribunal judges. I am also concerned that the processes are sometimes unnecessarily slow and unwieldy, against a background of needs which may vary due to unforeseeable factors even in the course of a competition. Against this background, I welcome the proposal (in the recent Governance of Britain Consultation Paper) for a statutory principle that, as well as being “fair, transparent, efficient and effective”, the JAC processes should be “flexible” and “proportionate”. The JAC are sympathetic to these concerns and we are already in discussion on means to overcome them.

Administrative Justice and Tribunals Council

55. The former Council on Tribunals established itself as an important and valued partner in promoting effective tribunal justice, acting among other things as a direct link between the tribunals and their users, and an unrivalled source of information about tribunal activities. Since my appointment as Shadow Senior President, I have been fortunate to enjoy the active support of the Council and its Chairman, Lord Newton. Consideration was given to whether the Senior President should become an *ex officio* member of the Council, or its successor body. However, Lord Newton and I were agreed that formal membership might lead to confusion, and potential conflict, between our distinct statutory roles. This has not prevented the development of a close and constructive working relationship. I am grateful that I (or my nominee) have

been able to attend all their meetings and annual awaydays, and I have been invited to speak at their annual conferences.

56. I have already mentioned the wider agenda set by the 2004 White Paper. I am pleased this is now reflected in the new statutory role given to the AJTC. The TCEA contains for the first time a statutory definition of the “administrative justice system”. It encompasses “the overall system by which decisions of an administrative or executive nature are made in relation to particular persons”, including the procedures, the law, and systems for resolving disputes. Thus, the AJTC’s role is not just about the final stage of dispute resolution, but covers the whole process from initial decision until final resolution at whatever level.

User Groups

57. It is important that the new tribunal system continues and develops the existing mechanisms for liaison and communication with users and the wide variety of groups and organisations which assist people with cases before tribunals. Arrangements are in hand to involve such groups in the forthcoming preparations for the launch of the new tribunals on T-day. Both the Deputy Senior President and I have been willing to respond to invitations for speakers at events or conferences held by representative bodies, and this will continue. I anticipate that existing groups, both national and local, will continue to operate after T-day in much the same way as before, even where they are based on jurisdictions which have been absorbed into the new chambers. In due course I expect the new Chamber Presidents, and the local judiciary, to work with representatives of the user groups to build on these relationships, and to consider how the arrangements can if necessary be adapted to meet the needs of users within the new tribunal structure.

WORKING ARRANGEMENTS

ASSIGNMENT AND CROSS-TICKETING

58. Under the TCEA I am given the function of “assigning” judges and other members between chambers, and I am required to publish a policy relating to assignments, agreed with the Lord Chancellor (Sched 4 Part 2). The statutory term “assignment” specifically refers to the function of assigning judges and other members between chambers. In addition it will be possible for a Chamber President to arrange for

judges and members within a each chamber to sit in different jurisdictions within the same chamber. The non-statutory term “cross-ticketing” is a convenient description of the latter process.

Assignment

59. Work on developing the assignment policy is at an early stage. I hope to publish a draft for consultation later this year. Under the Act, the Senior President’s policy in relation to assignment must be such as to secure that appropriate use is made of the knowledge and experience of the judges and other members of the First-tier Tribunal and Upper Tribunal, and also that there is sufficient knowledge and experience of Scottish and Northern Ireland law in chambers requiring the use of that law.

60. In formulating the policy (and for any assignment decisions required in the interim) I shall have the following general principles in mind:-
 - a. The paramount concern is service to the public.
 - b. Assignments will only be permitted where there is a business need. There is no presumption that all tribunal judges and members will be offered opportunities for assignment.
 - c. Under the statute, assignment is only possible with the agreement of the individual concerned, and of the Chamber President.
 - d. The maintenance and improvement of expertise is central to the role of tribunals; accordingly assignment should only be permitted where a judge or member either already has the appropriate skills or expertise, or can be given the necessary training and mentoring.
 - e. Where assignment is to a new area of work, the assignment it may be on a probationary basis.
 - f. Assignment policy should be developed and applied with regard to
 - i. the need to encourage diversity across the tribunals system;
 - ii. the need for a careful balance between assignment and new recruitment, in order to ensure a steady supply of fresh blood to the system;
 - iii. the need for an appropriate geographical spread of judges and members across the UK.
 - g. Assignment policy should be a means for providing variety to judges and members and offering clear and realisable career development paths.

- h. The system for selecting individuals for assignment should be fair, transparent and efficient. This is of particular importance if assignment to more than one chamber or tribunal carries with it extra remuneration.

Cross-ticketing

- 61. I will be discussing the arrangements for cross-ticketing with the Chamber Presidents when appointed. Similar principles should apply. My present intention is that judges and members should initially sit only in the jurisdictions to which they have been previously appointed, unless and until they are permitted by the Chamber President to work in another jurisdiction. That should only take place only when they have been sufficiently trained for the purpose. In effect, therefore, the identities and specialisations of the transferring tribunals will be preserved as distinct panels or groups of judges and members, and, where possible, under the same jurisdictional leadership.
- 62. The power to allow cross-ticketing within chambers is derived from the Senior President's powers to choose the members to decide a case. I expect to delegate these powers to the Chamber Presidents, who will be able to develop policies to suit the particular features of the jurisdictions under their control. However, I will wish to be assured that the principles laid down above are being followed, and for that purpose I will review the arrangements with each Chamber President from time to time.

High Court Judges

- 63. The deployment into tribunals of High Court Judges (or their equivalents in the other parts of the UK) will be a matter for discussion between me and the Lord Chief Justice, and the other chief justices. Other courts judges may be deployed into tribunals with their consent and the agreement both of the Chamber President and the Lord Chief Justice or his delegate. In general, assistance from the courts will be sought where there is a business need, in terms of either numbers or expertise. I will seek to agree principles for such deployments with the chief justices or their nominees.

PROCEDURE AND COMPOSITION

64. The procedural framework for the new tribunals will be set by rules made by the Tribunal Procedure Committee, and by Practice Directions made by the Senior President and Chamber Presidents. The Leggatt review and the 2004 White Paper emphasised the need for “simplification and overhaul” of the procedural rules across the system, while recognising the special needs of particular jurisdictions.⁶ I share that view, and have made it a priority in the implementation planning. Amongst other objectives, it should in time ease the task of newcomers to the tribunal system, including unrepresented litigants, and also facilitate assignment and cross-ticketing of judges to different jurisdictions.
65. I am pleased by the progress that has already made in preparing draft sets of rules for each of the three first Chambers, for consideration by the Committee and consultation. I am grateful to Mr Justice Elias for agreeing to act as the first Chairman of the Committee, which has already had its first meeting. Work is also in hand for the preparation of draft Practice Directions. In accordance with the implementation programme, these will all be subject to consultation before final consideration and approval. This will need to be achieved in good time for the judiciary and all other interested groups to familiarise themselves with them before T-day. Although this seems an ambitious target, I see no reason why it cannot be achieved. The draft rules have been prepared in consultation with the judges of the jurisdictions affected, with a view to ensuring that they are as simple and accessible as possible, and that changes to everyday practice of those appearing in tribunals will be limited.
66. The composition of the tribunal for individual hearings will be governed by an order made by the Lord Chancellor under paragraph 15 of Schedule 4 of the TCE Act. Where that order provides me with discretion as to the composition of a tribunal, it is my intention to start in general with a policy of maintaining established principles for different categories of case, unless and until there is shown to be good reason for change. I will expect Chamber Presidents in due course to review the current arrangements, in consultation with their judges, members and users. The general objective should be to ensure that the best use is made of judges and members, following the principles originally derived from the Leggatt review, and developed in the Consultation Paper *Transforming Tribunals*.

⁶ *Tribunals for Users* para 8.9; 2004 White Paper para 7.3

ANNUAL AND OTHER REPORTS

67. Under the TCEA the Senior President is required to report annually, in relation to cases before the First-tier and Upper Tribunals, or before the Employment and Employment Appeal Tribunals, on matters which he wishes to draw to the attention of the Lord Chancellor and on matters which the Lord Chancellor has asked him to report on (TCEA s 43).
68. At present a number of tribunals choose to produce annual reports on their activities. The President of Social Security Tribunals is required to report annually on decision-making by the Secretary of State for Work and Pensions. The Tribunals Service is also obliged to produce an annual report under its governing framework document. The AJTC is obliged to produce an annual report which covers its own activities. The annual reports of its predecessor, the Council on Tribunals, helpfully drew together in one place information about the workload of the tribunals under its supervision.
69. Before deciding the form and content of future reports, I wish to review current practice and discuss with interested bodies their needs and the best way of meeting them. I know that many users and their representatives value the jurisdiction-specific information which individual tribunals' annual reports provide. However, there may be other ways of achieving this objective. It may, for instance, be more useful as well as more cost-effective to post information regularly on the Internet rather than publish it in a conventional annual report. We also need to work with the AJTC secretariat to ensure that we are duplicating effort but that we are between us meeting the needs and expectations of users.
70. I have asked the TJO under the leadership of Sir Michael Harris to review the existing reporting arrangements of all the tribunals within the scope of section 43, and to make recommendations. These will provide a basis for the Tribunal Judicial Communications Group to advise me on proposals for future reporting arrangements, which will be subject to discussion with stakeholders and user groups.

CONCLUSION

71. This paper is intended to set the scene for the next few months of the implementation process. I am well aware that the programme is a challenging one. However, in agreement with the other members of the TJEB, I believe it is important, now that we have the statutory framework in place, not to lose the momentum of the reform agenda. I have been fortunate hitherto to be able to rely on the consistent good will and support of the tribunal judiciary and the administration. Without that the task would have been impossible. I am confident that, once we have completed this transition stage, the system as a whole will be greatly strengthened and we can begin to exploit the many opportunities for development and improvement. In the meantime, I welcome any suggestions, comments or queries from judiciary or users. I will report further in a second review paper in the Autumn.