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IT SEEMS that we have been discussing the likely nature and impact of the tribunal reforms for some time. It comes as something of a relief, therefore, to be able, since the end of 2008, to start looking at the realities – as opposed to the theory – of building a new structure and a dedicated Upper Tribunal.

On page 6 of this issue, Judge Phillip Sycamore considers his role as President of the Health, Education and Social Care Chamber, and what he believes the different jurisdictions of mental health, special educational needs and care standards can learn from each other.

The opportunity presented by the establishment of an appeal tribunal dedicated to hearing challenges to decisions of the First-tier Tribunal is, of course, a key element of the new tribunals structure, and on page 3, Mr Justice Hickinbottom describes the benefits and implications of the Upper Tribunal. This article continues a short series by Presidents of the new Chambers that started with Judge Robert Martin's piece in the autumn 2008 issue.

But this remains a training journal, and we include two articles in this issue on that subject. On page 12, Mark Hinchliffe looks at the role of the non-legal, non-specialist tribunal member, the significance of the views that they bring to the panel and the implications for training and teamwork. On page 9, Professor Jeremy Cooper describes the work of the Tribunals Judicial Training Group and the thought that it has been giving to training within the Tribunals Service.

Godfrey Cole CBE

Any comments on the journal are most welcome. Please send to publications@jsb.gsi.gov.uk.

EARLY CASES

The Charity Tribunal became operational in March 2008. *Alison McKenna* describes its function.



THE POLICY RATIONALE for the introduction of the Charity Tribunal by the Charities Act 2006 was two-fold. First, many charities felt that the Charity Commission could not effectively be challenged because it was too expensive for them to bring a case in the High Court. Second, it was felt that, owing to the lack of test cases being brought in the High Court, charity law was not being developed and keeping pace with the changing role of charities in society. The tribunal was therefore created to provide swift, low-cost access to justice for charities, to ensure that the Charity Commission was perceived as a truly accountable regulator and given the power to clarify issues of charity law.

The tribunal can hear three distinct types of application:

- *Appeals.* These are appeals against certain decisions, orders or directions of the Charity Commission as set out in Schedule 1C to the 1993 Act, as amended.¹
- *Reviews.* These apply to certain decisions which are not capable of appeal, but in respect of which there is a right to review by the tribunal, applying the principles that the High Court would apply in all applications for judicial review. The tribunal's powers in appeals and reviews include quashing the Commission's decision, remitting the matter to the Commission, and supplementing the order or direction.
- *References.* These are made by the Attorney-General or (with her consent) the Charity Commission in order to clarify matters of charity law.

When considering an appeal, the Charity Tribunal considers the decision afresh and is able to hear evidence that was not before the Charity Commission

Continued on page 2

when it made its original decision. When remitting a matter to the Commission, the tribunal can remit generally, or for a fresh determination in accordance with a finding of fact or law by the tribunal.

The role of the Attorney-General is one of the more unusual aspects of the Charity Tribunal. She may be involved not only in respect of references, but can also instigate appeals and reviews or intervene in appeals and reviews, whether at her own instigation or that of the tribunal. She can also be asked to 'assist' the tribunal on any matter, without being joined as a party.

The Charity Tribunal's procedure is governed by the Charity Tribunal Rules 2008 (SI 2008 No 221). These rules will change in 2009 when the Charity Tribunal moves into the General Regulatory Chamber.

There is shortly to be a public consultation on the new rules. At present, appeal from the tribunal is to the High Court on a point of law, to which the Attorney-General may be joined whether or not she was a party to the original proceedings before the tribunal. Following the introduction of the Charity Tribunal into the General Regulatory Chamber, appeal will be to the Upper Tribunal.

We have initially been resourced on the basis of 50 cases a year. The through-put of cases has, however, so far been slow, following the introduction of a thorough internal decision review process by the Charity Commission. Early indications are that the Charity Commission is resolving a high proportion of cases locally through this process, although the ability of charities to access the tribunal without first going through the internal review in certain cases is currently being considered in the context of our new rules.

It is, perhaps, too early to say whether our first three cases are indicative of the matters we will typically hear. The first case listed for a full hearing is an appeal by a charity trustee against his removal from this role by the Charity Commission. It involves alleged links with a proscribed organisation. The second and third cases, which will be heard together, involve appeals from the refusal by the Charity Commission to allow two charitable Catholic adoption agencies to amend their objectives, with the intention of bringing themselves within an exception in the Equality Act (Sexual Orientation) Regulations 2007, in order to limit the provision of adoption services to heterosexuals.

The Charity Tribunal has a salaried President, five legal members and seven 'ordinary members' who have 'appropriate knowledge or experience relating to charities'. The functions of the tribunal will be carried out by panels. The President or a legal member may sit alone

to form a panel, and the tribunal may also sit in combinations of two or three members (legal or ordinary) with the President or a legal member in the chair.

For the time being, we will generally sit as a panel of three, although I have recently heard an urgent, telephone directions application alone and also determined a further directions application on the papers. We do not have a dedicated hearing centre, but will sit wherever is most convenient to the parties.

Alison McKenna is President of the Charity Tribunal. Further information about the tribunal, including details of current cases, can be found at www.charity.tribunals.gsi.gov.uk.

¹ For appeals and reviews, these must have been made on or after 18 March 2008. The reference procedure, involving free-standing matters of legal principle, is unaffected by this time constraint.

A FORUM TO CLARIFY AND DEVELOP THE LAW



The Administrative Appeals Chamber is the first of the Upper Tribunal chambers in the reformed two-tier system. *Gary Hickinbottom* describes a unique opportunity.

IN HIS 2001 REPORT, Sir Andrew Leggatt identified three specific concerns about tribunals as he then saw them: lack of independence, inefficient use of resources and lack of coherence. Independence has largely been addressed (at least in so far as central government tribunals are concerned) by the transfer of the management of tribunals to the Tribunals Service, an agency within the Ministry of Justice. That has also enabled scarce resources – such as estate, staff and judges – to be more efficiently deployed. Work is continuing on initiatives such as the Birmingham Pathfinder Administrative Service Centre and appropriate use of assignment and ticketing to ensure that best use is made of available judicial resources. These important aspects of reform were discussed by Robert Martin in the Autumn 2008 issue of *Tribunals*.

Coherence

The lack of coherence to which Leggatt referred was addressed in the Tribunals, Courts and Enforcement Act 2008. Prior to the Act, challenges to first-tier tribunal decisions went in all directions. Some were made to a specialist second-tier tribunal (such as the Social Security Commissioners). Others went by way of appeal to the High Court (for example, challenges to decisions of the Special Tax Commissioners and SENDIST). A few found their way directly to the Court of Appeal or Inner House. Other decisions could only be challenged by way of judicial review. Leggatt proposed that, from a first-tier tribunal decision, there should be a general right of appeal on a point of law only and with permission to a single second-tier tribunal – and thence to the

Court of Appeal (or relevant Scottish or Northern Ireland equivalent), again on a restricted basis.

Reformed structure

With the notable exclusion of the tribunals dealing with employment and asylum and immigration, the 2008 Act establishes that reformed structure. In November 2008, a new First-tier Tribunal (FtT) was established, comprising three chambers, with a right of appeal to a new second-tier tribunal, the Upper Tribunal, which at present comprises just one chamber, the Administrative Appeals Chamber (AAC). There are some exceptions to this general scheme – notably there is no appeal from first-tier decisions in criminal injuries and asylum support, or from interlocutory decisions. These can still only be challenged by way of judicial review, although the Lord Chief Justice has issued a Practice Direction automatically transferring all judicial reviews of FtT interlocutory decisions and those arising out of criminal injury claims to the AAC, the Upper Tribunal having been given the power to judicially review by statute. The exceptions to the general scheme are thankfully few, and it is possible that over time the increasing call to give a full right to appeal in respect of all FtT decisions will be answered.

The exceptions to the general scheme are thankfully few...

Transfers

Throughout this year and beyond, other jurisdictions will be transferred into the reformed system, with new chambers being established for tax (at both FtT and Upper Tribunal levels), land (Upper Tribunal) and general regulatory (FtT).

While, as envisaged by Leggatt, some complex first-instance cases will be heard in the Upper Tribunal (with an appeal direct to the Court of Appeal or Inner House), the two-tier tribunal scheme will be generally be maintained. We await the Government's decision on the possible reform of the Asylum and Immigration Tribunal, but its consultation paper proposes bringing that jurisdiction too within the two-tier reformed system – a proposal that has the general support of the judiciary in both the tribunal and court systems (and certainly mine).

Simple route

The new structure has considerable advantages for users, who generally have a single and simple route of challenge of a tribunal decision. The Upper Tribunal Rules – drafted by the new, independent Tribunal Procedure Committee – are straightforward and consistent across the various jurisdictions they serve. Leaving aside the exceptions referred to above, users are not troubled by the procedures or expense of High Court proceedings. Short of misbehaviour, there is no power to award costs in appeals to the AAC.

Benefits for users

There are two further advantages for users. First, there is speed. Appeals or applications for judicial review are normally considered by a judge in the AAC within a matter of days, on a single ticket basis that promotes active and robust case management. Hearings can usually be listed as soon as the parties are able to be ready. Second, there is the flexibility of panel composition in the Upper Tribunal. We have available not only tribunal judges who are specialised in the particular substantive legal fields, but also experienced judges from the court system including High Court and even Court of Appeal judges, who can be fielded as single judges or panels of two or three. In appropriate cases, panels can be set up incorporating the weight of a senior judge with the experience of a judge who has worked in a particular field for many years. Furthermore, given the importance of giving authoritative

guidance (to which I return below), as President of the AAC I have maintained the practice of the former Social Security Commissioners of having, in cases of special legal difficulty, three-judge panels whose decisions are effectively binding on all single judges in the Upper Tribunal as well as on the FtT and original decision-makers. Such panels are particularly helpful where there are conflicting authorities from single judges or where there are substantial difficulties in practice that require authoritative resolution.

An early example

By way of example, the first important appeal from the mental health jurisdiction of the Health, Education and Social Care Chamber (HESC) of the FtT concerned disclosure of documents under the Tribunal Procedure (First-tier Tribunal) (HESC) Rules 2008, and particularly issues that arise when applications are made for the disclosure of medical records that contain third-party information confidential to that third-party. Typically, a family member of the patient writes to a hospital with information about the home circumstances or indeed that other person's own health. The substantive appeal was heard within about three weeks of the appeal being filed, by a panel comprising a member of the Tribunal Procedure Committee, the current President of HESC (who is the former liaison judge of the Mental Health Review Tribunal for England and Wales), and me as President of the AAC. Although the urgency of the case faded (because the patient was in the meantime released), we were nevertheless able to give authoritative guidelines in respect of the practical difficulties of disclosure that arise in many cases (*Dorset Healthcare NHS Trust v MH* [2009] UKUT 4 (AAC), available on the AAC website).

Specialist jurisprudence

These are immediate and direct advantages for tribunal users, including of course the original decision-making arm of government. However, the new coherent system will have sustained benefits for administrative justice. While some

jurisdictions with a strong second-tier appeal tribunal were able to develop their own specialist jurisprudence, the splintered nature of tribunals before the reforms meant that the development of the law in a coherent way elsewhere was at best difficult. Where the right of challenge was restricted to judicial review in the Administrative Court, such effective development was impossible. The new system allows for the development of the relevant law by a dedicated cadre of specialist judges. The importance of this to the administrative justice system as a whole was recognised in the Leggatt Report (at paragraph 3.9), and has been developed in a recent, visionary article by the Senior President (*Tribunal Justice – A New Start* [2009] PL 48).

Substantive law

There are three aspects of the law that will benefit from such development. First, there is the substantive jurisprudence of the particular areas of executive regulation covered by tribunals. AAC judges have experience and expertise in the highly specialised and complex legislation that comes before them to be interpreted, and are therefore in a special position to construe administrative legislation coherently, having regard to the relevant scheme as a whole. This unique attribute of specialist second-tier tribunals has been recognised by the higher courts (in cases such as *Cooke v Secretary of State for Social Security* [2001] EWCA Civ 734) and, as onward appeals will be the subject of restrictive second appeal criteria, the relevant substantive law will effectively be developed and evolved in the AAC, with reference to the higher courts only where general principles of law are involved.

Overarching principles

Second, the Upper Tribunal will be able to develop administrative law principles that will overarch all tribunals, in relation to (for example) adequacy of reasons. As Lord Justice Carnwath said in the article to which I have referred

(at page 56), the establishment of the Upper Tribunal (over which he presides), ‘provides an unprecedented opportunity to work towards a more coherent and distinctive system of tribunal justice, drawing together the strands of the principles developed for the various jurisdictions’.

Guidance

Third, the tribunal system is relied upon by users – both government agencies and the citizens they seek to regulate – to give them practical general guidance in relation to the decision-making process. In a number of cases, the courts have suggested that this is not the function of judges in the court system – the parties just have to do

the best they can with the wording of the regulations they have got – but that is not the approach of tribunals. In the context of a specific case, second-tier tribunals are used to being asked for, and giving, general guidance on matters of practice and procedure, not only of the first-tier tribunals from whom appeals come but also

of the original decision-making process. This was encouraged by Leggatt, and it will be a vital role for the AAC and other chambers of the Upper Tribunal once they are established.

Therefore, although the new tribunal institutions are not only welcome but vital to the reform programme, so far as the AAC is concerned their establishment merely provides the structure within which its work can be done. In addition to correcting errors of law in FtT decisions – which are found in only a tiny proportion of the enormous volume of cases with which the FtT deals – the establishment of the AAC does indeed provide a forum in which the law can be clarified and developed. I agree with the Senior President – this is a unique opportunity. And one which provides the AAC with an exciting future.

Mr Justice Hickinbottom is the Deputy Senior President of Tribunals.

A CONSISTENT APPROACH ACROSS JURISDICTIONS



Phillip Sycamore considers the opportunities for case management offered by the new Chamber's broad powers and the appointment of a group of salaried judges.

IT IS ONLY four months since the Tribunals Courts and Enforcement Act 2007 was implemented with the launch of the new Tribunals Service, the creation of the Administrative Appeals Chamber (AAC) of the Upper Tribunal and the first two First-tier Chambers – Social Entitlement (SEC) and Health Education and Social Care (HESC).

Senior judicial team

I am the Chamber President of HESC, which brings together the jurisdictions of the former Mental Health Review Tribunal, Care Standards Tribunal and Special Educational Needs and Disability Tribunal. The Family Health Services Appeal Authority is likely to join HESC in the early part of 2010.

In February 2009, the Judicial Appointments Commission started the recruitment process for two Deputy Chamber Presidents – one to specialise in the work of the mental health jurisdiction and the other to be responsible for the other jurisdictions in the Chamber. They, with me as Chamber President, will constitute the senior judicial team.

Salaried members

Historically, all of the jurisdictions in the Chamber have relied almost entirely on a fee-paid membership. We have been greatly assisted by the appointment in early 2009 of 10 full-time

salaried tribunal judges to the mental health jurisdiction with more appointments to be made during the course of this year. I hope that in the future similar appointments will be considered for the other jurisdictions in the Chamber.

The significance of this new cadre of salaried judges extends beyond the impact on the way hearings can be listed and conducted. For the first time we will be able to devote judicial resources to effective case management.

One of the attractions of the jurisdictions coming together is how each jurisdiction can learn from the experiences of the others and I hope that as case management develops there will be benefits in some common approaches.

Case management

The task in mental health is, to say the least, challenging. There are some 24,000 applications and references every year resulting in 13,000 or more effective hearings, all of which are conducted in hospitals. We had to decide how

to begin our approach to case management, recognising that not every case could be so managed from the outset.

We have decided to ask the salaried judges to concentrate initially on restricted patient cases. These account for about 12 per cent of the total caseload and involve patients who are detained without limit of time by virtue of orders of the

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Crown Court or by direction of the Secretary of State for transfer to hospital from prison.

The nature of these cases is such that the legal member of the tribunal must always be either a circuit judge or a recorder QC. These cases lend themselves to case management and I would expect a close working relationship to develop between the salaried tribunal judges and the circuit judges who will ultimately hear the cases.

Often the issues that are concerning the patient do not emerge until the day of the hearing and may not always be directly relevant to the statutory powers of the tribunal. An early identification of the issues should result in relevant case management directions being given, for example in deciding whether independent expert reports, often now routinely commissioned by legal representatives, are really necessary and in ensuring that all relevant preparatory steps have been complied with. This should result in a reduction in avoidable adjournments and speedier and more effective and relevant hearings.

Rules

The procedural rules for the Chamber – the Tribunal Procedure (First-tier Tribunal) (Health Education and Social Chamber) Rules 2008 – came into effect on 3 November 2008 and were the first concrete manifestation of the new Chamber.

While the rules are generic they also recognise the different needs of the individual jurisdictions and make specific provision for them. For example, the rule which provides a mechanism for striking out does not apply to mental health cases. Similarly the presumption in favour of a public hearing does not apply in special

educational needs and disability discrimination in schools cases or in mental health cases – these hearings can only be in public if the tribunal considers that it is in the interests of justice for a hearing to be in public.

It is important for members and parties to check that a particular rule is relevant to the particular jurisdiction. Regard must always be had to the overriding objective in rule 2(1), which is ‘to enable the tribunal to deal with cases fairly and justly’.

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Review and appeal

The provisions in the rules dealing with correcting, setting aside, reviewing and appealing against a tribunal decision are very different from the old procedures where judicial review was the only available remedy. They provide a modern, flexible framework which is entirely consistent with the overriding objective.

I will not explore all of the rules, but rules 47 and 49 perhaps most clearly demonstrate the innovative approach which has been created. On receiving an application for permission to appeal, the tribunal (usually a single judge) must first consider whether to review the decision.

Wide powers are given on a review (section 9 of the 2007 Act) including the power to set aside the decision and re-decide the matter. This power has already been exercised in a number of cases which have been re-listed speedily either before the original or a differently constituted panel.

Administrative Appeals Chamber

The Administrative Appeals Chamber (AAC) deals with appeals from both SEC and HESC. While the bulk of its work is the appellate work

previously carried out by the Social Security and Child Support Commissioners, who all became judges of the Upper Tribunal in November 2008, it has already dealt with an appeal from HESC.

By virtue of my office as Chamber President, I am also a judge of the Upper Tribunal. I sat in December 2008 with Judge Gary Hickinbottom (now Mr Justice Hickinbottom), President of the AAC and Upper Tribunal Judge Mark Rowland on the first appeal from the mental health jurisdiction. The appeal was listed very quickly and we were able to give a guideline ruling on sensitive issues relating to the disclosure of material contained in patient records (see *Dorset Health Care NHS Trust v MH* [2009] UKUT 4 (AAC)).

Links

I see a great attraction in the opportunities the Chamber structure offers in terms of a consistent approach across the jurisdictions to both training and appraisal. Many of our members already

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sit in more than one jurisdiction within the Chamber. There is already dialogue both within the Chamber and across the Tribunals Service as to how and where we can identify common training and appraisal goals. Finally, I am a great enthusiast of stronger links between the Court Service and the Tribunals Service. Already a number of circuit judges sit in HESC in the mental health jurisdiction, and the CST and SEND jurisdictions from time to time sit in Court Service venues.

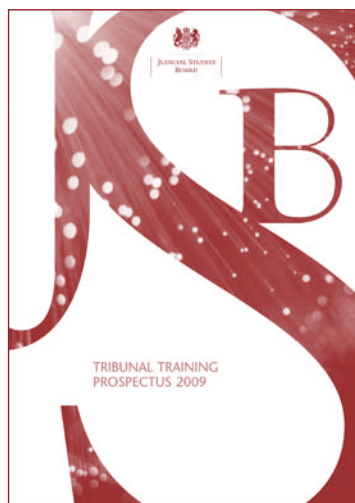
The northern base for HESC is to be in the new Civil Justice Centre in Manchester where the Administrative Court is also to begin sitting in Spring 2009. I look forward to working there and continuing to develop those closer working relationships which can only be to the long-term benefit of users, members and the public at large.

Judge Philip Sycamore is President of the Health Education and Social Care Chamber of the First-tier Tribunal.

PROSPECTUS OF COURSES FOR 2009

THE JSB plans to launch its new prospectus of courses in May 2009. The prospectus will cover courses being held from summer 2009 onwards. Copies of the prospectus will be circulated widely and also made available on the JSB's website (www.jsboard.co.uk) where details of the current training programme are already available.

For further details, please contact the tribunals team at the JSB on tribunals@jsb.gsi.gov.uk.



Despatch

In an effort to expand the journal's readership and speed up its despatch process, the editorial board has been working with tribunals over the past months to send each issue of the journal to individual tribunal members. As developments in administrative justice continue to move forward, this improved system is intended to ensure that the content of the journal is as current as possible.

GOOD JUDGES NEED GOOD TRAINING



The tribunals sector has a wide range of innovative and imaginative training courses. *Jeremy Cooper* describes the role of the Tribunals Judicial Training Group in advising the Senior President on improving the design and delivery of such courses within budget.

THE SENIOR PRESIDENT of the Tribunals Service, Lord Justice Carnwath, has statutory responsibility for ‘the maintenance of appropriate arrangements for the training, guidance and welfare of judges and other members of the First-tier Tribunal’.¹ In 2007, he created two judicial groups of senior tribunals’ judiciary to advise him on the exercise and fulfilment of these functions. This article will outline the work of one of these groups, the Tribunals Judicial Training Group (TJTG).²

Expressing the guarantee of appropriate training as one of his statutory, not optional, functions was a major recognition of the central importance attached by the judicial establishment to training. Without the availability of high-quality, up-to-date, appropriately delivered training, a good judge can soon become a bad judge.

Purpose

The overriding object of the TJTG is ‘to support and maintain judicial standards through training’. It advises the Senior President on training issues generally, and is tasked in particular with identifying judicial training needs, agreeing the final training programme for each year with the Senior President and keeping under review its delivery, within budget. Tribunals have

traditionally fiercely protected their individual training programmes and budgets. Creating the TJTG in 2007 as a forum to encourage individual jurisdictions to share information and ideas (let alone to discuss budgets!) was therefore a challenging task for the group’s first chairman, Sir Michael Harris, then President of the SSCSA. He was more than adequate to the task, and from shaky beginnings the group developed a strong corporate identity. It is working hard on achieving a consensus on how to approach training delivery and development across the TS, which now supports 30 separate tribunal jurisdictions and will shortly be expanded even further.

The TJTG meets five times a year, with its meetings timed to match strategic moments in the annual planning cycle. Group membership is designed to cover the range of jurisdictions within the TS, but it also includes a representative of those tribunals currently *outside* the service.

Evaluation

One of the first initiatives undertaken by the Senior President was to invite the JSB to carry out a comprehensive evaluation of the judicial training programmes in operation across the TS.³ This was an extremely important and positive

TJTG members are:

Jeremy Cooper (Chairman), Siobhan McGrath (Residential Property Tribunals Service), Mark Hinchliffe (JSB Tribunals Training Director), Nuala Brice (Tax and Finance Tribunals),

Andrew Grubb (Asylum and Immigration Tribunal), Simon Oliver (Health, Education and Social Care Chamber), David Reed (Employment Tribunal, England and Wales), Shona Simon (Employment Tribunal,

Scotland), Andrew Trott (Lands Tribunal), Nick Warren (Social Entitlement and General Regulatory Chambers), Nick Wikeley (Upper Tribunal) and Bernard Whyte (Social Entitlement Chamber).

exercise for all concerned and confirmed that training programmes across the service were generally robust, dynamic and of a high quality. Each JSB evaluation team made recommendations for improving the range and quality of future training programmes within individual jurisdictions – typically an encouragement to create internal training committees, to specify more concrete course learning outcomes, to experiment with a wider range of teaching methods and to develop clearer linkages between appraisal outcomes and training planning.

The TJTG has spent some time considering the overview report of the evaluation process – now completed for TS tribunals – and has used the opportunity to promulgate a service-wide summary document identifying examples of best practice across the sector, to inform planning for new programmes. The Senior President has also invited the JSB to follow up their recommendations with each individual jurisdiction and update him via the TJTG on their implementation.

This has never been attempted before in the history of tribunals, and is an important marker for the regulation of future progress.

Budget

Perhaps the most significant achievement of the TJTG to date has been its success in developing a model for a controlled but informed overview on the global TS training budget, which can then be formally approved by the Senior President. This has never been attempted before in the history of tribunals, and is an important marker for the regulation of future progress.

Although each TS jurisdiction still retains ownership of the development, costing, planning and delivery of its own training programmes, it can no longer do so in isolation. Each jurisdiction must now submit to the Tribunals Judicial Office details of its programme – the number and nature of events, outline content, cost breakdown and so on – at an early stage in the planning cycle. The

Judicial Office checks the data, seeking more information where necessary before amalgamating the information for consideration by the TJTG, which works with individual jurisdictions to agree the detail of the overall TS training programme for the next financial year, for the Senior President's approval. This process works well. It is transparent, democratic and constructive without to date having led to blood on the carpet. The approved training programme for 2009–10 managed to meet all reasonable requirements, while costing the same as the previous year – £4.4 million. A particularly beneficial aspect of the process has been the way in which it has revealed to all TJTG members the wide range and extent of innovation and imaginative course design in operation across the sector.

Efficiencies

One helpful consequence of the planning process has been to reveal the total amount of money currently spent within the TS on training, the largest single item within the Tribunals Judicial Office budget. This is not to say that the amount is in any way too high – far from it – but it does bring home the

responsibility we all share to supervise our large budgets, and avoid sloppy financial management. It achieves little to economise on trainers' fees and the quality of training materials while at the same time setting no rules on the need for all trainers and delegates to make maximum use of economy travel and accommodation packages.

Of particular importance to the TJTG is the way in which the new budgetary process allows us to flag up, and if necessary question, areas where one jurisdiction is significantly out of line with another on a particular aspect of its programme. This process is essentially assistive, not punitive. The pooling of collective wisdom and experience from across the group has led to encouraging economies of scale, the transfer of some programmes to a more cost-effective venue,

a more rational approach to the production of course materials and most important of all an exploration of the scope for sharing training courses, ideas and modules across jurisdictions.

Guidance

A further important consequence of the process has been the production within the group of a *Training Event Guidance Booklet*, which will be circulated to all TS tribunal training leaders later this year. The booklet draws together the collective experience of group members and the Tribunals Judicial Office and provides guidance on a host of practical issues connected with programme planning. It covers such matters as the use of hotel and conference booking agents, protocols on paying for overnight stays and travel arrangements, availability of efficiencies in reproducing training materials, sharing of training modules, economic usage of audio-visual equipment with useful advice on accessing sources, and ways of controlling and monitoring ongoing expenditure.

The TJTG has also taken a great interest in the work of the Tribunals Judicial Welfare and Appraisal Group . . .

Judgcraft

A topic of great interest to the TJTG has been the feasibility of developing joint training programmes, in particular in the area of ‘judgcraft’ skills. In the early stages of the debate within the group it emerged that generic judgcraft was in itself a problematic concept, as the procedural differences between different jurisdictions were said to be of such significance that they were almost irreconcilable. ‘In this tribunal we do it this way’, ‘Oh, we never do it like that’ were the consistent responses in early debate. The idea of a cross-jurisdictional approach to judgcraft training appeared a pipedream. As the debate has progressed over the months, however, a more refined concept has begun to emerge – that of generic judgcraft training *within a chamber*. This seems a more promising project, and work is now taking place within the Health, Education and

Social Care Chamber to explore the idea further. The other new chambers will also be looking into possibilities in this direction over the coming months and years.

The TJTG has also taken a great interest in the work of the Tribunals Judicial Welfare and Appraisal Group, especially their views on the need to integrate the appraisal process with the planning of future training programmes. We have embarked upon a number of discussions with the JSB in an effort to map out a new role for the JSB in the future TS training agenda. Notwithstanding its miniscule budget for tribunal training of £175,000, the JSB has played an important role in providing assistance to many tribunal jurisdictions. It is noted for its bespoke training courses on trainer skills, appraisal and mentoring, equal treatment and so on, and has offered generic judgcraft training courses that have been particularly welcomed by small tribunals, who have not been in a position to provide their own training programme. The JSB has also exercised some influence in ensuring that TS training reflects the values set out in the competence framework document published by the JSB in 2008.

Now that the TS has started to develop and project a more corporate approach to the management and planning of its own training agenda, a root-and-branch review of its future training strategy, including its relationship with the JSB, will form a key part of the work of the TJTG over the coming year.

Professor Jeremy Cooper is a Regional Tribunal Judge for the First-tier Tribunal (Mental Health) and chair of the TJTG.

¹ Tribunals Courts and Enforcement Act 2007 Schedule 2 para 8.

² The other group is the Tribunals Judicial Welfare and Appraisal Group, chaired by Libby Arfon-Jones of the AIT.

³ See the Spring 2007 and Summer 2008 issues of this journal.

| DON'T JUST SIT THERE, PLAY A FULL PART



Mark Hinchliffe describes why it is important that non-legal panel members are equal members of the team.

IN 1957, THE FRANKS COMMITTEE subjected the tribunal system to detailed scrutiny.¹ Franks concluded that the advantages of tribunals included expert knowledge of their particular subject, which was an essential aspect of the service that tribunals offer to the public.

The next major review was more than 40 years later, when Sir Andrew Leggatt reported that: ‘One of the great advantages that tribunals have over ordinary courts is that tribunal decisions are often made jointly by panels comprising lawyers, experts and members of the community who are able to meld their knowledge and experience in order to bring a broad range of skills to bear on decisions.’²

Teamwork

As tribunals mushroomed and now, to a degree, have coalesced, an important message has emerged. An essential ingredient and a unique feature of the tribunal justice process is teamwork. As Leggatt saw things, teamwork in the tribunal world involved melding, fusing and jointly applying individual knowledge, experience, skill, intellect, analysis and informed opinion onto shared judicial tasks.

Judicial tasks, of course, are as much ‘people tasks’ as legal tasks – involving working as a judicial team to stage-manage and use the hearing to put people at their ease and so create the best climate to obtain the best possible evidence. Until this is done, those of us who sit on panels cannot properly move on to the next stages of sifting and weighing that evidence, applying the law, and trying to reach

a legally sustainable, evidentially supported and objectively reasoned decision that is both fair and just. If we can’t work as an effective team, we are unlikely to succeed in our principle task of doing justice.

Idiosyncracies

The strength of the panel lies in its legitimacy, its broad intellectual base, its ability to discuss, and its processes for shared and cohesive decision-making. There are mechanisms for the containment and control of individual tendencies

that judges who sit alone may find difficult to spot and restrain. One of the benefits of a panel is that idiosyncracies are less likely to adversely affect the outcome, especially if panel members have the confidence to engage with each other clearly and confidently, but without being dogmatic or inflexible. This can be quite a

tough call. But we need to remember that we are selected, not as individual decision-makers, but for the individual contributions that we make to the collective work of the judicial team.

Joint expertise

Teamwork for tribunals is a specific and particular skill: a method of working together and pooling all relevant knowledge and experience. It uses joint expertise to the full, and works in a planned, respectful and mutually supportive way in order to achieve a fair and effective hearing and a just outcome. Depending on the history, culture, function and framework of the jurisdiction, panel members come in different shapes and sizes. At one extreme, psychiatrists doing mental health cases in the

One of the benefits of a panel is that idiosyncracies are less likely to adversely affect the outcome . . .

Health, Education and Social Care Chamber of the First-tier Tribunal will generally have to examine the patient on a one-to-one basis, and then formally give an expert opinion on the patient's mental state. Then there are the Employment Tribunals, Special Educational Needs and Care Standards panels, whose members have knowledge and experience relevant to the jurisdiction.

Legitimacy

At the other extreme, a number of panels dealing with the qualifications or conduct of professionals, or matters seen as the preserve or domain of a particular discipline, set great store by the presence of a member who is non-legal and, also, not a member of the profession or discipline in question. These panels are particularly worried at suggestions that the days of the non-legal, non-specialist member might be numbered, given that part of the rationale for continued involvement is that, not only in terms of being fair, but also in terms of looking fair, the non-legal, non-specialist member contributes something intangible to the legitimacy of the panel that, possibly, the lawyers and the expert professionals do not.

'Real world'

In a recent series of training events held for the Family Health Services Appeal Authority, the JSB surveyed members' views on non-legal and non-medical members in a questionnaire. This particular tribunal comprises a lawyer, a medical member and a non-legal member. Asked what contribution, if any, the non-legal and non-medical members made to a panel charged with the complexities of assessing medical practice, a high proportion of responses referred to the need for balance and stressed the value of a perspective from an independent and right-thinking member of the public, living in the 'real world'. More than one delegate pointed out that medical practice generally involved more than just the doctor, dentist or nurse – there was the ordinary person on the receiving end too.

Another message from this small but illuminating survey was that, when there is a team, and when it works well, the benefits are immense. But when it goes wrong, the dysfunction can potentially prejudice efficient decision-making and even threaten the quality of justice itself. This means that the dynamics of panel functioning should not be left entirely to chance. Like every other aspect of judgecraft, people saw a clear role for practical training.

Competence

It is necessary, therefore, to think about making teamwork work. The chair needs to manage panel relationships effectively, but all members need to be aware of their role and contribution, and of the impact of their personalities on the process. These skills are a refinement of our everyday social skills, but are nevertheless specific to the judicial task, and they need to be honed through training, practice and experience. They are a fundamental part of the JSB competences appraisal process.

Plain English

Most panel members said they found it relatively easy to express their opinions, even where there was strong disagreement. Interestingly, many non-legal members saw a role for themselves in making the lawyers and medical members justify and explain their views in plain English. But ease of contribution depended on the willingness of others to listen and to keep an open mind. Personalities, especially the personality and style of the chair, were seen as having an important influence. Knowing yourself and developing confidence were repeatedly identified as crucial factors. But contrasting styles and approaches, as well as our differing or competing opinions, were generally seen as a good thing, ultimately enhancing the process of teamwork and the quality of the eventual decision.

Disagreement can be helpful if it builds togetherness, opens up new perspectives, and encourages everyone to discuss issues and find new solutions. It becomes harmful if it turns into conflict,

diverts energy from the judicial task, amplifies differences in values, weakens or destroys morale, or causes a position to become entrenched.

Confidence

Although most expert and non-legal members were hesitant about contradicting the lawyer on matters of legal interpretation, very few panel members saw difficulty in expressing disagreement on the application of the law. The legal members were content with this approach too, feeling that non-legal colleagues often had the benefit of having sat on similar cases. Again, the key was seen as confidence, with constructive and professional disagreement allowing for the exchange of logical arguments and propositions in order to arrive at the correct decision.

Roles

To maximise the benefit of the multi-background tribunal, the allocation of roles is vital. Every member should make a public contribution, by asking appropriate questions – and be seen to do so. Panel members also recognised the need to become adept at asking questions that are short, neutral, open, relevant and evidence-based.

Expectations

Different people, of course, have different expectations of the panel member. The expectations of the legal member may be different from those of the parties' representatives, or those of a person with a direct interest in the case, or a member of the public. Accordingly, the JSB mini-survey concluded with questions that encouraged delegates to imagine what expectations others may have of each team member, including the non-legal member. Answers included an expectation that the non-legal member would be robust, receptive, unbiased, straightforward, informed, well prepared, and the voice of 'common sense'.

The chair or tribunal judge may be the conductor of the orchestra, but the symphony will not sound right unless each instrument is heard, and heard at the right time.

And, on top of that, every member needs to be a chameleon, switching as appropriate between an interpersonal role that promotes an unthreatening, structured, polite and focused interplay between all participants in the process; the enabling role, especially in relation to reluctant, shy or nervous witnesses; and the adjudicatory role, which remains at the heart of the judicial function and involves sound judgement based on evidence and supported by coherent reasons. How (and when) each role is deployed will depend on the nature, dynamics and stage of the case, the needs of the participants, and the particular strengths and

interests of the panel member. The chair or tribunal judge may be the conductor of the orchestra, but the symphony will not sound right unless each instrument is heard, and heard at the right time.

Equal members

This year, the JSB is taking this session to members of the new Tax and Finance Chamber, where non-legal involvement is an important feature. We hope to derive more insights to add to our survey. In the meantime, the role of the panel

member is sure to remain complex and multi-faceted. The member may be there because of their professional background and expertise – or precisely because they do not bring the interests of any particular interest group to the table. Either way, the process of teamwork for tribunals requires special skills, developed through training and experience, to ensure that the non-lawyers fully play their part and make their contribution as equal members of the team.

Mark Hinchliffe is the JSB's Director of Tribunal Training.

¹ Report of the Committee on Administrative Tribunals and Enquiries 1957, Cmnd, 218.

² *Tribunals for Users: One System, One Service* – published 16 August 2001.

BEST PRACTICE ON NEEDS OF THE VULNERABLE



Catriona Jarvis describes a judge's duty to assess the vulnerability of parties and witnesses in proceedings, and the accommodations they might make to ensure a fair hearing.

THE Vulnerable Persons Working Party of the International Association of Refugee Law Judges (IARLJ) has produced a set of draft guidelines on vulnerable persons.¹

Guidance already exists in different forms for judges in all jurisdictions on the best ways of ensuring a fair hearing when a vulnerable person appears as a party or witness. The JSB's *Equal Treatment Bench Book* is one such source of advice, looking at a number of different areas of vulnerability, such as disability and children. Further, in November 2008, Lord Justice Carnwath handed down a Practice Direction in relation to vulnerable, sensitive and child witnesses² for those tribunals within the Tribunals Service.

The characteristics and needs of such witnesses must, of course, be taken into account by every tribunal judge in order to ensure fair treatment, and the production of these draft guidelines provides a good opportunity to look again at best practice in identifying the needs of those individuals who face particular difficulties at hearings and making appropriate procedural accommodations as soon as practicable, in order to ensure a fair hearing.³

Definition

For the purposes of the guidelines, a vulnerable person is defined as one whose 'ability to understand and effectively present their case or fully participate in proceedings may be impaired, because of intrinsic factors (who they are) and/or because of

extrinsic factors (their experiences)'. Such persons may include, but are not limited to, persons with mental illness or learning difficulties, people with disabilities, children, the elderly, survivors of torture, survivors of genocide and crimes against humanity, women and men who have suffered gender-related harm, trafficked persons, persons in detention, and those in poor health.

General principles

A judge has a duty to ensure that justice is done based on the merits of the case and the

ordinary rules of evidence. A person may be identified as vulnerable based on alleged underlying facts which are also central to the determination of their case. An identification of vulnerability is made for the purpose of procedural accommodations only and does not indicate acceptance of the alleged underlying facts. The judge should ensure that participants are given an opportunity to address any evidence used to assess the merits of the case

in the usual ways. The credibility and probative value of the evidence is then assessed solely by the judge.

The judge should remain neutral, compassionate and objective during proceedings, and should use body language, gestures and verbal tone that attempt to put the vulnerable person at ease. The cultural and religious background of the vulnerable person may inform the approach to be taken. The judge should also ensure that all parties act in a similar manner.

A person may be identified as vulnerable based on alleged underlying facts which are also central to the determination of their case.

Early identification

It is preferable to identify vulnerable persons at the earliest opportunity. In the course of early review of the file, the judge may find information which suggests that the ability of the person to present their case may be impaired. The judge may initiate early contact with the person, the designated representative, counsel or any other appropriate person – for example, a doctor, social worker or care giver – to gather evidence relevant to the individual’s likely vulnerability.

Representatives are best placed to bring any vulnerability to the attention of the judge, and are expected to do so as soon as possible. Wherever it is reasonably possible, independent evidence documenting the vulnerability should be filed and served on all parties and the body overseeing the hearing, prior to commencement of the hearing. The nature of the vulnerability should be specified, the type of procedural accommodations sought and the rationale for the particular accommodations.

Where the claimant is unrepresented or lacks the necessary understanding or capacity, the judge may act on their own initiative and make all reasonable efforts to identify their needs, including by adjourning if necessary to enable expert evidence to be provided and for the claimant to obtain adequate representation. If practicable, the same judge should have responsibility for the case throughout.

Where identification of vulnerability is made other than at the outset of proceedings, the judge should review the conduct of the proceedings up to that point, before considering and noting the procedural accommodations implemented and the remedial measures taken to ensure the fairness of the proceedings. This may require a re-hearing to be scheduled. While proceedings

involving vulnerable persons should be given scheduling priority, they may be delayed in order to provide short breaks during the hearing day or more substantive adjournments.

Procedural accommodations

A judge has a broad discretion to tailor procedures and, where appropriate and permitted by law, may accommodate a person’s vulnerability by various means, including:

- Ensuring the case is heard first on the day of the hearing.
- Allowing the vulnerable person to provide evidence by video conference or other technological means.
- Allowing a vulnerable person to be supported during a hearing.
- Creating an informal setting for the hearing.
- Varying the order of questioning.
- Excluding non-parties from the hearing room.
- Providing a judge or panel of a particular gender.
- Providing an interpreter of a particular gender.
- Explaining processes in terms appropriate to the individual’s needs and understanding, inviting them to ask questions at any time and reviewing their understanding at regular intervals during the hearing.

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Public and private hearings

Not all hearings are held in public and not all decisions are published. Different jurisdictions have different procedural rules on this issue. The judge should consider whether whole or part of the hearing should be held in private so that the witness’s ability to give personal and intimate evidence is not affected. This may include the removal of family members where requested by the claimant. The decision whether

to conduct a hearing in private should be made initially in closed session, with representations being submitted by the parties and those directly affected by the decision. The decision issued at the end of the private hearing may then be anonymised or redacted.

Representation

If it is judged that the vulnerable person is unable to appreciate the nature of the proceedings, the judge should ensure that they are facilitated to find a legal representative and, if necessary, an appropriate adult or guardian. Appointment of a designated representative – that is, one with the competency legally to present the case – should automatically be considered in cases involving children. The judge should endeavour to ensure that the process is both accessible and understandable to unrepresented parties and that they can participate as meaningfully as possible in their own hearings.

Questioning

A judge should ensure that all those who appear at hearings are questioned with sensitivity and respect, to reduce the risk of unnecessary distress. This obligation is all the more important in the case of vulnerable persons. The oral examination of a vulnerable person should be relevant to disputed issues in the matter and be no longer than necessary. The parties should be asked to agree, and the judge ensure adherence to, the parameters of questioning necessary, taking into account the needs of the vulnerable person and the fair determination of the hearing to all parties.

Decisions and reasons

The uncertainty and anxiety generated by waiting for a decision may be particularly stressful for vulnerable persons. Generally, decisions and reasons for decisions involving

vulnerable persons should be delivered as soon as possible, in writing or orally, as deemed appropriate, and in terms that are clear so that the decision and the reasons for it can be understood. The judge should also consider whether publication of a decision, or details of a decision, should be disclosed or the identity of the vulnerable person be anonymised.

Detailed written notes of any proceedings should be kept throughout the proceedings. This should include the judge's finding on the specific vulnerability or the reason why they were not found to manifest a vulnerability, details of evidence given in regard to the vulnerability, the procedural accommodations implemented, and at what stage of the proceedings this issue was addressed.

Conclusion

The new rules of procedure for the Upper Tribunal and First-tier Tribunal include an overriding objective, which is 'to deal with cases fairly and justly'. In both sets of rules, dealing with cases fairly and justly is detailed as including 'ensuring, so far as practicable, that

the parties are able to participate fully in the proceedings'. Now is a good time, therefore, to reconsider the sources of advice available to the tribunals judiciary in meeting the IARLJ objective, and to recognise the importance of this framework document in achieving this objective.

Catriona Jarvis is a Senior Immigration Judge at the Asylum and Immigration Tribunal.

¹ The draft guidelines can be found at www.iarlj.org, along with a consultation document for completion by the end of April 2009.

² See www.tribunals.gov.uk/Tribunals/Documents/Rules/Childvulnerableadultandsensitivewitnesses.pdf.

³ The draft guidelines refer throughout to 'judges', which includes all judicial and quasi-judicial decision-makers who deal with appeals.

A CHANGING ROLE THAT KEEPS ON GROWING



The role of the school adjudicator has changed significantly since its creation only 10 years ago. *Elizabeth Passmore* describes how, despite the expansion of their remit, their main role as decision-maker remains unchanged.

THE Office of the Schools Adjudicator (OSA) was created by the School Standards and Framework Act 1998. This Act and its subsequent amendments, most recently in the Education and Skills Act 2008, set out when an adjudicator is the decision-maker. The role of an adjudicator is to:

- Resolve disputes where there is disagreement locally on school organisation proposals or the disposal of non-playing field land and assets.
- Determine objections to school admission arrangements and appeals from schools against a direction to admit a particular pupil.
- Decide on requests to vary determined admission arrangements.

Schools adjudicators

Adjudicators are appointed by the Secretary of State for Children, Schools and Families, but we are independent of the Department in doing our work. Adjudicators are self-employed and work from home 'as needed'. At present, there are seven adjudicators, one of whom is the Interim Chief Adjudicator and six full-time equivalent administrative staff based in the Department's Darlington office, who work exclusively for the OSA. Adjudicators must be available for about 40 days a year, with half that time from May to July.

Adjudicators need good communication skills and have experience of making decisions. A good knowledge and understanding of education is also essential in gaining credibility with those for whom we make decisions.

Induction and training

On appointment we are given guidance on the legislation. This extensive reading gradually begins to make sense through briefings with the Chief Adjudicator, the Department and Treasury solicitors. Each new adjudicator is assigned an experienced adjudicator as mentor, who they initially shadow. When assigned our first cases, we are then shadowed by our mentor. New adjudicators also attend training by the JSB about six months after being appointed. Adjudicators meet regularly, sometimes with administrative staff, to keep up to date so that we can all benefit from experience gained by others. At least twice a year training has a formal place at the meeting, for example on new regulations.

History

Although adjudicators have a very short history, the precise nature and extent of our remit has changed significantly throughout the decade, but our main role as a decision-maker is unchanged. More local decisions about local school organisation proposals are now made by an adjudicator, including some where there is not any disagreement locally. The legislation on school admission arrangements has also been amended several times. In particular, the initial Code of Practice was superseded in 2007 by the mandatory School Admissions Code, the latest version of which came into force on 10 February 2009. Other changes concern powers initially retained by the Secretary of State, such as for certain matters for schools designated as having a religious character, and for a direction to a school to admit a child. These have gradually been transferred to adjudicators.

What do we do?

The schools adjudicator's role is to make decisions on cases where there is disagreement or the adjudicator is the designated primary decision-maker. We work to the principles of openness, fairness and impartiality, and make every effort to publish our decisions as quickly as is consistent with investigating and gathering the information necessary to be able to make a sound decision. Our cases involve parents, schools, faith groups, local authorities and local communities. We often deal with cases where emotions run high – such as a proposal to close a small rural primary school or changes to admission arrangements for a school where parents assumed they would secure a place for their child, but the changes mean they may or will not.

Statutory proposals for school organisation concern opening, closing or altering, for example enlarging or changing the age range of, a school. There is an expectation that there will be a competition if a new school is required, but the local authority as the commissioner of school places may seek an exemption from the Secretary of State. If granted – as often happens where a community infant school and separate community junior school are proposed for closure and a new community primary school opened – this amalgamation, as it is regarded locally, will be decided by an adjudicator. We must take account of a wide range of factors including standards and school improvement, need for places, finance, views of interested parties, and community cohesion. We must also take account of expectations about having a range of types of schools, community, voluntary aided, foundation and academies, in an area.

Parents not offered a place for their child at the school they would prefer can appeal. The admissions authority must organise and

administer appeals itself or arrange for another person to do so on its behalf. The appeals process must be conducted in accordance with the mandatory School Admission Appeals Code.

Admissions authorities determine their arrangements by 15 April for admission to schools 17 months later. Objections to these arrangements are concentrated in the summer months and we try to resolve them before parents start expressing their preferences for places during the autumn. Some objections relate to matters over which the admissions authority has no discretion, such as giving top priority in their oversubscription criteria to looked-after children. Many objections are matters of fairness. Dealing with these requires careful collection of evidence and assessment of the criteria against the Code, and very clear reasons for the decision. Once admission arrangements have been determined, except to correct a breach of the Code, a request to vary arrangements must be made to an adjudicator.

In 2007–08 we dealt with 70 statutory proposals, 369 objections to admission arrangements, 66 variations to admission arrangements, 28 directions and four land transfers.

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How do we work?

Adjudicators work alone. A lead adjudicator and one or more other adjudicators can be appointed for any case, but even for competitions for a new school there is normally only more than one adjudicator when there is more than one bid.

All types of cases usually begin with a letter or pack of papers arriving in Darlington, sometimes preceded by a telephone call from a parent, or from a local authority giving early notice that a competition is under way. The Chief Adjudicator

allocates cases, taking into account the local authority areas from which an adjudicator is barred because of previous employment, living in that authority or other connection, and the current case load of each adjudicator.

The case manager opens the file and if crucial papers are missing from the initial pack asks the relevant party for these. We read the papers and decide whether to request further written information and consider if a meeting is needed. For school organisation proposals, it is usual to visit the schools and sites involved, meet the local authority and those directly concerned with the detail of the proposal and hold a public meeting.

For objections to admissions arrangements, a meeting is often held, but these vary in scale and are tailored to the individual case. The smallest may involve just four people from the school and local authority. At the other extreme there may be meetings with groups from more than one school and public meetings for anyone who is interested, which can be 300 or more people for the most contentious cases. The cost of the notice in a local newspaper for public meetings is borne by the OSA. We choose the venue according to the nature of the case, very often using a school, but if we believe that is inappropriate, the OSA may hire a neutral venue.

The work on direction of a pupil to a school is relatively new to us and does not involve meetings with the parties. We use the written material considered at the earlier stages in the process of allocating a place to the pupil and the appeal papers. We may request further information, but would usually expect to be able to decide without extra material.

Decisions

Our decisions for all cases except those directing a child to a school are published on the OSA website. There is no appeal against our decision, but it can be challenged through judicial review. We try to minimise the risk of a judicial review by clearing all our decisions with Treasury solicitors,

but have still had challenges, few in number and most found in our favour. We have noticed a growing trend for schools to involve solicitors while a case is being considered and to advise on whether a decision could be challenged successfully.

Challenges

Working to a legal framework does not always come easily to new adjudicators, neither does having your name on the decision. We must make the decision, give well-argued reasons and stand by both. There is no room for personal preferences. Holding meetings can be difficult, but usually they are greatly appreciated by all the parties, who value being able to meet and speak to the decision-maker, and are grateful that the decision is being taken by an impartial adjudicator.

Looking to the future

There are fewer adjudicators and more work than previously, so we are currently recruiting new ones. The 2008 Act extends our role further so that we may consider admission arrangements that may not comply with the Code. We are working on how we might use the power to check for compliance and make changes to admission arrangements. The tight limits on who could object to admission arrangements and about what have been widened to give parents a much greater involvement, and the Secretary of State can refer a case to the adjudicator, so there may be more objections to determine.

The Chief Adjudicator reports annually to the Secretary of State. From 2009 every local authority must report to the Chief Adjudicator on specified aspects of 'fair access', including how well admission arrangements and the appeals process for a school place work in their area. We are beginning to devise guidance for these reports so we can extract useful information for the Chief Adjudicator's reports.

Dr Elizabeth Passmore OBE is currently Interim Chief Adjudicator. See www.schoolsadjudicator.gov.uk for more information.

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- 1 To provide articles to help those who sit on tribunals to maintain high standards of adjudication while remaining sensitive to the needs of those appearing before them.
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