



JUDICIAL STUDIES  
BOARD

TRIBUNALS  
TRIBUNALS  
TRIBUNALS  
AUTUMN 2007  
TRIBUNALS

1 TRAINING

A decade of change sees the growth of a credible training body.

*Jeremy Sullivan*

2 ADMINISTRATIVE JUSTICE

Seminars allow alternative concepts to be debated in search of consensus.

*Michael Adler*

6 JUDICIAL SKILLS

The *Competence Framework for Chairmen and Members of Tribunals* has been revised.

*Godfrey Cole*

9 CASE NOTES

Court of Appeal provides support for the fact-finding role of tribunals.

*Nuala Brice*

13 INTERPRETERS

The team at the Tribunals Service who deal daily with 142 languages.

*Ellen Arbuthnott*

16 DISABILITY

How one tribunal benefits from the experience of its members.

*Adrian Stokes*

18 TRIBUNALS SERVICE

The Welsh language and what tribunals should offer: Chwarae teg. Fair play.

*Michael Bird*

Plus

Mary's role as training adviser – page 8.

Tribunals Service annual report – page 20.

# DECADE OF CHANGE



After eight years as chairman of the JSB's Tribunals Committee, *Jeremy Sullivan* looks back at the growth of a credible training body.

TEN YEARS AGO, the JSB was considering its future direction. One paper from that time noted: 'it cannot be too clearly emphasised that the [JSB] can only advise, guide, encourage and support.'

This was around the time that the JSB was trying to analyse the training needs of chairmen and members in all tribunals. Some chairmen received training (and fewer panel members), but there was little appraisal or mentoring. How far we have come since then. Ten years ago the JSB offered two tribunal skills courses and one 'training for trainers' course each year, and that was about it. Since then, we have developed the competence framework and built a framework for training around it. We now offer courses that go beyond the decision-making function and touch on managerial and other skills. Importantly, the JSB also now offers more courses tailored to the need of particular jurisdictions. We have grown from a respectable cottage industry into a credible training body.

Reaching a consensus was always going to prove tricky. Support and encouragement have remained at the heart of our approach. The committee has achieved a lot in a relatively short time.

Pinpointing the core competences provided its own series of hurdles, but was not as contentious as the then radical suggestion that appraisal should form part of any programme of training. Equally difficult was persuading tribunals that a process of 'evaluation' – itself a controversial word – was a good way of providing advice and guidance to tribunals on their training programmes. Competences and appraisal are now an accepted part of judicial life in tribunals, and many who were sceptical can now see the benefits. In fact, much of what is now commonplace in tribunals is also gaining currency in other parts of the justice system.

The single most gratifying aspect for me personally has been the establishment of closer collaboration across the tribunals world, not only with individual presidents, training heads and members, but also with the Council on Tribunals and, more recently, with the fledgling Tribunals Service. A consultative approach remains key to the development of a coherent framework of training.

**Mr Justice Sullivan** retires as chairman of the JSB's Tribunals Committee in November 2007.

EDITORIAL



Administrative justice can be seen as including all means of enhancing the fairness of administrative decision-making (see Michael Adler's article on page 2).

The editorial board has started to consider whether it is time that the content of the journal should reflect this interpretation. Over forthcoming issues, we hope to include articles about different decision-makers – the Financial Services Authority, the Adjudicator's Office and the Independent Review Service are three examples – and the challenges they face in reaching a fair decision.

If you come into contact with decision-makers who fall outside the system of formal tribunals, we would like to hear from you.

On page 9 we include two cases notes. We are always keen to hear of any case that you feel may be of general interest.

**Any comments on the journal are, as ever, most welcome, and should be sent to [publications@jsb.gsi.gov.uk](mailto:publications@jsb.gsi.gov.uk)**

**Godfrey Cole CBE**

# DEBATING CONCEPTIONS, SEEKING CONSENSUS



**Michael Adler** describes a series of seminars, held earlier this year, that provided an opportunity for academics, researchers, policy-makers and regulators to discuss issues related to administrative justice.

THE TERMS ‘civil justice’ and ‘criminal justice’ are both familiar and reasonably well understood. The former refers to the provision by the state for all its citizens of the ‘means by which they can secure the just and peaceful settlement of disputes between them as to their respective legal rights’<sup>1</sup> and a remedy if their rights are infringed. The latter refers to the means for ‘convicting and punishing the guilty and helping them to stop offending’ and ‘protecting the innocent’<sup>2</sup> but also includes the means for detecting crime and carrying out punishments sanctioned by the courts, such as collecting fines and supervising community and custodial disposals.

In the mid-1990s, Lord Woolf carried out a review of civil justice in England and Wales and his two reports gave rise to a wide-ranging programme of reform.<sup>3</sup> Criminal justice has been under almost constant review and has been the subject of legislative reform at regular intervals.<sup>4</sup> By comparison, the term ‘administrative justice’ has, until recently, been shrouded in obscurity and has not been a concept with which many people – except, perhaps, a few academics and researchers – were familiar. Now all that looks set to change. The White Paper *Transforming Public Services: Complaints, Redress and Tribunals* (Cm 6243), published in July 2004, devoted a chapter (Chapter 3) to ‘The Administrative Justice Landscape’ and recommended, *inter alia*, that the Council on Tribunals should be replaced by an Administrative Justice Council, with a correspondingly wider remit of keeping under review the performance of the administrative justice system as a whole and advising the government on changes in legislation, practice

and procedure that would improve the ways in which it works. This change will be implemented by the Tribunals, Courts and Enforcement Act 2007, which received Royal Assent on 19 July 2007.<sup>5</sup>

## Competing conceptions

There would appear to be two contrasting conceptions of administrative justice.

On the one hand, there is the view that sees it in terms of the principles enunciated by various redress mechanisms that come into play when people who are unhappy with the outcome of an administrative decision, or with the process by which that decision was reached, challenge the decision and seek to achieve a determination in their favour. Although the determinations of the superior courts in cases involving administrative decision-making are of particular importance for this conception of administrative justice, the determinations of other bodies, such as appeal tribunals and ombudsmen, are important too.

On the other hand, there is the view that sees it in terms of the justice inherent in routine administrative decision-making. The latter view is broader than the former because, although it recognises the importance of courts, tribunals, ombudsmen and other redress mechanisms for administrative justice, it is equally concerned with other means of enhancing the fairness of administrative decision making, e.g. staff training, standard setting, auditing and accounting procedures.

The former view focuses on the decisions of courts, tribunals and ombudsmen in the

relatively small number of cases that come before them, and can be characterised as a ‘top-down’ conception of administrative justice. By contrast, because the latter view starts off from a concern with the justice inherent in very large numbers of first-instance decisions, it can be characterised as a ‘bottom-up’ conception of administrative justice.

The importance attached to these contrasting conceptions of administrative justice has ebbed and flowed in recent years. Until recently, the ‘top-down’ conception of administrative justice was dominant and textbook discussions of administrative justice would focus on the principles enunciated in the judgments of the superior courts, particularly in actions of judicial review. Now the pendulum appears to have swung in the opposite direction. Thus, *Transforming Public Services: Complaints, Redress and Tribunals* approaches administrative justice from the perspective of the normative expectations held by members of the public. It claims that:

‘We are all entitled to receive correct decisions on our personal circumstances; where a mistake occurs we are entitled to complain and to have the mistake put right with the minimum of difficulty; where there is uncertainty we are entitled to a quick resolution of the issue; and we are entitled to expect that, where things have gone wrong, the system will learn from the problem and will do better in the future’.<sup>6</sup>

It then goes on to define administrative justice in terms of these normative expectations, pointing out that they apply to the huge number of ‘routine’ administrative decisions that officials make every day.

‘This is the sphere of administrative justice. It embraces not just courts and tribunals but the millions of decisions taken by thousands of civil servants and other officials’.<sup>7</sup>

This ‘bottom-up’ conception of administrative justice informed the approach taken by the White Paper, which then proceeded to outline what would be required to make a reality of it.<sup>8</sup> It also informed the thinking that lay behind the decision to organise a series of seminars on administrative justice.

### The aims of the seminars

The government’s enthusiasm for ‘administrative justice’ seemed to call for a response from the academic and research communities. Each year the Economic and Social Research Council (ESRC) organises a seminars competition, and those who are successful receive funding to organise a series of seminars for academic researchers and other interested parties. Discussions with colleagues suggested that it would be both appropriate and potentially very useful to run a series of seminars for academics, researchers, policy-makers and practitioners from the tribunals, ombudsman and complaints-handling worlds, to exchange ideas and consider what we know and what we need to know to enhance the reforms that were under way. I was awarded two years’ funding for a series of five seminars, which took place between March 2006 and June 2007.

The five seminars comprised three full-day and two residential seminars, and were held in a variety of locations throughout the United Kingdom. Quite independently, the Nuffield Foundation had also decided to run a series of six evening seminars on administrative justice and these took place between November 2005 and May 2006. Since the aims of the two series of seminars overlapped, this could have created rivalries, but peaceful co-existence was achieved.

In support of the application for a seminar series, it was argued that research on administrative justice was characterised by an institutional division of labour organised around particular mechanisms of redress or forms of accountability, such as complaints-handling, ombudsman

procedures, administrative tribunals and judicial review. Those with interests in particular redress mechanisms or forms of accountability tended to know each other and to be familiar with each other's work but they tended not to know those with other specialist interests and were not familiar with their work. It was also argued that research on administrative justice was weak analytically and that there were too few opportunities to exchange ideas between academics, researchers, policy-makers, regulators and other 'stakeholders'.

For these reasons, the seminars aimed to bring together those who worked in or on each of the major sub-divisions of administrative justice. It was hoped that the ensuing dialogue would make it possible, at the end of the series, to develop a research agenda that would, ideally, reflect a consensus among those who had taken part on what are the most important questions relating to administrative justice that need to be addressed.

#### **Achievements**

The seminar series proved to be very popular. It was widely advertised and open to anyone who wished to attend. The average attendance was nearly 40 and most of the main 'stakeholders', e.g. academics and researchers, policy-makers in government, the tribunal judiciary and ombudsmen, were well represented. However, it was disappointing that we were unable to attract as many postgraduate research students or 'user representatives' as we had hoped. The format we adopted was one in which the papers were circulated in advance; the authors were asked to introduce them briefly on the understanding that participants had already read them; and two participants, who were thought to be especially knowledgeable about the topic, then gave prepared responses to the papers. We made an effort to ensure that plenty of time was

left for general discussion. This formula worked well and gave rise to some excellent discussions.

The aim of the first seminar was to review the current state of theoretical work on administrative justice, in the expectation that this would inform the discussion at subsequent seminars. Three academics from the United States, Australia and the Netherlands outlined the ways in which they approached administrative justice, invoking theoretical concepts and conceptual frameworks which they regarded as helpful. These included 'adversarial legalism' and the pressures that might encourage or inhibit the Americanisation of European approaches to administrative justice, and a demonstration of how 'legal consciousness', in particular studies of the attitudes of officials towards the law, can contribute to a deeper understanding of administrative justice. The three papers introduced participants to some new and potentially productive ways of thinking about and conducting research on administrative justice.

The aim of the second seminar was to consider the impact of socio-economic, political and technological change on the relationship between the state and the citizen and to analyse their implications for administrative justice. There are, of course, a great many such changes, but five that were regarded as particularly significant, and on which papers were given, were recent changes in the nature of governance and public administration, in management and service delivery, in audit and accounting procedures, in information technology, and in civic culture. The two respondents to each paper then considered the implications for administrative justice. This arrangement worked well and enabled us to harness the expertise of these speakers to our concerns.

*It was hoped that this dialogue would make it possible to develop a research agenda that would, ideally, reflect a consensus on what are the most important questions relating to administrative justice that need to be addressed.*

The themes for the third and fourth seminars emerged in the course of discussion and were suggested by those who took part. The third seminar was concerned with the public-private divide and considered the applicability of the concept of administrative justice to private law contexts and the implications of privatisation for administrative justice. The fourth seminar focused on the implications for administrative justice of the establishment of the new Administrative Justice and Tribunals Council and the new second-tier or Upper Tribunals.

The dual aims of the fifth, and final, seminar were to produce an assessment of the current state of administrative justice in the UK and our understanding of it; and to outline a research agenda designed to fill existing gaps in our knowledge. It included a paper on grievances, remedies and the state, another on developments in citizen redress in the UK and a paper on the relationship between complaints handling and regulation, audit and inspection.

To address the second aim, panels of academics and of organisations representing ‘users’, stakeholders and those who fund research sought to identify the issues or areas that they considered to be particularly important and that required further research and practical attention. Although there was an abundance of suggestions, it was clear that some of them resonated with the thinking of participants more than others. The construction of a possible research agenda, which

will take into account the issues that the Nuffield Foundation’s recently announced research initiative will seek to address,<sup>9</sup> should not be difficult to construct, but that is another story.

**Michael Adler is Professor of Socio-Legal Studies in the School of Social and Political Studies at Edinburgh University. He wishes to acknowledge the financial support received from the Economic and Social Research Council and the contribution of his former colleague Dr Richard Whitecross, who was jointly responsible for organising the seminars.**

<sup>1</sup> Lord Diplock in *Bremer v South India Shipping Corporation Ltd* (1981) AC909, 917, cited (with approval) in Lord Woolf (1995), *Access to Justice: Interim Report to the Lord Chancellor on the Civil Justice System in England and Wales*, chapter 1, para 2.

<sup>2</sup> *Aims and Objectives of the Criminal Justice System*, at [www.cjsonline.gov.uk](http://www.cjsonline.gov.uk).

<sup>3</sup> See Department of Constitutional Affairs (2001) *Emerging Findings: An early evaluation of the Civil Justice Reforms*, at [www.dca.gov.uk](http://www.dca.gov.uk).

<sup>4</sup> Most recently the Crime and Public Order Act 1994, the Criminal Justice and Police Act 2001, the Criminal Justice Act 2003 and the Criminal Justice Act 2006.

<sup>5</sup> The Administrative Justice Council proposed in the White Paper will be known as the Administrative Justice and Tribunals Council.

<sup>6</sup> Cm 6243 (2004), para 1.5.

<sup>7</sup> Cm 6243 (2004), para 1.6.

<sup>8</sup> Cm 6243 (2004), para 1.7.

<sup>9</sup> Details of the Research Initiative on Administrative Justice can be found on the Nuffield Foundation’s website at [www.nuffieldfoundation.org](http://www.nuffieldfoundation.org).

**The Nuffield Foundation seminars were the subject of an article by Maurice Sunkin in the Autumn 2006 issue of this journal. Their aims were to stimulate an informed and strategic discussion, ensure the wider issues raised in current reform proposals can be covered, and to help identify future research needs. By comparison, the main aims of the ESRC seminars, discussed here, were to review the current state of theoretical work on administrative justice, to consider the implications of contextual policy changes for administrative justice, to assess the current status of administrative justice in the UK and how it might be enhanced, and to develop a research agenda which identified the most important questions relating to administrative justice that needed to be addressed.**

# QUALITIES AND ABILITIES IN ACTION



The JSB's *Competence Framework for Chairmen and Members of Tribunals* has been revised. **Godfrey Cole** describes the need for change, and the amendments that have been made.

IN OCTOBER 2002 the JSB published its *Competence Framework for Chairmen and Members of Tribunals*. It set out the skills, knowledge and behavioural attributes needed to perform the judicial role in a tribunal. Its distribution followed consultation with presidents from a wide range of tribunals. The finished product was circulated widely and stimulated considerable interest in England and Wales, Scotland, and Northern Ireland as well as in other jurisdictions, where its novelty was recognised.

The scheme was never intended to be prescriptive – although it was hoped that the extensive discussions before publication would make it acceptable to all. In the event, the framework has been adopted unchanged by the majority of tribunals and modified only slightly by the remainder. All use it as the foundation for their appraisals and as a valuable tool in the design and delivery of their training programmes.

When the framework was published in 2002, the JSB made the commitment that its use would be the subject of continuous evaluation. This pledge was in recognition of the changing face of administrative justice which has continued apace. There have been new tribunal jurisdictions, the creation of the Tribunals Service, the appointment of the Senior President, moves towards greater commonality in training and appraisal, and of course Royal Assent to the Tribunals, Courts and Enforcement Act 2007.

## Review

In February 2007, as the framework approached its fifth anniversary, the JSB realised that it was time to begin the work of reviewing and then

publishing a revised version of the scheme. As before, the first stage was consultation. Presidents, the Council on Tribunals and others were asked three specific questions: whether equal treatment should remain a stand-alone competence, and whether there should be new headline competences for case management and/or proportional dispute resolution (PDR). Responses on case management and PDR were unanimously opposed to additional headline competences being created. Responses on the place for equal, or fair, treatment were not so stark, although a clear majority – including the Equal Treatment Advisory Committee (ETAC) – supported a change in emphasis so that it would become a theme embedded throughout.

## Qualities and abilities

Next, the amended scheme had fit with a number of intervening publications. The Judicial Appointments Commission (JAC) did not exist in 2002 but in a major initiative they have prepared a *Framework of Qualities and Abilities* for those in judicial office. The JAC had had regard to the JSB scheme when preparing its framework, which is one of the tools used by them to assess suitability for appointment to a judicial post in tribunals and courts, so it was only right that the JSB should do the same in reverse. The more so, as the JAC too had taken the decision to integrate fair treatment into their framework. Overall, it should now be possible to identify a thread flowing from appointment through to training, and through again to appraisal and mentoring. The JSB had itself been undertaking work to create a scheme of 'abilities and qualities' applicable to training provided for the district, circuit and High Court benches. The tribunals

scheme is more ambitious as it aims to provide a framework for training *and* appraisal, which in turn makes it more complex due to the need for an increased number of performance indicators. Nevertheless a check was essential to ensure that there were not items present in the ‘uniformed’ scheme which had been unwittingly omitted from the tribunals scheme. And we wanted to have regard to Professor Dame Hazel Genn QC’s report *Tribunals for Diverse Users*, as well as the themes emerging from our ongoing programme to evaluate the training, appraisal and mentoring in the Tribunal Service tribunals.

The resulting draft went out for consultation, and as always there were a number of responses – invariably helpful, thoughtful, constructive, and sometimes picking up things we had missed despite all of the earlier planning and discussion.

### The revised framework

By the time this article appears there should be a final version of the revised framework, although at the time of writing some work does still remain to be done. The title has been changed to reflect the complementary nature of the JAC and JSB frameworks to *Tribunal Competences – Qualities and Abilities in Action*. The framework is now divided, following the integration of fair treatment, into five headline competences, each representing a core element of the judicial role and each with performance indicators relating to different groups of tribunal members. The headline competences are now:

- A** Knowledge and values
- B** Communication
- C** Conduct of cases
- D** Evidence
- E** Decision-making

Although a number of textual revisions have been made, the style of the first edition will remain – competences in the left-hand column with the right-hand column containing one

or more performance indicators. As before the performance indicators are *not* intended to be an exhaustive list, rather examples of the evidence required to show that a particular competence has been demonstrated. And, again as before, the framework has been sub-divided between those competences applicable to chairmen (applying equally to those who sit as non-legal chairmen of panels or those who sit alone as adjudicators or arbitrators), specialists and members.

### Conduct of cases

Although case management and PDR were not wanted as separate headline competences, consultations on the draft indicated that neither could be left out altogether. As a result, chairmen are expected to apply case management techniques in a new headline competence entitled ‘Conduct of cases’. They are expected to show that they deal effectively with such issues by: carrying out any necessary pre-hearing work; making realistic time estimates; maintaining progress; and keeping delays and irrelevancies to the minimum. And in ‘Knowledge and values’, chairmen, again, are expected to ‘keep up to date with changes in the law and to consider the availability and appropriate use of alternative forms of proportionate dispute resolution’. In other words, the ground has been laid for developments which will surely become more important in the next few years.

### Information technology

The future is also anticipated in the inclusion of a mention of information technology. The working group had not initially felt it was appropriate to include it, because in tribunals its use varies widely. Some are paperless. Some do have hardware and software, but vary in their encouragement of its use. Others still simply don’t see a computer in the hearing. Nevertheless, the use of technology is steadily increasing and its use is indicative of increasingly professional approaches to procedures. Its presence in the final framework is the result of the responses to the draft circulated to presidents. It appears in ‘Communication’ where the competence for all is ‘Makes effective



use of supporting computing facilities and appropriate software’, which corresponds to the performance indicator ‘Uses Word, e-mail and Internet as required’.

### Fair treatment

And how *has* equal treatment been incorporated and embedded? The emphasis is now on fair treatment, in line with the Equal Treatment Bench Book, and new directions and emphases in the Bench Book have also been taken on board.

Fair treatment now appears in headlines A, B, and C, above, and headline B has been revised to ‘ensure effective communication between all tribunal chairmen, members and parties *and members of staff*’. There are new performance indicators which fill gaps, for example to take steps ‘to facilitate effective communication and eliminate or reduce, so far as practicable, potential difficulties for those appearing before the tribunal’. Also, interpreters are included

among those who appear before the tribunal who need to be used effectively.

### Using the amended framework

The revised framework is designed to provide fair and unbiased criteria to help facilitate the training and appraisal of chairmen and members in tribunals. Several of the new competences and performance indicators have been included to make the process of appraisal easier, based on the feedback we have received. We believe that the framework retains its value as an aid to the competence-based approach to training to ensure that an individual’s ongoing development needs are met effectively. We expect the scheme to be ready to launch at the Administrative Justice and Tribunals Council conference in November 2007. The spring 2008 issue of this journal will also include a copy of the new scheme.

**Godfrey Cole is the JSB’s Tribunals Training Director.**

## MARY’S KEY ROLE AS TRAINING ADVISER

MARY HOLMES, the JSB’s senior training adviser, retired in August 2007. As an experienced trainer, her appointment in 2002 was initially to advise on the national framework for judicial training in tribunals. In the event, her role went wider, and she also advised on training for judges as a whole, as well as in the cross-jurisdictional ‘Managing judicial leadership’ courses in 2006.



Mary Holmes

played a key role in all of this, and in particular in the creation of the mentoring and appraisal frameworks for tribunals. She was instrumental in writing the *Tribunals Training Handbook*, which was the precursor for its sister publication, the *Judicial Training Handbook*.

She continued throughout to facilitate a number of JSB courses and in producing a number of important pieces of training material, including an equal treatment training pack for tribunals and several DVDs, most recently on mentoring. Internationally, she helped an Australian tribunal develop competence-based training and facilitated appraisal skills training for the British Columbia’s Administrative Tribunals.

Approachable, friendly, but always to the point, Mary will be missed by all who worked with her.

# THE TRIBUNAL AS FINDER OF FACTS

***Nuala Brice* considers the useful pointers given by the Court of Appeal in strongly restating the basic rules and providing support for the fact-finding role of tribunals.**

WE ALL KNOW the basic rule. A primary function of a tribunal is to find the facts. There may be an onward appeal on a point of law, but not from a finding of fact. However, an argument that a fact-finder came to an unreasonable conclusion on the evidence is a matter of law, which can be the subject of an appeal.

These principles have recently been confirmed by the Court of Appeal in *AJ (Cameroon) v Secretary of State for the Home Department* [2007] EWCA Civ 373. The judgment also contains some useful guidance on fact-finding which will assist all tribunals, namely:

- The fact-finder can reject evidence without making alternative findings.
- The fact-finder must survey all the relevant evidence.
- The fact-finder can be selective and need not deal with every point.
- Factual arguments are not a basis for asserting illegality.

## Before the tribunal

*AJ (Cameroon)* concerned an appeal from the Asylum and Immigration Tribunal, who in turn had heard an appeal from a decision of the Secretary of State refusing asylum and making removal directions. Before the Tribunal the appellant argued that he was at risk of persecution and ill-treatment if he were to return to Cameroon. He claimed that his political activities had led to his being detained and ill-treated on three occasions. The doctor's evidence was detailed and made numerous findings of

scarring which, he concluded, were unlikely to have been all caused by natural means; the doctor gave evidence that the scars fitted in with the appellant's explanations and gave strong support to his account of severe violence in detention.

The Tribunal's decision described the medical evidence in considerable detail and compared the accounts given by the appellant with what he had told the doctor. The Tribunal was inclined to accept that the appellant's scars were unlikely to have been caused by natural means and that he had been a victim of violence but did not accept that the scars were inflicted during torture. The Tribunal concluded that it regarded the appellant and his wife (who was a witness) as accomplished liars who had fabricated the claim of persecution in Cameroon and dismissed the appeal.

## Rejecting evidence

In the Court of Appeal the appellant argued that the Tribunal had not given sufficient reasons for rejecting the evidence about the cause of the scarring and should have made their own findings as to what forms of violence had been inflicted on the appellant. This was rejected. The Court said, at [11]:

‘that the Tribunal was not bound to make findings as to how they thought the appellant came by his injuries. The burden of proof was on the appellant. The Tribunal was not obliged to look for some different or modified case that might be in his favour. Such an exercise would be speculative and therefore inapt and unhelpful.’

The Court concluded that it could not be said

that the only reasonable conclusion on the facts was that the appellant's evidence was right.

### Relevant evidence

In the Court of Appeal the appellant also relied upon *Mibanga v Secretary of State for the Home Department* [2006] EWCA Civ 1153. There, in assessing credibility, a tribunal had first considered an appellant's evidence and, as a separate exercise, had then considered whether that finding might be shifted by the expert evidence.

In *AJ (Cameroon)*, at [9], the Court of Appeal confirmed that this, where it occurred, was a legal error because all the evidence must be looked at as a whole:

'A report said to be relevant to credibility is integral to the evidence and not an add-on to it. A fact finder must not reach his or her conclusion before surveying all the relevant evidence. The compiler of a medical report cannot usurp the fact finder's function in assessing credibility. However, the report can offer a factual context in which it is necessary for the fact-finder to survey the allegations placed before him and might be a crucial aid in deciding whether or not to accept the evidence as true.'

The Court held that the legal error identified in *Mibanga* was plainly not found in *AC (Cameroon)*.

### Selective

It was also argued by the appellant before the Court of Appeal that the Tribunal had approached the evidence selectively and ignored matters which were not damaging to the appellant's credibility. At [15] and [16] the Court regarded this argument as an 'assault on the factual findings' which was an illegitimate exercise:

'It is elementary that a fact-finder does not have to deal with every piece of material or

even every point. It is inevitable, or almost inevitable, that in performing the exercise of giving reasons, he should concentrate on those aspects of the material before him that have moved his decision.'

And at [20] the Court added that it did not accept that, because of the absence of an express reference, the tribunal had ignored relevant evidence.

### No basis for asserting illegality

After dismissing a number of other detailed arguments the Court concluded at [22] that *AJ (Cameroon)* was a particularly stark example of the misuse of factual arguments as a basis for assaulting the legality of a decision. It was an 'artificial construction of asserted errors of law which were no more than an attempt to re-argue questions of fact which have already been properly determined'. The appeal was dismissed.

### Conclusion

As well as strongly re-stating the basic rules, the judgment provides support for tribunals in their fact-finding role. So long as a tribunal surveys all the relevant evidence before reaching a conclusion, the decision of the tribunal cannot be challenged just because it rejects evidence without making alternative findings or just because it does not deal with every piece of evidential material or every point.

**Nuala Brice is a full-time chairman at the Finance and Tax Tribunal.**

**Have you come across any recent cases that you feel may be of interest to readers of this journal? We'd be pleased to hear from you, at the e-mail address below. You don't have to write the case note! Just a case name and an indication of why you consider it worth reading are enough.**

**Send to [publications@jsb.gsi.gov.uk](mailto:publications@jsb.gsi.gov.uk).**

# HOW OTHERS SEE US

Below is reproduced a series of extracts from the judgment of Baroness Hale of Richmond in the House of Lords in the case of *Gillies (AP) v SoS for Work and Pensions (Scotland) 2006 UKHL 2*. Readers of this journal may be interested to see the view it gives of how others see the work of tribunals.

‘I ADD A FEW words only because, as a former member of the Council on Tribunals, I take a particular interest in the tribunal system. Tribunals were once regarded with the deepest of suspicion but they are now an essential part of our justice system. They are mostly there to secure justice between citizen and state in a wide variety of contexts, the most numerically important of which is entitlement to the financial benefits provided by the welfare state.

Since the Report of the Donoughmore Committee on Ministers’ Powers (Cmd 4060, 1932), it has been recognised that tribunals can have important advantages over courts of law. These are ‘cheapness, accessibility, freedom from technicality, expedition and expert knowledge of their particular subject’: see the Report of the Franks Committee on Administrative Tribunals and Enquiries (Cmnd 218, 1957, para 38).

The Report of Sir Andrew Leggatt’s Review of Tribunals, *Tribunals for Users, One System, One Service* (2001, paras 1.11 to 1.13) suggests three tests of whether tribunals rather than courts should decide cases.

The first is participation: that users should be able to prepare and present their own cases effectively. The second is the need for expertise in the area of law involved: users should not have to explain to the tribunal what the law is. The third is the need for special expertise in the subject matter of the dispute:

‘Where the civil courts require expert opinion on the facts of the case, they generally rely on the evidence produced by the parties – increasingly jointly – or on a court-appointed assessor. Tribunals offer a different opportunity, by permitting decisions to be reached by a panel of people with a range of qualifications and expertise. Users clearly feel that the greater expertise makes for better decisions.’

*Expertise on the tribunal not only improves decision-making and reduces the need for outside expertise; it also thereby increases the accessibility and user-friendliness of the proceedings.*

Expertise on the tribunal not only improves decision-making and reduces the need for outside expertise; it also thereby increases the accessibility and user-friendliness of the proceedings.

Ever since the Franks Report, the watchwords by which any tribunal system has been judged are its ‘openness, fairness and impartiality’:

‘Take . . . impartiality. How can the citizen be satisfied unless he feels that those who decide

his case come to their decision with open minds?’ (para 24)

Thus, ‘. . . impartiality [appears to us] to require the freedom of tribunals from the influence, real or apparent, of Departments concerned with the subject matter of their decisions.’ (para 42)

This is echoed in the Council on Tribunals’ *Framework of Standards for Tribunals* (November 2002, para 1(a)):

‘Tribunals should be free to reach decisions according to law without influence (actual or perceived) from the body or person whose decision is being challenged or appealed, or from anyone else.’

Impartiality is not the same as independence, although the two are closely linked. Impartiality is the tribunal’s approach to deciding the cases before it. Independence is the structural or institutional framework which secures this impartiality, not only in the minds of the tribunal members but also in the perception of the public. The public are now represented by the ‘fair-minded and informed observer’.

The approach to be adopted was explained by Lord Phillips of Worth Matravers MR in *In re Medicaments and Related Classes of Goods (No 2)* [2001] 1 WLR 700, para 85, at pp 726-727, and adopted (with the deletion of the words ‘or a real danger’) by my noble and learned friend Lord Hope of Craighead in *Porter v Magill* [2001] UKHL 67, [2002] 2 AC 357, para 103, p 494:

‘The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility . . . that the tribunal was biased.’

The ‘fair minded and informed observer’ is probably not an insider (i.e. another member of the same tribunal system). Otherwise she would run the risk of having the insider’s blindness to the faults that outsiders can so easily see. But she is informed. She knows the relevant facts. And she is fair-minded. She is, as Kirby J put it in

*Johnson v Johnson* (2000) 200 CLR 488, ‘neither complacent nor unduly sensitive or suspicious’.

The relevant facts of tribunal life include the great advantage, both to its users and to its decision-making, of being able to call upon the people with the greatest expertise in the subject matter of the claim. To have such expertise available on the tribunal can only be an advantage to it.

But another relevant fact of tribunal life is that professional people are often called upon to adjudicate upon disputes concerning exactly the same sort of decisions that they regularly make in their own professional practice. In disciplinary tribunals they may be called upon to judge whether a fellow practitioner has met the required standards of professional practice and conduct. Doubts are sometimes expressed about whether professional solidarity gets in the way of impartial adjudication in such cases, but the professional members of such tribunals have not so far been held to be institutionally biased.

It is also a fact of tribunal life that they are presided over by lawyers whose role is not only to conduct the hearing in a fair and user-friendly fashion, to understand the relevant law, and to explain it to their colleagues. It is also to assist those colleagues to address the relevant issues in a reasonable and fair-minded way and then write the reasons for their decision. I find it difficult to understand what there could possibly be about the facts of tribunal life which would lead to a lessening of that professional independence and objectivity at the tribunal stage.’

**The full judgements of both cases can be found at [www.bailii.org](http://www.bailii.org).**

*The relevant facts of tribunal life include the great advantage, both to its users and to its decision-making, of being able to call upon the people with the greatest expertise in the subject matter of the claim.*

# HOW TO SPEAK 142 LANGUAGES

There is a team of people at the Tribunals Service who deal daily with languages such as Kurdish and Farsi, and less frequently with others such as Mandinka and Kinyarwanda. *Ellen Arbutnott* describes how they book interpreters for hearings.

THE Interpreter Bookings and Services Team has been based at the Tribunals Support Office in Loughborough since the year 2000, when the office first opened. Before then, the individual Asylum and Immigration Hearing Centres had had responsibility for booking their own interpreters. In early 2006, the responsibilities of the team at Loughborough were broadened to include other tribunals. The team now books interpreters and facilitators – whose role can include providing advice and support – for all the larger tribunals.

Further, smaller tribunals continue to be added to that list. Other tribunals, such as the Mental Health Review Tribunal, have their own system for booking facilitators. Eventually, it is hoped that there will be a single interpreter list for all government departments, and which can also be used by the smaller tribunals.

Discussions are also under way with the National Register of Public Service Interpreters, who provide interpreters for the police and criminal justice system, as well as health services and other local government-related services, about the possibility of working together.

Different bodies tend to have different sets of criteria for interpreters, and one of the tasks in amalgamating systems, such as those for different tribunals, has been agreeing a common set of

standards. Virtually all of the interpreting offered is simultaneous, where information is interpreted as it is being spoken.

## Booking an interpreter

In those tribunals with which the Loughborough team works, the form initially completed by an appellant indicates whether or not they require an interpreter for their hearing.

The information is then recorded electronically, and when the appeal is listed for a hearing the team receives notification of the need for an interpreter electronically.

Listing practices in different tribunals vary widely – so that an interpreter may need to be booked as much as three months in advance in some, as with as short notice as two days before in others. Those booking in advance do not necessarily get the best interpreter – this simply depends on the interpreter's availability.

Last-minute bookings can result in higher costs, however, if the only available interpreter has to travel a long way to the hearing. The team is considering alternative booking systems to 'first come, first served'.

List-splitting practices in tribunals can also mean that the best use of interpreters is not always made. Tribunals should consider the most effective use of resources, for example by staggering cases requiring the same language, so that more than one interpreter is not required at once.

*Tribunals should consider the most effective use of resources, for example by staggering cases requiring the same language, so that more than one interpreter is not required at once.*

Interpreters are paid £26 an hour, plus £16 an hour travelling time and travel expenses. The fee is the same irrespective of the tribunal. There is no last-minute booking fee, although where an interpreter is cancelled with less than 24 hours notice, with no alternative booking, they receive a cancellation fee.

### Conflicts of interest

All interpreters are self-employed and agree to abide by a series of terms and conditions, which have now been standardised across government departments, including the Tribunals Service and HMCS, before taking any bookings. As freelance interpreters, they can work for any government or private organisation. However, there is a requirement that they must declare any ‘conflict of interest’, to avoid jeopardising a fair hearing.

When difficulties arise in finding a suitable interpreter, the team might approach other government departments, making sure that they are of the standard required – most notably able to do simultaneous interpreting, which is our minimum requirement.

The first port of call for the team in booking an interpreter, however, is its own panel of about 1,300 interpreters. The team also has access to the National Register of Interpreters and to the Council for Advancement of Communication with Deaf People. Contracts also exist with a number of agencies, in particular for the provisions of specialist interpreters, for example those proficient in the use of British Sign Language.

Altogether, the interpreters to which the team has recourse cover about 142 languages – the most frequently used at the moment being Urdu, Somali, Punjabi, Kurdish (Sorani), Tamil and Farsi. There are currently shortfalls for interpreters in Polish and Pushtu (a language of Afghanistan), with a particular shortage of interpreters of Polish in Scotland and the south east of England.



There are a number of rare languages (such as Mandinka, a language of West Africa, and Kinyarwanda, spoken in Rwanda) where there is a shortage of interpreters and a shortage of assessors who are able to judge the proficiency of the interpreter – and a possible question of impartiality when the assessor and interpreter know each other.

### Managing the panel

The level of English and experience of each interpreter is assessed, and their interpreting, linguistic and professional skills tested by the by the Institute of Linguists. Upon successful completion of the assessment, the interpreter is asked to attend a two-day training course that covers note-taking, oaths, court proceedings, role plays, and question-and-answer sessions.

Up to a maximum of 20 skill points are allocated to each interpreter – 10 for qualifications and another 10 for experience, including the number

of interpreting hours. Interpreters are booked based on their:

- Skill points.
- Cost, including the cost of travel to the particular venue.
- Suitability for particular case – if a court is listed requiring an interpreter for more than one language or dialect (e.g. Russian and Lithuanian), one interpreter may be able to speak all the languages required.
- Availability.

### Quality

The team is responsible for maintaining good standards for interpreting and feedback processes are used to ensure quality is not compromised. Feedback is gathered in a number of ways, including quality check forms. Judges are encouraged to fill them in to provide feedback, both positive and negative, although this does not happen as often as we would like. On occasions they demonstrate a shortfall by the judge, rather than the interpreter. For example, one judge criticised an interpreter for (quite rightly) seeking clarification of a medical terminology before he interpreted to the appellant, and another was criticised for using simple terms for the phrase ‘Zimmer frame’, which might not be understood by appellants from other parts of the world.

Where there is doubt over the interpreter’s skill level or professionalism and a breach of the terms and conditions has occurred, these are investigated and appropriate action taken.

### Guidance for judges

#### Breaks

Judges should remember that the interpreter usually speaks twice as much as any other party in the courtroom. Frequent breaks should be granted, whether or not requested. A lunch break is also essential (interpreters are not paid for this

time), and an early indication of when the lunch break will take place is appreciated. Make it clear to the interpreter whether or not they are required when the case reconvenes.

#### *Be clear*

Sometimes words have several meanings or different meanings in other countries and cultures – for example, arrested and charged have two distinct meanings in the UK, but may be part of the same procedure in other countries. Care should be taken by the judge to ensure that the interpreter has a clear message to send.

*Care should be taken by the judge to ensure that the interpreter has a clear message to send.*

#### Translation

Interpreters provided for hearings have not been assessed for translation skills, and should not as a rule be asked to translate documents, unless they are small and an essential part of the hearing.

#### Dialect

Make sure that an interpreter with proficiency in the correct dialect is booked, to avoid an adjournment.

#### Nationality issues

There have been occasions in the past where an appellant or their representative have expressed themselves unsatisfied with the interpreter as not being from the same country or region. Bear in mind that, while an ability to interpret in the same dialect is important, it is the standard of the interpreting which is important, rather than the country the interpreter comes from. Interpreters give an undertaking to be impartial at all times – any suggestion that they have not been will be pursued, with the possibility of their being removed from the panel.

**Ellen Arbuthnott is Interpreter Bookings and Services Manager at the Tribunals Support Centre Loughborough and can be contacted on [ellen.arbuthnott@tribunals.gsi.gov.uk](mailto:ellen.arbuthnott@tribunals.gsi.gov.uk).**



# DRAWING ON VALUABLE EXPERIENCE



This journal has previously considered the relevance of two aspects of diversity – sex and ethnic background – in relation to the tribunals judiciary. **Adrian Stokes** considers another – disability – and explores how one tribunal benefits from members with expertise in the area.

THE Disability Discrimination Act 2005 defines a disabled person as someone with a ‘a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities’. The Family Resources Survey 2005–06 estimated that there were more than 10 million disabled people in the United Kingdom (of which nearly half are over state pension age). The Disability Rights Commission estimates that about 10 million people (i.e. about 17 per cent of the population) have a disability. Whichever measure is used it seems likely that they are under-represented in tribunals judiciary.

Why might this be? There are many reasons – for example, only 50 per cent of disabled people of working age are in work compared with 81 per cent of able-bodied people<sup>1</sup>, the number of disabled people with professional qualifications is significantly lower than in the general population, and many premises remain inaccessible to disabled people. Anecdotal experience of members of the Council on Tribunals indicates that even where the premises do fulfil statutory obligations, they may not be within its spirit – for example, a tribunal member may find it a significant barrier to have to use a number of stair lifts to get from the tribunal room to the toilet. Tribunals should also consider whether hearing rooms are provided with an induction loop system, whether signs are legible to someone with a severe visual disability, and so on.

The new Tribunals Service is likely to improve the position of disabled members by using fewer, but often purpose-built, centres and not using

premises on an *ad hoc* basis, unless unavoidable. Of course, while such a strategy will no doubt make *premises* more accessible, the disadvantage is that both applicants and tribunal members will have to travel further, a disincentive in itself.

## Increasing diversity

In 2004, the Department for Constitutional Affairs published a consultation paper entitled *Increasing Diversity in the Judiciary*<sup>2</sup>. While recognising that disability was one aspect of diversity, the paper stated: ‘it is not known exactly how many serving judges or applicants for judicial appointment have disabilities, and consideration is being given as to how their number might be monitored in the future.’ The paper recognised that ‘few serving judges or applicants have disabilities’.

The new Judicial Appointments Commission (JAC) is fulfilling its commitment to widen the range of applicants for judicial appointment, to ensure that the very best eligible candidates are drawn from a wider range of backgrounds, by:

- Encouraging a wider range of applicants.
- Promoting diversity through fair and open processes that are based solely on merit.

It is also helping to measure and report on judicial diversity from application through to appointment and beyond by collecting data at each stage of the selection process according to disability, as well as other areas.

## Disabled people in the judiciary

The value of non-legal tribunal members, whether because of their experience or expertise,

received widespread support in representations to the Leggatt Review<sup>3</sup>. The report noted that: ‘they were felt to have a valuable role in ensuring that tribunals were representative of the communities which they serve and in which they operate . . . they broadened the experience which tribunals brought to bear on a decision, in particular in relation to decisions of fact . . . [and] the presence of people without an obviously expert qualification helped some users cope with the stressful experience of appearing before the tribunal.’

The Leggatt Review further commented that: ‘Tribunal members who were themselves disabled were, for example, thought to make a major contribution to disability appeal tribunals in which they sat.’

### Expertise in disability

When Disability Appeal Tribunals were first set up, it was specified that the tribunal should include a disability-qualified member. The last did not have to be disabled themselves but had to be ‘experienced in dealing with the needs of disabled persons in a professional or voluntary capacity or because they are themselves disabled’<sup>4</sup>. In a recruitment exercise for fee-paid disability-qualified members early in 2007, the JAC described its main duties as being: ‘to analyse the evidence for each case, advise the Tribunal on the effects of disability and make decisions in line with relevant legislation.’ It seems that currently some 150 out of around 600 disability-qualified members sitting in this tribunal have disabilities themselves; this figure does not include disabled members sitting in other roles.

### The possibility of bias

Where the panel member is disabled, might there be a perception of bias towards a disabled

appellant? This issue was considered in the appeal to the House of Lords in *Gillies (AP) (Appellant) v Secretary of State for Work and Pensions (Respondent) (Scotland)*, 2006 UKHL 2. There, Lord Rodger of Earlsferry stated that, consciously or subconsciously, a disability qualified member:

‘. . . might be more receptive to the disabled person’s account of his or her condition. It is important to emphasise, however, that

Parliament has not endorsed that line of thinking. On the contrary, it takes the view that disabled people who have been selected to serve as members of a tribunal can act impartially and may bring valuable experience to its work – even though they are not legally qualified and have not taken a judicial oath. That will usually be the position in practice as well as in theory. If, exceptionally, it should turn out that the judgment of a particular tribunal member was so affected by his or her disability that the member could not display the necessary impartiality in reaching decisions, this would be a good ground for objecting to that member.’

*. . . my own experience is that a disabled person on a tribunal is less likely to exhibit bias in favour of a disabled applicant, possibly because their experience of the needs of disabled people allows them to be more objective.*

Indeed, my own experience is that a disabled person on a tribunal is less likely to exhibit bias in favour of a disabled applicant, possibly because their experience of the needs of disabled people allows them to be more objective.

### Dr Adrian Stokes OBE is a member of the Council on Tribunals and has been disabled since birth.

<sup>1</sup> Disability Rights Commission website [www.drc-gb.org](http://www.drc-gb.org).

<sup>2</sup> Increasing Diversity in the Judiciary, Consultation Paper CP 25/04, Department for Constitutional Affairs, October 2004.

<sup>3</sup> Leggatt, A, *Tribunals for Users – One System, One Service* (para 7.19), The Stationery Office, Oct 2001.

<sup>4</sup> s 42(4), Social Security Administration Act 1992.

# THE WELSH LANGUAGE: WHO NEEDS IT?

**Michael Bird** has been involved in the creation of a Welsh language scheme for the Tribunals Service and thinks he has the answer.

IN THE TIMES of 31 May, the columnist Matthew Parris recounted that, on his way to the Hay Literary Festival, he narrowly missed his train connection at Newport. Because the train announcements were bilingual, he had to wait for the English version, by which time the train had departed (presumably with the Welsh speakers aboard). Sadly, he did not make Hay while the sun still shone. Delayed by the peculiar customs of these benighted people who inhabit Cymru (aka Wales), he lamented:

‘Ears rang with a constant stream of announcements repeated in two languages, taking twice as long to convey. There were twice as many notices stuck on the walls and steel posts . . . Network Rail was doubling the time, space, noise and visual nuisance of public announcements, and hampering access to information, for whose benefit? The largest group of non-English speakers using Newport Station are probably Poles.’

This is depressingly familiar to those of us who speak the language. It derives from a prejudice formulated by Henry VIII in the Laws of Wales Act 1535 (27 Hen 8 c 26). The Welsh language spoken daily by the people of Wales was ‘nothing like, ne [nor] consonant’ to what was said to be ‘the natural mother tongue within this realm’. It was therefore enacted that the language to be used in courts was to be English, not Welsh, and those who continued to speak Welsh were to be excluded from office, including judicial office (see the judgment of Judge LJ in *Williams v Cowell* [2001] ICR 85 at p 97). Judge LJ described that legislation as an outrage, not least because the use of the language of the common people of

England had been sanctioned 200 years earlier by the Pleadings in English Act 1362, but the elementary principles of fairness of those provisions were deliberately disappplied in Wales.

In 1847, the language was expelled from the state education system. For the next century, schoolchildren caught speaking their native tongue in the schoolyard were caned. Adults were penalised in other ways. Gwilym Williams was dismissed by his employers, Mr & Mrs Cowell, because he insisted on speaking Welsh to his colleagues in their kitchen. They felt entitled to know what he was saying about them, and, anyway, English was the official language of the country. Betty Boothroyd reprimanded Newport West’s MP Paul Flynn telling him: ‘I’ve told you before, you are not allowed to use that language in this House.’ Unfortunately for Betty, Paul Flynn was actually quoting Geoffrey Chaucer. But that is not exactly English either.

I have lost count of the times I have been told that people in Wales do not speak Welsh. They speak English all the time, and then revert to something unintelligible when an English speaker approaches. Welsh speakers are bemused by this canard, and it does not stand up to logical analysis. But it persists. It remains to be seen whether it will survive the measures taken by the Parliament at Westminster to defeat this ancient prejudice.

The Welsh Language Act 1993 introduced the principle that in the conduct of public business in Wales, the English and Welsh languages should be treated on a basis of equality. In particular section 22(1) provides that:

‘In any legal proceedings in Wales the Welsh language may be spoken by any party, witness or other person who desires to use it, subject in the case of proceedings in a Court other than a Magistrates’ Court to such prior notice as may be required by rules of the Court; and any necessary provision for interpretation shall be made accordingly.’

In November 2004, I prepared a report with my colleague, John Thomas, on the use of Welsh in tribunals generally for the Lord Chancellor’s Standing Committee for the Welsh Language on the implementation of the Department for Constitutional Affairs White Paper.

We found that those which operated in Wales were able to offer this service without great difficulty.

The uptake has not been great. There are many reasons for this. Although employment tribunals applied and obtained approval for a scheme in August 1998, it was never launched, and never published. Years after the event, very few people knew about it. The long-standing legal tradition was also an impediment. Everyone understood that English was the language of the courts. Experience showed that many people presenting their cases in English were conferring in Welsh. On average in recent years about six cases per year have been heard in Welsh. It would be a mistake to assume that this will be the general pattern. There has been a large increase in education through the medium of Welsh. Its use is much more common among young people than older generations.

The 1993 Act also provided that every public body providing services to the public in Wales was required to prepare a scheme setting out how it would provide their services in Welsh and established the Welsh Language Board, whose function was to promote and facilitate the use

of the Welsh language. It offered advice about the setting up of such schemes and it monitored performance. The new Tribunals Service’s scheme has recently been approved. It was officially launched at the National Eisteddfod in August. The scheme makes provision to ensure that correspondence will be answered in the same language, and that literature will be provided in both. A telephone service will operate as efficiently in the one language as the other so far as this can be achieved. At public meetings, simultaneous interpretation will be provided. Invitations and advertisements will be bilingual, as will signage.

*The people of Wales need [the Welsh language] to ensure that they receive what every tribunal seeks to offer: Chwarae teg. Fair play.*

The demands on the various tribunals and staff will, of course, vary from one case to another. It is not thought that Asylum and Immigration will need to change very much and the smaller and informal tribunals will no doubt adjust to the individual localities. Nonetheless, it does provide a challenge to all tribunals in terms of recruitment and training of chairmen, lay members and staff. A good deal of work has been done on this by a sub-committee of the

Lord Chancellor’s Standing Committee, on the initiative of Lord Justice John Thomas and the current presiding judge, Mr Justice Roderick Evans. A few years ago, they conducted enquiries in Canada, which is a common law jurisdiction, where cases are routinely heard in New Brunswick in English and French.

For my part, I offer my congratulations to the new service for setting up their new scheme with such speed and enthusiasm. As to the title of this piece: who needs it? The people of Wales need it to ensure that they receive what every tribunal seeks to offer: Chwarae teg. Fair play.

**Michael Bird is a Regional Chairman of the employment tribunals.**

# EFFICIENT, INDEPENDENT, USER-FOCUSED

In its first Annual Report, the Tribunals Service describes the way in which the foundations for reform have been laid during its first year. *Joan Watson* looks at some highlights.

THE FIRST Tribunals Service Annual Report was published in July 2007. It set out our achievements during the first year of operation, in continuing to improve the delivery of services for users as well as in beginning the process of reform. Both were achieved against a backdrop of bringing together a range of individual tribunals with different cultures and procedures into a single organisation.

The objectives for our first year were:

- To maintain or improve standards of service.
- To develop our capacity to deliver reform.
- To reduce the volume of appeals reaching tribunals and to dispose of those that do in more effective and efficient ways.

We have achieved these objectives by improving performance across most of our tribunals. A new leadership and management structure and business model will transform our service into the future. During 2006–07, however, the focus was on planning the integration of tribunals, many of which were formally sponsored by other government departments.

During 2006–07, the Tribunals Service dealt with almost 570,000 tribunal cases. In the three largest areas – social security and child support, asylum and immigration, and employment – waiting times for hearings were reduced compared with the previous year. Shorter waiting times were also achieved by many of the other tribunals.

Other highlights in our first year included continuing to reduce the number of outstanding appeals in the Criminal Injuries Compensation Appeals Panel to 2,525 by the end of March 2007. Waiting times were also improved in both Social Security and Child Support Appeals (SSCSA), from 10.4 weeks in 2005–06 to 9.6 weeks in 2006–07, and employment tribunals, with 79.4 per cent of cases now being heard within 26 weeks against a target of 75 per cent.

The Asylum and Immigration Tribunal retained its Charter Mark for customer service, and a single customer care scheme was introduced for the Tribunals Service. Two pilot schemes were launched during 2006–07, in employment tribunals and SSCSA, to test whether alternative dispute resolution techniques can be used to resolve disputes without a full tribunal hearing.

The Tribunals, Courts and Enforcement Act will provide the legislative platform to create a single two-tier tribunal to which most of the existing jurisdictions will migrate. A financial settlement has been reached with the Ministry of Justice for the next four years, giving the investment funding that, along with the support of our judiciary and the hard work of our staff, will continue to drive through the reforms needed.

**Joan Watson is Head of Communications at the Tribunals Service.**

## JSB seeks training adviser

Would you like to help improve the quality of decision-making in tribunals?

The JSB is looking for a new training adviser. The role involves planning training courses for judges in tribunals, while

maintaining a watchful eye on the JSB's standards for training, appraising, mentoring and evaluation.

Working closely with the Tribunals Service, the successful candidate will have substantial experience of designing and delivering training courses and a knowledge

of distance learning and IT-based training, as well as face-to-face training.

For further details and a full job description, see [www.jsboard.co.uk](http://www.jsboard.co.uk). See also page 8 of this journal, for an overview of the work of the predecessor in the role, Mary Holmes.

## EDITORIAL BOARD

**GODFREY COLE**  
Chairman of the Editorial Board

**DR NUALA BRICE**  
VAT and Duties Tribunal

**PROFESSOR JEREMY COOPER**  
Mental Health Review Tribunal

**JOAN WATSON**  
Tribunals Service

**PENNY LETTS**  
Council on Tribunals

**KERENA MARCHANT**  
SENDIST and SENTW

**STUART VERNON**  
Adjudicator, Office of Fair Trading

**ANDREA DOWSETT**  
Judicial Studies Board

**JOHN GIBBONS**  
Judicial Studies Board

**MARY HOLMES**  
Judicial Studies Board

## AIMS AND SCOPE

- 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.
- 2 To address common concerns and to encourage and promote a sense of cohesion among tribunal members.
- 3 To provide a link between all those who serve on tribunals.
- 4 To provide readers with material in an interesting, lively and informative style.
- 5 To encourage readers to contribute their own thoughts and experiences that may benefit others.

Tribunals is published three times a year by the Tribunals Committee of the Judicial Studies Board, although the views expressed are not necessarily those of the Board.

Any queries concerning the journal should be addressed to:

Publications Coordinator  
Judicial Studies Board  
9th Floor  
Millbank Tower  
London  
SW1P 4QU

Tel: 020 7217 2410

Fax: 020 7217 4779

E-mail: [publications@jsb.gsi.gov.uk](mailto:publications@jsb.gsi.gov.uk)

Website: [www.jsboard.co.uk](http://www.jsboard.co.uk)