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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.

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TRANSFORMING TRIBUNALS

ROBERT CARNWATH *outlines the provisions of the Tribunals, Courts and Enforcement Bill, expected to be law by the summer of 2007.*

I wrote in my last article about the unfinished business of the Government's constitutional reform programme in relation to the tribunal judiciary. Much has happened since spring 2006, not least the introduction of the Tribunals, Courts and Enforcement Bill to Parliament in November 2006. The Bill is currently in the House of Lords and is expected to be law by the summer of 2007, although implementation of the provisions is likely to take a year or more. The Bill implements the main recommendations for tribunals in the White Paper, *Transforming Services: Complaints, Redress and Tribunals*.

The new tribunals' structure

The Bill itself creates two new tribunals, the First-tier and Upper Tribunal, which together with the Asylum and Immigration Tribunal, the Employment Appeals Tribunal and employment tribunals will form the three pillars of the reformed tribunal system. Existing tribunal jurisdictions can be transferred into the 'chambers' of the two new tribunals and members 'assigned' between them. The Upper Tribunal will primarily be a specialist appellate tribunal from the First-tier tribunals but will also hear some first-instance matters.

The tribunal's procedures will be regulated by Tribunal Procedure Rules (designed to operate in much the same way as the Civil Procedure Rules). Initially these are likely to subsume the tribunal's existing rules, pending work on greater harmonisation. Both tribunals will have the power to review their own decisions on grounds set out in the rules. This should avoid the need for appeals where decisions are obviously wrong. The Bill also provides for a rationalisation of the ways in which first-instance tribunal decisions can be challenged, allowing the specialist Upper Tribunal to hear some categories of judicial review applications transferred from the High Court. This will be useful, for example, where judicial review cases are closely related to the appellate jurisdiction of the Upper Tribunal.

The judges

The Bill will establish tribunal judges as an integral part of the judicial family. A key feature of the Bill is the extension to the tribunal judiciary

Continued on page 2



EDITORIAL

Hazel Genn's retirement as chair of the editorial board for this journal at the end of 2006 has given us the opportunity, on page 20, to consider some of her many achievements over the past six years.

Elsewhere in this issue, on page 3, we consider how best to manage proceedings, and still ensure a fair hearing, when one of the parties or witnesses requires an interpreter. This is the first of two substantial articles on interpreters by Kerena Marchant, and looks at good practice in relation to the different types of communication facilitator that may be required by a deaf person, or someone with a disability. The second, to be published in our summer 2007 issue, will look at the different considerations that apply to the use of a foreign language interpreter.

In this issue, we also look at two new pieces of legislation. In the first, opposite, Lord Justice Carnwath details the provisions of the Tribunals, Courts and Enforcement Bill. In the second, on page 9, Penny Letts considers the implications of the Mental Capacity Act for those sitting in tribunals.

G O D F R E Y C O L E

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of the statutory guarantee of judicial independence, found in section 3 of the Constitutional Reform Act 2005. I am pleased to see that this is given prominence as clause 1 of the Bill. For the time being the guarantee will extend only to tribunals for which the Lord Chancellor is responsible (including the employment tribunals in Scotland). However, it provides a clear precedent for tribunals under other legislative enactments.

Safeguards for judges and members

The Bill creates the statutory post of the Senior President, as the judicial head of the unified tribunal judiciary. The Senior President's general duties are defined in clause 2 to include the need for tribunals to be accessible, for proceedings to be fair and handled quickly and efficiently, the need for members of tribunals to be experts in the subject matter or law of cases they decide and the need to develop innovative methods of resolving disputes.

The Senior President will have a range of specific functions under the Bill, including agreeing the chambers structure for the new tribunals and the allocation of functions between those chambers. He will have the power to 'assign' judges and members to chambers and be required to publish a policy on such assignments. He will also be able to request court judiciary to sit as judges in the new tribunals, with the agreement of the Lord Chief Justice. The Senior President can also issue Practice Directions and is expected to chair (or nominate the chair) of the Tribunal Procedure Committee.

The Senior President will also be responsible for maintaining appropriate arrangements for the 'welfare, training and guidance' of all tribunal judges and members. There will also be a requirement for the Senior President and the chief justices in each jurisdiction to co-operate with each other in the making of these

arrangements. In England and Wales these arrangements will be subject to the oversight of the Judges Council, on which tribunal judges already have three representatives. The Senior President will be able to make representations to Parliament on 'matters of importance relating to tribunal members, or otherwise to the administration of justice'. This mirrors the function of the chief

justices of the UK in relation to the court judiciary. The Senior President will also be responsible for representing the views of tribunal members to Parliament, the Lord Chancellor and other Ministers.

Feedback and administrative justice

The Senior President will be under a duty to produce an annual report for the Lord Chancellor on the workings of the new tribunals, which will be published. The form and contents will be a matter for the Senior President, subject to any specific points which the Lord Chancellor asks him to address. I am open to suggestions as to the most useful form of

report, and how it should relate to the annual reports already produced by some tribunals. I am also keen to improve the ways in which tribunals provide feedback to decision-makers in government departments. A useful model is the report on decision-making currently produced by the President of the Appeal Tribunals as part of his statutory duties. The White Paper emphasises that tribunals should be the means, not just of correcting matters when things go wrong, but helping to get them 'right first time'.

I have no doubt that through these legislative and administrative changes, tribunals will play a broader role within the administrative justice system, and strengthen their position within the evolving constitutional landscape.

LORD JUSTICE CARNWATH is the Senior President of Tribunals Designate

'The White Paper emphasises that tribunals should be the means, not just of correcting matters when things go wrong, but helping to get them "right first time".'

BREAKING DOWN BARRIERS

In the first of two articles, KERENA MARCHANT considers the needs of tribunal users who are disabled with language-based access needs, and the practicalities of providing support during a hearing.

Despite the efforts of tribunal chairs and members to ensure that tribunals are jargon-free and accessible to users from all backgrounds, there remains a group of people who, because of disability, cannot access English in spoken or written form, or sometimes in either. There are also those who have English as a second language and are not sufficiently fluent to access tribunal proceedings. This broad group includes the nine million with disabilities who have language-based access needs and the estimated three million people whose first language is not English. The first group includes those who have had these needs since birth or through acquired disability. They can include people with learning difficulties, mental health disabilities, speech and language difficulties, sensory disabilities, neurological disabilities or injuries. For these people, it will be impossible to have a fair hearing without some form of language facilitation, such as a foreign or sign language interpreter, communicator or facilitator.

In the summer 2007 issue of *Tribunals*, Kerena Marchant will look at how best to include those for whom English is a second language in the tribunal process.

or translators for access needs, although they may need additional interpretation support if their first language is not English. However, there is one group of disabled people who use interpreters for reasons of language, culture and access – the deaf community. Deaf

people who use British Sign Language (BSL) regard themselves as a linguistic minority with their own culture and language. Many of this group see themselves as a linguistic minority first and disabled second. BSL has its own distinct grammar and vocabulary, which is quite distinct from English. In fact, the nearest language to BSL in terms of syntax and paralinguistics is Mandarin. BSL has no written form and if deaf BSL users want to record information, they usually record on to videotape. Deaf people have their own culture and way of living that is distinct from hearing people and BSL is the linguistic reflection of that culture.

Other signing systems

There are other signing systems used by deaf and disabled people, such as Sign Supported English (SSE), Signalong, Makaton and Paget Gorman. These signing systems are distinct from BSL in that they are signing systems that are English-based, as opposed to a distinct language. SSE, which is used by deaf people whose first language is English as opposed to BSL, is based on BSL signs, but these are put into English order. Makaton and Signalong, which are used by people with learning difficulties, also borrow some signs from BSL. Paget Gorman is a signing system that is used with children who have speech and language disorders and has no link with BSL signs. When communicators deliver signing systems, they are not interpreting, but translating, by matching a

Some common terms

An interpreter or translator is someone who changes what someone is saying into another language. The term 'translation' is often associated with those working mostly on written translations. There is another, important distinction between the words 'translate' and 'interpret', which is that a translator will simply translate literally, while an interpreter may have to interpret differences in culture as well as language.

British Sign Language

Interpreters are mostly associated with foreign language interpretation. Disabled people do not require interpreters

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sign to an English word. They may use a more simple form of English that meets the user's more limited language needs, but they are not playing an interpreting role. Some communicators will not use a signing system but use their skills to break down spoken language so that it is accessible to disabled people with a learning, speech or language difficulty. Some communicators may use symbol charts or be able to understand unclear speech. Some hard-of-hearing people may use a lip speaker who simply repeats what is said using clear lip patterns.

The whole judicial process is reliant upon effective oral communication. Any failure in oral communication will strike deeply at the delivery of justice and may arise from:

- Lack of fluency in the English/Welsh language.
- Illiteracy.
- Learning disabilities.
- Hearing difficulties.

Equal Treatment Bench Book, Judicial Studies Board

Article 6

The moral and legal right to a fair hearing for all tribunal users is contained in Article 6 of the European Convention on Human Rights. Under section 6 of the Human Rights Act, it is unlawful for a public authority to act in a way that is incompatible with the Convention. The right to a fair trial contained in Article 6 is compelling reason for tribunals to provide interpreters or communicators for those who need them. Failure to provide such facilitation puts tribunals in breach of Article 6. A tribunal could face a legal challenge for failing to provide language interpretation or facilitation under Article 6.

Disability Discrimination Act

Communication access is also an integral part of the Disability Discrimination Act 1995, which makes it unlawful to discriminate against disabled people in the provision of facilities and services. By failing to comply with section 21 of that Act, which deals with the duty of providers of services to make adjustments, including the

provision of 'auxiliary aids or services' to tribunal users, tribunals could face charges of disability discrimination. Section 21 specifically mentions sign language interpreters, but the section can be read as including other kinds of communicator for those with language difficulties.

While the 1995 Act does not expect public service providers to anticipate the specific needs of every user, tribunals should make their willingness to facilitate any reasonable request for language facilitation plain to their users, and ask them to alert the tribunal to any access needs they may have, in order to ensure a fair hearing.

Regulations

Tribunals take mixed approaches to the provision of interpreters or language facilitators. The regulations for some tribunals contain no statutory obligation to provide interpreters, let alone communicators. Others, such as SENDIST and SENTW, have regulations that allow for the provision of interpreters, although they do not specify whether this includes all the kinds of language facilitator that users might need. However, whether or not a tribunal's regulations permit the use of interpreters, the Disability Discrimination Act applies, as does Article 6, where a tribunal is determining a party's civil right or obligation.

Letting the user know

Tribunals need to let their users know of their right to use an interpreter or to request communication support to meet their access needs or any equipment that is required to do this. Many tribunals already include guidance in their 'how to appeal' literature or in their correspondence with the appellant before the hearing. It should be made clear to appellants, however, that this right is not confined to foreign or sign language interpreters, but includes other kinds of language facilitator, and that they should let the tribunal know of their access needs.

Avoiding an adjournment

Once the appellant's need for communication access has been identified, the tribunal will need to consider where to go to find an appropriate person. A tribunal should

steer away from asking a tribunal user to provide their own interpreter or facilitator, which may lead to an untrained family member or friend coming along to help the appellant, or the appellant paying for their communication support. Sign language interpreters and lip speakers working with deaf people usually have years of training in how to interpret, and this includes interpreting boundaries that apply in legal situations. Communicators do not belong to a professional body with standards and lack this training. A friend or family member without this training could become a liability to the tribunal user and to the tribunal process. It is imperative that tribunals ensure that an impartial communicator, preferably who is experienced in working in legal situations, is booked for the hearing. There are many agencies for interpreters and facilitators that tribunals can approach. The tribunal should also ensure that that person knows the signing or correct communication system used by the appellant. Tribunal members themselves can aid this process by reading the papers before the day of the hearing and alerting the tribunal administration where they suspect an access need may have been overlooked or it is not clear what the appellant's communication needs are. This good practice can avoid unnecessary adjournments.

The right to a fair trial goes much deeper than the simple provision of an interpreter or communicator, which will not on its own guarantee a fair hearing. The tribunal also needs to know how to identify an appellant's need for language facilitation, and panels need to know how to work with a wide range of interpreters, equipment and with disabled people's advocates during the hearing.

Specific needs

Disabled people cannot be categorised into groups with the same access and communication needs. Each is different and has individual communication needs. Some people may have more than one disability – for

example, a person who is deaf and blind may need hands-on or visual frame signing. Flexibility and lateral thinking is the key to working with disabled people. The table on page 6 attempts to summarise the types of support that might be required by people with different disabilities.

Children

Often children are involved in tribunal proceedings, either as live witnesses, on videotape or through a written interview with an independent interviewer. It is important that children's language needs are met to ensure accurate and equal access for them in the tribunal process. Some tribunals include the use of interpreters or communication facilitation in their guidelines on working with children.

A child's testimony may need to be facilitated by an independent communicator or sign language interpreter. Some public bodies use specialist services to facilitate this, such as the National Children's Homes who provide skilled interviewers who will work to an appropriate communicator or interpreter to secure the view of the child for legal proceedings. This ensures the integrity of the child's interview, which should not be conducted or facilitated by a parent or anybody who is party to

the appeal, although the parent may sit in on it. The communicator should be comfortable working with a child, who may have a different use of language to adults.

Facilitating

The interpreter or communicator is there to facilitate the appellant and ensure that they can access the hearing and have a fair hearing. Tribunal panels need to have full understanding of the role of interpreters and communicators as facilitators, to ensure that a fair hearing is achieved. Interpreters and communicators are not there as helpers, friends or supporters. They are there to translate or break down language and to provide

The right to a fair trial goes much deeper than the simple provision of an interpreter or communicator, which will not on its own guarantee a fair hearing.

Disability	Access need	Communication support required
<i>Hearing-impaired.</i> Deaf and hard of hearing.	Cannot hear speech, no speech or unclear speech. Some deaf people cannot read or write English.	<ul style="list-style-type: none"> ● BSL interpreter. ● SSE communication support. ● Lip speaker. ● Radio aid. ● Loop system. ● Speed text. ● Palentype.
<i>Learning disability.</i> People with a variety of diagnosed and undiagnosed difficulties, such as Down's syndrome, autism, dyspraxia, fragile X syndrome, acquired brain damage.	Developmental delay, short- and/or long-term memory difficulties, processing difficulties.	<ul style="list-style-type: none"> ● Makaton signing system communicator. ● Advocate to break down language and facilitate the person to express their own view. ● Use of symbols to understand meaning.
<i>Visually impaired.</i> Blind and partially sighted.	Unable to see, or varying degrees of useful sight.	Tribunal paperwork in large print, Braille or tape. If deaf and blind, the person may need a visual frame or hands-on signing.
<i>Speech and language difficulty.</i> Dyspraxia, Down's syndrome, autism, cerebral palsy, acquired brain injury, stroke, people with throat cancer.	Varies – can have expressive and/or receptive difficulties accessing language or be unable to speak. Alternatively, may have processing difficulties with spoken language.	<ul style="list-style-type: none"> ● Paget Gorman signing. ● Signalong. ● Makaton signing. ● Argumentative communication equipment (voice boxes). ● Communication charts. ● Symbol books. ● Communicator who can understand their speech.
<i>Mental health disability.</i> Schizophrenia, depression, anxiety.	Anxiety, paranoia, impaired grasp of reality, short- and long-term memory loss.	Often need a trusted person to help get across their point of view and to cope with anxiety. Many people with mental health needs can have other disabilities, such as learning difficulties, deafness and speech and language needs, and their communicator needs to have experience in mental health needs to fully facilitate them.

access. Panels need to work within a tribunal framework that enables this. Hearings that involve communication support will take longer, and double time should be allowed. While a BSL or SSE sign language interpreter will sign at the same time that panel members and parties are talking, they may need slightly longer to keep up or break down and expand on some aspects of language.

Communicators or facilitators with learning disabled persons may need extra time to break down and explain the meaning of what has been said. While it is possible to use Makaton signing or Signalong at the same time that the panel members are talking, it is important to remember that these are very simple signing systems with a limited vocabulary, which does not encompass legal

jargon. The communicator may need the panel to use a more simple register of language and need extra time to explain legal concepts or the meaning behind questions. If it is a long hearing, two interpreters may be needed, or ample breaks provided if there is a single interpreter. The Council for the Advancement of Communication with Deaf People (CACDP), the professional body for British Sign Language interpreters, requests that their interpreters have a break every 20 minutes to ensure that they are fully able to process and translate to a high standard. If equipment is to be used, such as a loop system, radio aid or Palentype machine, time needs to be set aside to set it up in the tribunal room, ensure that it is working and that all involved in the hearing can use it and are comfortable with it.

Before the hearing

The panel needs to find out how the communicator plans to work, and where they need to sit or stand. For example, a sign language interpreter or lipspeaker will be unable to stand directly in front of a window, as the deaf user will be unable to focus on them against the light. It is not unreasonable for a panel to move to the other side of the table in such a case. The signing interpreter will also need to sit or stand on the same side of the panel. An advocate or communicator for a person with learning difficulties may need to sit beside to the appellant, and may need room on the table for a symbol chart.

Consideration needs to be given to where the interpreter or communicator waits for the hearing. There is no right or wrong approach – access and impartiality are the important issues. For example, the appellant may need help in communicating with the clerk or the other party before the hearing and the interpreter should, in these instances, be with them. It is not appropriate for the interpreter to be with the appellant to help them prepare their case while waiting for the appeal! However, it is important to give the interpreter and the appellant

a short opportunity to ensure that they can understand each other prior to the hearing, and for panels to check that this is the case at the start of the hearing.

During the hearing

The chair and panel members need to pace their questions and legal explanations at an appropriate speed for the communicator or interpreter. The exact pace can vary! An educated deaf person and their interpreter or lip speaker will be happy with a normal pace, while a person with limited English may need a slower pace. In this case, the chair and panel should try to give simpler explanations and questions. Communicators have to

listen, and then process and break down the language for the appellant, and may need a slightly slower pace to facilitate this. It is good practice to check that the pace and the language level are acceptable to both the interpreter and the person who is being assisted by them. The law is complicated and the onus is on the chair, not the communicator, who lacks legal training, to make it understandable. It is also important that tribunal panels direct their questions to the appellant, and not to the interpreter or communicator.

Panel members are well aware that they should avoid asking leading questions.

Court interpreters should also be aware of this, but many are not, and many of the different communicators working with disabled people may never have worked in legal situations. It is worth reminding them throughout the hearing of the importance of translating literally what is said, and not doing more – for example, explaining it or giving the appellant the answer. If an interpreter working with a disabled person considers it is necessary to explain questions (as may be the case with a learning-disabled person), there needs to be some discussion with the panel chair as to how this is to be handled, to ensure they are not overstepping the boundary between facilitation and help. Equally, if the appellant's speech is unintelligible, the chair should monitor whether a

The law is complicated and the onus is on the chair, not the communicator, who lacks legal training, to make it understandable.

communicator is actually listening to the appellant speak, or just answering for them. Putting this into practice is easier said than done, especially when dealing with learning-disabled people who may not understand what is asked of them.

Panel members need to control the situation using a variety of questioning strategies. I remember asking a young man with Down's syndrome if he could dress himself with a simple question: 'Are you able to dress yourself?' The advocate translated this as 'You can dress yourself, can't you?' Before the young man could reply, I told the advocate I would rephrase the question and asked: 'Can you put on your T-shirt yourself? How do you do this?' – and went on to ask questions about every item of clothing.

In a similar situation, I asked a gentleman with cerebral palsy about the help he needed during the night. He was understandably nervous, kept having muscular spasms and was unable to touch the words on his voice box and symbol chart, so his access worker started pressing them for him. I could see that he was not always pressing the keys or touching the word that the appellant was trying to point to, so I asked the appellant to confirm that the answers given were correct by nodding or shaking his head.

It is important to remember that an interpreter may not only have to translate language, but also culture. It is also worth remembering that deaf and disabled people have their own culture, which will influence their perception of the world, and that some legal and subject jargon that tribunals use don't translate into BSL. It is a sad fact that many deaf people with mental health disabilities are misdiagnosed or their psychiatric needs underestimated, because questions asked by mental health professionals – such as 'Do you hear voices?' – are signed without regard to culture.

Flexible

The final rule for tribunal panels working with interpreters and communicators is to be flexible and imaginative. I remember an appeal where the appellant was a deaf Somali refugee who had come to the UK

via Holland. He had no language at all, except a few Somali and Dutch signs. A previous hearing had been adjourned as the BSL sign language interpreter could not understand or be understood by him. It was decided to use two interpreters – a hearing BSL interpreter to translate the panel's questions to a deaf interpreter, who would use a combination of GESTUNO (an extremely visual form of signed communication used by deaf people internationally), mime and picture drawings to communicate with the appellant. The deaf interpreter would then sign back in BSL the appellant's answers to the BSL interpreter, who would voice them over to the non-deaf members of the panel. Triple time was allowed for this appeal – and it was needed!

The decision

The appellant's right to a fair trial does not end with the hearing, but with the decision. If it is the practice of your tribunal to give oral decisions after the hearing, make sure the clerk is aware that you need the communicator to stay for the decision. Some tribunals who issue written decisions ask appellants if they would like their decisions translated, and warn them that that process will take longer. In the case of a disabled appellant, tribunals need to clearly identify if this extends to actually paying an interpreter to record the decision on videotape in BSL, a Braille transcriber or for a communicator to translate into symbols.

Conclusion

There is no doubt that tribunals have an obligation under Article 6 and the Disability Discrimination Act to cater for the wide range of disabled people who require some form of language facilitation, either with human aid or by access to equipment, such as a loop system.

Finally, I feel I should apologise for skimming the surface of this deep and complex issue, and express the hope that the JSB will produce a comprehensive booklet at some time in the future.

KERENA MARCHANT is a member of SENDIST and of SENTW and the Social Security and Child Benefit Tribunal.

MINDED *to* make DECISIONS

PENNY LETTS *summarises the key elements of the Mental Capacity Act, explains the concepts it is based on and suggests ways in which these may have implications for the work of some tribunals.*

The Mental Capacity Act 2005 (MCA), due to be implemented in two stages during 2007, creates a comprehensive statutory framework setting out when and how decisions can be made on behalf of people aged 16 and over who may lack capacity to make specific decisions for themselves. It also clarifies what actions can be taken by others involved in the care or medical treatment of people lacking capacity to consent to those actions. In addition, the MCA extends the arrangements available for adults who currently have capacity and want to make preparations for a time when they may lack capacity to make certain decisions in the future.

Why is new legislation needed?

Reform of the law relating to mental capacity has been a long and protracted process, starting in 1989 with a five-year inquiry by the Law Commission, which published its report in 1995.¹

The Government undertook further consultation², leading to a policy statement³ and eventual publication in 2003 of a Draft Mental Incapacity Bill.⁴ The draft Bill was subject to pre-legislative scrutiny by a Joint Select Committee, which made a number of recommendations for improvements.⁵

The MCA will affect a huge number of people. The Department for Constitutional Affairs, which has responsibility for the MCA, has estimated that up to two million people may be affected by a lack of capacity to make some or all decisions for themselves. It is also estimated that around six million people are involved in caring or providing services for those who lack decision-making capacity, for whom the existing law offers no

guidance on what actions or decisions they may lawfully take on behalf of those they care for.

Key provisions

The MCA sets out a new integrated jurisdiction for the making of personal welfare decisions, health care decisions and financial decisions on behalf of people without the capacity to make such decisions for themselves. It also includes provisions to ensure that people are given all appropriate help and support to

enable them to make their own decisions or to maximise their participation in the decision-making process.

The statutory framework is based on two fundamental concepts: lack of capacity and best interests. For those who lack capacity to make particular decisions, the Act provides a range of processes, extending from informal arrangements, to decision-making requiring formal powers and ultimately to court decisions, governing the circumstances in which

necessary decisions can be taken on their behalf and in their best interests.

The Act's key provisions are designed to:

- Set out five guiding principles to underpin the Act's core values and to govern its implementation.
- Ensure that people are given appropriate help and support to enable them to make their own decisions.
- Provide a definition of a person who lacks capacity to make a decision and set out a single clear test for assessing capacity.

The statutory framework is based on two fundamental concepts: lack of capacity and best interests.

- Establish a checklist for determining what is in the ‘best interests’ of a person lacking capacity to make a particular decision, as the criterion for taking action or making a decision on that person’s behalf.
- Clarify the law when acts in connection with the care or treatment of people lacking capacity to consent are carried out in their best interests, without formal procedures or court intervention, but with clear restrictions and limitations.
- Provide for a decision to be made, or a decision-maker (called a deputy) to be appointed, by a new specialist Court of Protection in cases where there is no other way of resolving a matter affecting a person lacking capacity to make the decision in question.
- Provide for the appointment of Independent Mental Capacity Advocates (IMCAs) to support and represent particularly vulnerable people who lack capacity to make certain significant decisions about serious medical treatment or a move into long-term care.
- Set out specific parameters, safeguards and controls for research involving people lacking capacity to consent to their participation.
- Provide mechanisms to protect people lacking capacity by creating a new public office – the Public Guardian – to oversee attorneys and deputies and to act as a single point of contact for referring allegations of abuse to other relevant agencies.
- Introduce new criminal offences of ill-treatment or wilful neglect of a person lacking capacity in relation to matters affecting their care.

The MCA is accompanied by a statutory Code of Practice⁶ providing guidance to anyone using the Act’s provisions, including anyone involved in caring for or working with people who may lack capacity to make particular decisions.

The statutory principles

Section 1 of the MCA sets out five statutory principles to emphasise the underlying values of the Act and to govern how it is to be interpreted and implemented:

- 1 A person must be assumed to have capacity unless it is established that he lacks capacity.
- 2 A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- 3 A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- 4 An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.

- 5 Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person’s rights and freedom of action.

These principles confirm that the Act is intended to be enabling and supportive of people lacking capacity, not restrictive or controlling of their lives. The aim is to protect people who lack capacity to make particular decisions, but also to maximise

their ability to make decisions, or to participate in decision-making, as far as they are able to do so.

The Act’s starting point is to enshrine in statute the existing presumption at common law that an adult has full legal capacity unless it is shown that they do not. It then goes on to define what it means to lack capacity to make a decision and how to determine whether a particular decision or action is in the best interests of a person lacking capacity to make the decision in question.

Lack of capacity

The Act adopts the common law notion that capacity is a functional concept, requiring capacity to be assessed

... the Act is intended to be enabling and supportive of people lacking capacity, not restrictive or controlling of their lives.

in relation to each particular decision at the time the decision needs to be made, and not the person's ability to make decisions generally. This means that individuals should not be labelled 'incapable' simply on the basis that they have been diagnosed with a particular condition, or because of any preconceived ideas or assumptions about their abilities due, for example, to their age, appearance or behaviour. Rather it must be shown that they lack capacity for each specific decision at the time that decision needs to be made. Individuals retain the legal right to make those decisions for which they continue to have capacity.

Section 2(1) of the Act sets out the definition of a person who lacks capacity:

'For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.'

This definition imposes a two-stage test in order to decide whether a person lacks capacity to make a decision. It must be established that:

- There is an impairment of, or disturbance in the functioning of, the person's mind or brain, and
- The impairment or disturbance is sufficient to render the person unable to make that particular decision.

Section 3 sets out the test for assessing whether a person is unable to make a decision for themselves. A person is unable to make a decision if they are unable to:

- a) Understand the information relevant to the decision.
- b) Retain that information.
- c) Use or weigh that information as part of the process of making the decision, or
- d) Communicate the decision (whether by talking, using sign language or any other means).

An explanation of information relevant to a decision must be provided in ways that are appropriate to the person's circumstances, using the best form of communication to help the person understand.

Best interests

Once it has been established that someone lacks capacity to make a particular decision, any action taken or decision made on that person's behalf must be in their best interests. In view of the wide range of decisions and actions covered by the Act and the varied circumstances of the people affected by its provisions, the concept of best interests is not defined in the Act. Instead, section 4 sets out a checklist of factors that must be considered

in determining what is in a person's best interests. Anyone determining best interests must:

- Avoid making unjustified assumptions about the person's best interests on the basis of their age, appearance, condition or behaviour.
- Consider all relevant circumstances.
- Consider whether the person may regain capacity, and if so when.

... any action taken or decision made on that person's behalf must be in their best interests.

- Permit and encourage the person to participate in the decision.
- Take account of the person's wishes and feelings, beliefs and values.
- Consider the views of other people, such as carers and anyone interested in the person's welfare.

There are special considerations where the decision concerns the provision or withdrawal of life-sustaining treatment. Not all the factors in the checklist will be relevant to all types of decisions or actions, but they must still be considered if only to be disregarded as irrelevant to that particular situation. Any option that is less restrictive of the person's rights or freedom of action must also be considered, so long it is in the person's best interests.

Implications of the MCA for tribunals

People who lack capacity to make particular decisions face considerable obstacles in enforcing their rights and entitlements, not least because they rely on others to pursue these matters for them. This may not be a problem where there is ready access to legal representation⁷, but this is rarely available for most tribunals.

It is hoped that the increased publicity and awareness-raising leading up to implementation of the MCA will reinforce the fact that people lacking capacity have the same rights of access to justice as anyone else and will therefore encourage family members, carers, advocates and legal advisers to help people with impaired capacity to pursue applications to tribunals where this may be relevant.

In civil and family proceedings before the courts, special procedures apply in any case involving a ‘person under a disability’ including those who lack capacity to instruct a solicitor or take part in the proceedings.⁸ However, there are no such rules or procedures to assist tribunals where the application may relate to a person who lacks capacity to make relevant decisions or take part in the appeal. Tribunals should therefore be guided by the provisions of the MCA, in particular the statutory principles and the requirement to make a decision in the best interests of the person lacking capacity.

There are specific provisions of the MCA of which tribunals may need to be aware.

- The new Lasting Powers of Attorney will allow donors to appoint attorneys to make healthcare or personal welfare decisions, as well as those relating to property and affairs. Some tribunals may see more attorneys making applications on behalf of LPA donors.
- The new Court of Protection is a superior court of record able to establish precedent and build up a body of case law and expertise in all matters affecting people who may lack capacity to make specific decisions for themselves – the court’s decisions and precedents may have a bearing on tribunal proceedings

- A provision of the Code of Practice, or a failure to comply with the guidance set out in the code, can be taken into account by a court or tribunal where it appears relevant to a question arising in any criminal or civil proceedings.

Implementation of the MCA

Only the provisions of the Act relating to the IMCA service and the new criminal offences will be effective from 1 April 2007. The remaining parts of the MCA will be implemented in October 2007. Tribunal members should use the time available to ensure they are familiar with the new jurisdiction by the time it comes into effect.

PENNY LETTS is a member of the Council of Tribunals. She was Specialist Adviser to the Joint Committee on the Draft Mental Incapacity Bill and has worked with the DCA in preparing the MCA Code of Practice.

¹ Law Commission, *Mental Incapacity* (Law Com No 231) (London: HMSO, 1995).

² Lord Chancellor’s Department, *Who decides? Making decisions on behalf of mentally incapacitated adults*, (London: HMSO, 1997) (Cm 3803).

³ Lord Chancellor’s Department, *Making decisions: the Government’s proposals for making decisions on behalf of mentally incapacitated adults*, (London: TSO, 1999) (Cm 4465).

⁴ Draft Mental Incapacity Bill, (London: TSO, 2003) (Cm 5859-I)

⁵ Report of the Joint Committee on the Draft Mental Incapacity Bill, Vol I (HL Paper 198-I, HC 1083-I) (London: TSO, 2003).

⁶ Available on the DCA website at www.dca.gov.uk/legal-policy/mental-capacity. The final version of the Code will be published in April 2007.

⁷ Patients detained under the Mental Health Act 1983 are entitled to free legal representation for hearings before the Mental Health Review Tribunal.

⁸ Civil Procedure Rules 1998, Part 21; Family Proceedings Rules 1991, Part IX; Insolvency Rules 1986, Part 7, Chapter 7. The new Court of Protection Rules will be published later in 2007.



WHAT IT'S ALL ABOUT

GODFREY COLE *answers questions about an ambitious project.*

After much consultation, and with the full support of the Senior President Designate, Carnwath LJ, and the Tribunals Service (TS), the JSB has embarked on a programme evaluating the training, appraisal and mentoring of tribunals inside and outside the TS.¹ The project is ambitious, almost certainly unique, and understandably sensitive, given the detail of the enquiries. It is a tribute to presidents that they are participating in the programme so enthusiastically and unconditionally. The questions and answers that follow try to anticipate what a tribunal chairman or member might want to know when attempting to find out what evaluation is all about.

What is evaluation?

It is a review of a tribunal's training, appraisal and mentoring to see how far it has been able to meet the criteria in the various JSB publications² that virtually all tribunals have accepted as setting out the standards they wish to strive to meet.

Why do it?

Tribunals are steadily being brought together under one administrative body, the TS. The Senior President, and the TS, will want to ensure that there are common standards against which resources, seemingly always limited, can be distributed. It is appropriate that a respected outside body, the JSB, carries out a dispassionate review.

Which tribunals are to be evaluated?

The short answer is all of them. At present, only first-tier tribunals in the TS are being evaluated. A large number joined in April 2006 and the present priority is to evaluate that group by the summer of 2007. More tribunals will join in April 2007, and yet more in April 2008, so these two groups will be looked at in the autumn of 2007 and in 2008.

Do you evaluate them all in the same way?

No. The JSB's survey³ underscored the differences between tribunals in a host of ways: their case load; the variety of their work; how many full-time judiciary they have, if any; and whether they sit alone or with others. It has been possible to differentiate between the larger and the smaller jurisdictions – the detail they are asked to provide in their returns varies, as does the material they themselves return.

What's this *pro forma*?

It's quite simply the component parts of the training, appraisal and mentoring schemes redrawn so that tribunals can indicate how far they have been able to meet the criteria, how far they cannot do so for one reason or another, and what good practices they have developed that they would like to share.

Who carries out the visit?

The visiting panel is chaired by a Judicial Director from outside the jurisdiction. They will have wide tribunal experience and may also have had training experience. Another member of the panel will be an experienced member of the jurisdiction who can clarify matters and save unnecessary enquiries. The rest of the panel will be from the JSB secretariat. The report of each visit goes to the President and to the Senior President Designate. The JSB will also prepare a composite report for the Senior President setting out its findings and conclusions from the evaluations completed up to the summer of 2007.

Any emerging themes?

None that cut across all the tribunals we have visited but lots of innovation, good practice, and a determination to train effectively, even if the jurisdiction has few

sittings to offer its members. Each tribunal inducts its new members and each tribunal provides continuation training. Some have training committees, some are thinking about them. Appraisal schemes are widespread and virtually all are based on the JSB scheme. Frequency of appraisal varies, as does the number of members being appraised at any one time. Mentoring is less common as yet, possibly because awareness of its value and guidance from the JSB is much more recent

Any good practice to share with us yet?

Lots. In no order of priority, there are interesting initiatives in: developing training around competences, using field trips to bring members up to date, delivering training regionally, getting delegates to assess their needs before attending the course, and broadening ways in which training is delivered. There is also the implicit learning and general ideas that Judicial Directors pick up after a day’s intensive discussion and which they take back to their own jurisdiction.

What will happen when all the TS tribunals are done?

The short answer is that we don’t know yet, because we are nowhere near finishing them. The longer answer is that each evaluation ends with a report and a number of recommendations and date for implementation. Once both the report and the recommendations are agreed with the jurisdictions (which to date has been fairly easy to achieve), the tribunal sets about implementing the recommendations. The JSB plans, once all the first-tier tribunals have been visited, to go back to see how they are progressing with the recommendations that they have agreed. That will be the subject of a further report to the Senior President – probably around the middle of 2008 – and, at that stage, consideration will need to be given to Stage Two. Of course, while the follow-up work is going on, the visits to

all the other tribunals will progress apace, and they are unlikely to be completed much before the spring of 2009.

And who have you visited to date?

Thought you might want to know that. We started at the end of 2006 with the Special Education Needs and Disability Tribunal (SENDIST), which very kindly agreed to be the subject of the pilot evaluation. In 2006, we visited the Pension Appeal Tribunal (PAT), the Mental Health Review Tribunal (MHRT), the Criminal Injuries Compensation Appeal Panel (CICAP), and the Social Security and Child Support Tribunal (SSCST) as ‘full-blown’ visits, as it were. We have had shorter meetings with the Immigration Services Tribunal (IMSET) and the Lands Tribunal. By the summer of 2007 we plan to have visited the Care Standards Tribunal, the Asylum and Immigration Tribunal (AIT), Finance and Tax Tribunals, the Employment Tribunal and the Information Tribunal.

Does it work?

It seems to. Reports and recommendations so far have been agreed with Presidents or equivalent without too much discussion. Some of that may be due to careful preparation and to presentation of the recommendations before the end of the day of the visit. Equally, more than one President has said that completing the *pro forma* was a catalyst for change, helping them to identify the half-realised concerns that needed to be implemented or considered further.

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GODFREY COLE is the JSB’s Director of Tribunals Training.

¹ *Evaluation of Training, Appraisal and Mentoring in Tribunals*, published in April 2006.

² *Competence Framework, Framework of Standards for Training, Guidance on Appraisals and on Mentoring, Framework for Induction Training* (see www.jsboard.co.uk).

³ See 1, above.



FOLLOW *the* LEADER

PETER SPILLER *enjoyed the opportunity presented by two courses to consider what makes a good leader, and to join with other judges in assessing his own particular style of leadership.*

Over the past three years, the Judicial Studies Board has conducted a course on *Managing judicial leadership* for English judges and tribunal presidents and their deputies who have leadership roles. In November 2006, I was fortunate to attend this course in my role, which involves management of 59 judicial officers. Two weeks after my return from England, I attended the inaugural Australasian Tribunal Leadership Conference in New Zealand. In this article, I have touched on some of the highlights of both.

Participants

The JSB course was attended by 30 participants, of whom 12 were resident judges, eight were designated civil or family judges, three were judges from Scotland, Northern Ireland and New Zealand, and seven were tribunal members. The New Zealand course was attended by 40 participants, 21 from New Zealand and the rest from the five states of Australia. All the participants were involved in tribunals, from judges seconded to head administrative tribunals to those who held purely administrative positions.

Structure and content

The JSB course was held over two days, and comprised around ten-and-a-half hours of activity. There was a mix of instruction in plenary session and discussion in small groups. The topics covered management responsibilities and challenges, qualities of leadership, management styles, and relationships with the media. The course ended with the distribution of printed materials containing suggestions for effective management. The New Zealand course was based on the JSB course and covered all of the areas included in it. However, the New Zealand course extended to around thirteen-and-a-half

hours and included additional topics. These were dealing with officials and political processes; performance review, peer review and codes of conduct; parallel sessions on (re)appointments of tribunal members and development of websites; and training and educational support of tribunal members.

For me, the three main highlights of each course were in the same broad areas.

What makes a good leader?

The first highlight was the guest speaker on leadership and influencing. In the JSB course, the speaker was Dr John Potter of the National School of Government. Among the telling points that he conveyed to me were the need for the leader to set a good example and develop self-awareness; to create structure and systems, set direction and focus energy, deliver results in time scales, seek alignment of staff with goals, be calm in time of crisis, and pursue incremental change; and to focus on communication and relationships and develop people and their self-esteem. He presented the simple but effective model of acting only after assessing one's own position, then the subjective position of the other person concerned, and then an objective position.

The guest speaker on leadership and influencing on the New Zealand course was Dr Mark O'Brien, a medical doctor who had come to specialise in management issues. He stressed the importance of articulating clear goals; motivating change through both creating dissonance or tension and providing the means to success; measuring things that mattered; and providing motivational feedback. He spoke of the need to deal with 'adolescent' behaviour of difficult people through providing compassion and strong boundaries.

Managing judicial leadership

The aim of the JSB course is 'to provide an opportunity for appointees with management roles to improve their effectiveness by sharing experiences and best practice'.

Learning outcomes:

By the end of the course, participants will:

- Be aware of the roles and responsibilities of the resident judge and designated civil and family Judges.
- Appreciate the importance of establishing good relationships with other interested parties.
- Recognise how to make the best use, in a changing environment, of the time and resources available to them.
- Accept the need to influence colleagues effectively.

New Zealand course

Aim is 'to provide an opportunity for tribunal members with leadership roles to improve their effectiveness and sharing experiences and best practice'.

Learning outcomes:

By the end of the course, participants will:

- Be aware of the roles and challenges of tribunal leadership and best practice strategies to meet these challenges.
- Appreciate the importance of establishing good relationships with members, administrators and stakeholders.
- Recognise how to make the best use, in a changing environment, of the time and resources available to them.
- Accept the need to influence colleagues effectively.

What's your style?

The second highlight of both courses was the analysis of management and communication styles. In the JSB course, this was achieved through completion of the Myers Briggs Type Indicator (MBTI) questionnaire and then discussion of the results and their implications. It was interesting that, over the years, the large majority of judicial officers who have completed the test have fallen within the 'STJ' categories – sensing, thinking and judging – rather than intuition, feeling and perceiving. My experience, along with those of the other participants of the course, was that the MBTI description of my personality was remarkably accurate. In the New Zealand course, the analysis of personality dynamics took the form of exploring four personality types, centred on the planner, the innovator, the carer and the leader. This analysis mirrored and simplified the MBTI test, although it did not involve the completion of a full-length questionnaire. In both courses, the analysis of personal styles prompted self-reflection and a greater awareness of the importance of tolerance and respecting difference. The sessions also added lightness and a fun aspect to the proceedings.

Exchanging ideas

The third highlight of both courses was the opportunity for interaction with fellow judicial officers, in small-

group and social activities. There is a sense of relief and support in realising that others have similar issues and problems, and there was value in exchanging and contributing ideas. For example, in one of the JSB small-group sessions, ably led by Godfrey Cole, he made the telling point that it is good to make the best use possible of the available expertise that one has among the members one is managing.

Long-term impact of the courses

However enjoyable and well-delivered a course is, its real value lies in its long-term benefits. Both courses ended with the excellent idea of asking each participant to team up with one other person on the course and explain to that person the three main ideas that had been learnt in the course and which the participant intended to implement in the future. The teams were asked to get in touch with each other after several months to check if indeed there had been progress.

The JSB should be proud of its course and the fact that this has inspired a similar successful venture in New Zealand.

PROFESSOR PETER SPILLER is Principal Disputes Referee at the New Zealand Disputes (Small Claims) Tribunals.

ANNUAL CONFERENCE

REBECCA ROWSELL *touches on some of the discussion that took place at this year's conference, on the general theme of improving feedback to government bodies.*

The 2006 annual conference of the Council on Tribunals, on 14 November, was attended by 200 delegates from within the tribunals, regulatory, complaints handling and advice sectors. The theme for this year's conference drew on proposals in the 2004 White Paper: *Transforming Public Services: Complaints Redress and Tribunals* foreshadowing a new approach to dispute resolution. The focus was the role of feedback in improving the standard of decision-making within government departments and local authorities and general improvements to the end-to-end process.

The keynote speaker was Lord Falconer of Thoroton, Lord Chancellor and Secretary of State for Constitutional Affairs. His speech focused on the then proposed Tribunals, Courts and Enforcement Bill, which was subsequently introduced in the House of Lords on 16 November 2006. He acknowledged tribunals as a cornerstone of the justice system, noting that members of the public were more likely to have direct experience of a tribunal than any other part of the justice system and, as such, public confidence in the tribunals system was particularly important. He welcomed the enhancements in coherency and flexibility within the tribunals sector that would be brought about by the work of the Tribunals Service, the judicial leadership of the Senior President of Tribunals and other reforms aimed at increasing the use of mechanisms such as case management and proportionate dispute resolution.

Lord Falconer was also accompanied by the DCA Parliamentary Under Secretary of State, Baroness Ashton of Upholland, who fielded questions on the status of the review of the role of lay (or non-legal) tribunal members. The Lord Chancellor's speech was followed by contributions from the Senior President of Tribunals designate, Lord Justice Carnwath, who addressed the conference on the subject of getting decisions 'right first time' and the Chairman of the Council on Tribunals, Lord Newton of Braintree, who spoke on the future of

the Council on Tribunals in its new expanded role as an Administrative Justice and Tribunals Council (AJTC).

The afternoon session saw speeches from Judge Michael Harris, President of the Social Security and Child Support Appeals Tribunal, Mr Justice Hodge, President of the Asylum and Immigration Tribunal, and Tony Redmond, Local Government Ombudsman and Chair of the British and Irish Ombudsman Association on the theme of 'Stimulating improvements in decision-making through feedback'.

Delegates then took part in a session involving breakout groups, which considered the scope for improving feedback to government bodies over the standard of decision-making and on how tribunals might improve the 'end-to-end process' and 'make it work better' for the user. Concerns were expressed about whether departments are always receptive to feedback, whether feedback actually appropriately targets initial decision-makers, and limitations on the feedback process owing to the need to preserve judicial independence and impartiality. However, on the whole, the sessions produced a lot of positive discussion around ways to build on and improve existing feedback.

The suggestion by participants that the new AJTC might usefully play a role in drawing together existing feedback mechanisms to assist in establishing a standard framework and in developing a best practice model has given the Council much food for thought and is likely to inform future projects.

A full report on the conference will be published in the April 2007 edition of *Adjust*, the Council's free quarterly e-newsletter, at www.council-on-tribunals.gov.uk/publications/newsletter.htm. If you would like to subscribe, please send an e-mail to: adjust_mailing@cot.gsi.gov.uk.

REBECCA ROWSELL is a member of the Secretariat at the Council on Tribunals.

The Equal Treatment Advisory Committee – Practitioner Member

Applications are invited for membership of the Equal Treatment Advisory Committee (ETAC) of the Judicial Studies Board. The JSB is based in Central London.

ETAC is anxious for its membership to continue to be drawn from a broad cross-section. The committee advises the JSB on the form and content of judicial training in all aspects of fair treatment and diversity. This is intended to include anyone who might be disadvantaged before the courts or tribunals, but ETAC is currently focusing on issues relating to race and ethnicity, disability, gender and sexual orientation and the needs of unrepresented parties and children.

The main responsibilities of the role are:

- To participate in the meetings of and the work carried out by ETAC.
- To work directly with the course directors.
- To provide direct delivery and/or facilitation of training.

The committee meets four times a year, for about half a day on each occasion, including an awayday event over one-and-a-half days. In addition to attending such meetings, members may be invited to become course consultants to course directors of JSB seminars (requiring attendance at planning meetings), act as ETAC representatives on other JSB committees, and participate in working groups, each of which are for a duration of about a half a day. Additionally, members may be required to contribute to the development of fair treatment training materials, lead related training sessions at JSB seminars, and represent ETAC at external events.

Committee meetings usually take place at the JSB's offices in Millbank Tower, on Friday mornings. The time commitment associated with this appointment is a minimum of seven days per year plus travelling and reading time. ETAC currently has 15 members. The appointments are for a fixed term of four years.

Further information about the role can be obtained from Michael Williams at the JSB, on 020 7217 2428 or michael.williams@jsb.gsi.gov.uk.

The closing date for this post is 26 March 2007, and those who best meet the criteria for appointment may be invited to attend a selection interview in London on 17 or 18 April 2007.

Tribunals Journal – Editorial Board Members

Applications are invited for membership of the editorial board for the JSB's *Tribunals* journal, and in particular a practitioner with experience of administrative justice.

Three issues of the journal are published each year, with the aim of providing interesting, lively and informative analysis of the reforms currently under way in different areas of administrative justice. The journal also aims to promote high standards of adjudication in tribunal hearings, including a sensitivity among the tribunals judiciary to the needs of those appearing in front of them, and to encourage a sense of cohesion among tribunal members.

The JSB is now keen to expand the membership of its editorial board, with the intention of increasing the pool of knowledge and skills available there.

Successful candidates will have:

- An understanding of the needs and concerns of those appearing in front of tribunal hearings.
- The ability to contribute their own thoughts and experiences, with the aim of benefiting others.
- Good communication and interpersonal skills.
- Ideally, some writing experience.

Members of the editorial board are asked to attend three meetings a year at the JSB's London office.

The closing date for this post is 30 March 2007, and interviews for those who best meet the criteria for appointment may be invited to attend a selection interview in London in April 2007.

Tribunals Training Director

The JSB is seeking applications from suitably skilled and qualified members of the judiciary for the post of Tribunals Training Director when the current director's term of office comes to an end on 1 January 2008.

Although the JSB's role in tribunals is mainly advisory, it has not only established itself as a provider of judgecraft training, but also advises tribunals on the development of their own training provision and, where appropriate, provides bespoke training and identifies consultants to assist in the delivery of training. It has also developed the training framework (competences, training standards, mentoring guidance and appraisal principles) around which training in tribunals is now firmly based and it is currently undertaking, at the request of the Senior President for Tribunals, an evaluation of training, appraisal and mentoring (against its frameworks) in all those tribunal jurisdictions that have joined or are about to join the newly formed Tribunals Service.

The successful candidate will be expected to take a lead in the above initiatives. You will need to be able to demonstrate leadership and imagination in the context of a rapidly changing and diverse tribunals world and the variety of organisational structures that exist. You will hold a unique position in the JSB by providing active support to the Committee Chairman in the JSB's dealings with senior figures and bodies in the tribunals world including the Senior President, the Chairman of the Council on Tribunals, as well as Tribunal Presidents themselves and the Tribunals Service. You may also be expected to work with the JSB's Director of Studies, a circuit judge to contribute to the development of JSB training initiatives. The new director must therefore have the ability to communicate at the highest level, together with the drive, determination and presence to see major training initiatives through to successful conclusion.

The appointment could either be on a fee-paid basis for a fee-paid judicial office-holder or, if the successful candidate currently holds a salaried judicial post, on an agreed number of days from that jurisdiction. The minimum required number of days needed is 40. This proposal has the support of the Senior President for Tribunals and the Tribunals Judicial Executive Board (TJEB). Remuneration or release terms will be subject to negotiation with the individual and/or their tribunal. Those applicants with salaried appointments will need to consult with their President before making an application.

A draft job description and application form can be obtained from Matthew de Ridder at the Judicial Studies Board on 020 7217 2435 or matthew.deridder@jsb.gsi.gov.uk.

Further information about the role can be obtained from Mary Holmes, Head of Tribunals Training, on 020 7217 4432 or mary.holmes@jsb.gsi.gov.uk.

The closing date for this post is 20 April 2007.

General information on all JSB appointments

The JSB is an independent judicial body, part of the Judicial Office of the Lord Chief Justice. As well as being responsible for the training of all part-time and full-time judges in England and Wales, it has an advisory role in the training provided for chairmen and members of tribunals and for lay magistrates.

Save in the case of some specific directorship appointments, for which there are separate remuneration arrangements, members of JSB committees who do not hold a full-time judicial or other public office are paid a daily fee (currently £150 + VAT if applicable) plus travel and subsistence expenses in accordance with normal public service rules for attending committee meetings and undertaking other JSB-related work.

Further information about each appointment and application forms are available from Matthew de Ridder at the Judicial Studies Board, 9th Floor, Millbank Tower, Millbank, London SW1P 4QU (tel 020 7217 2435).

Applicants should note that the JSB will not be able to meet any travel costs associated with attending the interview.

The JSB is committed to providing equal opportunities for all, irrespective of age, disability, ethnicity, gender, marital status, religion, sexuality, transgender and working patterns.

BREADTH *of* KNOWLEDGE

HAZEL GENN, *below*, retired as chair of the editorial board for the *Tribunals journal* at the end of 2006. Here we touch on some of her work during that time.

An editorial board member since the journal was first published in 1994, Professor Dame Hazel Genn QC has chaired that group since 2000. She has overseen the establishment of the journal as an important archive of material on the knowledge and skills required in tribunal work. One indication of the increasing substance of the journal has been its move from two to three issues a year, as it has attempted to report and comment on important developments in the field. The breadth of Hazel's own knowledge has allowed her to advise and comment on the contents of each of the issues she has steered to publication.



and abilities for appointment to judicial office makes this apparent. An individual's knowledge of their subject area, combined with the abilities to communicate clearly and work efficiently appear in both, as do the qualities of integrity and decisiveness.

Appointment of judges

Regular readers will be aware of Hazel's appointment as a lay member of the Judicial Appointments Commission (JAC) a year ago. Not surprisingly, the establishment of a new series of policies and processes by the JAC has involved an enormous amount of work, and Hazel has been closely involved with JAC's efforts in defining and then assessing the qualities and abilities required of potential judicial office-holders.

Training of judges

Readers of this journal are less likely to be aware of a concurrent project that Hazel has been running with the JSB, to conduct a learning needs analysis for those judiciary who work in the courts. This extensive piece of work has involved researching, for the first time, the training that judges feel they require, when newly appointed and afterwards, to conduct their role effectively. The results have been fed into a 'Framework of judicial abilities and qualities', which will in turn be used to underpin the design of all judicial training.

Overlap

There is, of course, an overlap between these last two particular pieces of work. Even a cursory glance at the JSB's draft framework alongside the JAC's list of qualities

Training the tribunals judiciary

The JSB's current judicial training strategy does not include the tribunals judiciary, but it owes much to the work undertaken, by the JSB again, in the late 1990s to establish a training needs analysis for the tribunals judiciary. That research was undertaken while Hazel was a member of the JSB's Tribunals Committee and she played a key role. The groundwork led to a series of templates for the content and standard of training, appraisal and mentoring within tribunals, and ultimately to the evaluation exercise currently under way (see page 13).

Fair treatment

Access to justice has been a clear theme in Hazel's work. Her report *Paths to Justice*, published in 1999, looked at the frequency with which people experienced problems with a possible legal solution and the ways in which they set about solving them. The Spring 2006 issue of this journal looked at the conclusions of Hazel's recent research (*Tribunals for diverse users*, DCA, January 2006) into the experience of minority users of three different tribunals. Hazel has also led a series of probing sessions in the sometimes contentious area of judicial training in fair treatment issues.

And lest it be thought that Hazel is a civil law specialist, as professor of socio-legal studies at University College London, she lectures undergraduates in, among other subjects, criminal justice.

Hazel's depth of knowledge and wide range of contacts, domestically and internationally, as well as her enthusiasm, energy and approachability, have all contributed to her success in chairing the editorial board of this journal.



JUDICIAL STUDIES
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