



JUDICIAL STUDIES
BOARD

TRIBUNALS
TRIBUNALS
TRIBUNALS
SUMMER 2007
TRIBUNALS

1 TRIBUNALS SERVICE

A strategy has been produced that sets out the steps to a unified service.

Peter Handcock

2 REASONABLE APPREHENSION OF BIAS

Guiding principles to ensure that objectivity and lack of bias are guaranteed and maintained. *Jeremy Cooper*

6 INTERPRETERS

The role of the tribunal in relation to foreign language interpretation.

Kerena Marchant

10 FAIR TREATMENT

Extracts from JSB guidance on the wearing of the veil, or *niqab*, during proceedings.

14 LEARNING AND DEVELOPMENT

How a DVD on mentoring skills for tribunals was produced. *Susan Hewett* and *Mary Kane*

17 CROSS-JURISDICTION TRAINING

Changes in training as seen by an experienced tribunal president.

Michael Harris

18 PROFILE

My role as president of the new Information Tribunal. *John Angel*

Plus

The beginning of 2007 saw the launch of the Gambling Appeals Tribunal.

FOCUS ON USERS



In May 2007, the Tribunals Service published a strategy to make tribunals more efficient, independent and user-focused. *Peter Handcock* explains what it contains.

THE STRATEGY *Delivering the future: one system, one service* sets out the blueprint on how the Tribunals Service – now an agency of the new Ministry of Justice – will use the Tribunals, Courts and Enforcement Bill currently before Parliament (and expected to receive Royal Assent by July 2007) to move from a service administering 27 very different central government tribunals to one providing unified support to a radically simplified tribunal structure, with the aim of creating a system in which dispute resolution can be delivered speedily and conveniently for users.

Most tribunals administered by the Tribunals Service will be transferred into the new structure, which provides a first level of appeal for users and a further level of appeal on questions of law. Those tribunals that will not become part of the two-tier structure – the Asylum and Immigration Tribunals, Employment Tribunals and Employment Appeal Tribunal – will remain as separate tribunals within the Tribunals Service, but will share the leadership of the Senior President, the new arrangements for judicial interchange and a common administration with the other tribunals, making it easier for judiciary and staff to work more flexibly across different tribunals.

The strategy outlines plans to set up around 40 hearing centres in major towns and cities that can host a wide variety of tribunals. These will make more services available to the public at a single venue and will be complemented by the hiring of venues in other locations when very local hearings are necessary. Six administrative support centres will also be created to provide effective back-office case administration at a reduced cost to taxpayers. A single management structure is also being formed to promote consistent customer services and avoid management duplication.

The strategy also reveals plans to develop more alternative dispute resolution schemes, encourage better decision-making by the departments being appealed against, improve customer services, and provide better IT to benefit both staff and users.

Peter Handcock is the Chief Executive of the Tribunals Service. Copies of 'Delivering the future: one system, one service' are available from www.tribunals.gov.uk.

EDITORIAL



THIS summer 2007 issue of the *Tribunals* journal considers a

number of procedural areas for tribunals. On page 2, Professor Jeremy Cooper considers the case law that sets down the 'reasonable apprehension of bias' in relation to a particular judge, and the way that test has been applied by the courts, and on page 10, we reproduce the recently published guidance on the wearing of the full veil, or *niqab*, by women during proceedings.

In the second of her series of articles on interpretation on page 6, Kerena Marchant considers how far a tribunal has to go in the context of the fair trial provisions of Article 6, to ensure that the needs of minority languages users are met. We also include profiles of some newer tribunals and their presidents – in particular the Information Tribunal on page 18 and the Gambling Appeals Tribunal on page 20.

Any comments on the journal are, as ever, most welcome, and should be sent to publications@jsb.gsi.gov.uk

Godfrey Cole

WHEN TO SIT AND WHEN NOT TO SIT



Jeremy Cooper examines recent case law setting down the guiding principles that should be applied in any tribunal to ensure that objectivity and lack of bias on the adjudicating panel are guaranteed and maintained.

OBJECTIVITY and lack of bias among panel members are essential requirements of an independent tribunal. They form the bedrock of a modern justice system and, without public confidence in their presence, trust in the judicial system is eroded.

As the Tribunals Service grows in size and confidence, the likelihood of individuals developing careers as tribunal judges, and sitting in a number of different jurisdictions, is emerging. ‘Cross-ticketing’ – where tribunal members are deemed competent to sit in jurisdictions other than those to which they were originally appointed – is a natural and logical way of spreading talent and experience across the Service.

Linked to this development is the increasing possibility that tribunal members might also appear as witnesses or representatives before panels of colleagues with whom they have sat in a different judicial context. Against this background, it is essential that clear rules are laid down and understood to determine the circumstances in which a tribunal member should not sit, to avoid reasonable apprehension of bias in the minds of any of the parties, or other stakeholders in the outcome of the hearing.

Key test

The key test to be applied in any case involving a possible bias challenge was laid down in the House of Lords case of *Porter v Magill* [2002] 2 AC 357 as follows:

‘The question is whether the fair-minded and informed observer, having considered

the facts, would conclude that there was a real possibility that the tribunal was biased.’

This test effectively brings together in one definition the old common law test of bias with the requirement of Article 6 of the European Convention on Human Rights for an independent and impartial tribunal.

Lawal

The test was put into sharp effect by the House of Lords in the subsequent case of *Lawal v Northern Spirit* [2003] ICR 856. In this case, counsel appearing for one of the parties before the Employment Appeal Tribunal was also a part-time recorder QC, who had previously sat as an Employment Appeal Tribunal panel chairman with one of the lay members adjudicating the current case.

An objection was raised that this lay member might, albeit subconsciously, be influenced by the fact that he had previously sat with the counsel in question in a judicial capacity. The basis of this assumption was that ‘lay members look to the judge for guidance on the law, and can be expected to develop a fairly close relationship of trust and confidence with the judge’. If the same judge subsequently appeared as an advocate before that lay member, the lay member might be suspected of bias, induced by the close working relationship of trust and confidence that had developed at the previous hearing(s). Their Lordships concluded, perhaps surprisingly given the robust independence and experience associated with typical tribunal lay members, that there was a real risk of a

perception of bias and that the panel should therefore not have sat.

It is important to stress that this case was decided on the particular facts, and should not be seen as a statement of law that panellists must always stand themselves down if they discover that they have sat on a previous tribunal with the counsel who now appears before them as an advocate. It is more likely that it reflected the particular dynamics of the Employment Appeal Tribunal, which are unlikely to be replicated in other tribunals, before whom senior counsel who are also part-time judiciary rarely appear as advocates.

Further illumination

A third House of Lords case, *Gillies (AP) v SoS for Work and Pensions (Scotland) 2* [2006] UKHL, has added further illumination and commentary on this issue. In this case, the medical member of the tribunal determining appeals against a refusal of the Disability and Carers Service to grant a particular benefit was also contracted as an examining expert medical practitioner to provide reports for the Disability and Carers Service on other cases concerning the same benefit. This House of Lords panel, which was differently constituted from the *Lawal* hearing, had no difficulty robustly refuting the claim that the doctor in question should not have sat for reasons of possible bias. The decision of Baroness Hale (herself once a member of the Council on Tribunals) was particularly forthright. She made four key observations:

- 1 '[A] 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.'
- 2 '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.'

- 3 'The role of the examining medical practitioner is to provide an independent assessment of whether the claimant meets the criteria for the benefit in question. She has no more interest in denying the claimant a benefit to which he is entitled than she has in granting him one to which he is not.'

- 4 'I find it difficult to understand what there could possibly be about the facts of tribunal life which lead to a lessening of [a doctor's] professional independence and objectivity at the tribunal stage.'

Thus, the employment of a tribunal member by the same organisation whose decision is being challenged does not lead to automatic disqualification from sitting as a member of that panel under the 'fair-minded and informed observer' test.

This approach was well illustrated in the case of *R oao PD v West Midlands and North West MHRT* [2004] EWCA Civ 311, in which the medical member of the tribunal considering the continuing detention of a patient under the Mental Health Act was employed by the same Trust that was detaining the patient. On the facts of this case, the Court of Appeal decided that there was nothing to suggest that the Trust had any particular interest in the outcome of the case, or that it was in a position to benefit or disadvantage the doctor if it disapproved of the decision. It would only be, for example, if the medical member had worked personally and recently with the staff detaining the patient in the particular hospital that the outcome might have been different.

Same applicant

A different formulation of the 'reasonable apprehension of bias' test will occur when a tribunal member becomes aware that he or she has already sat on a previous case involving the same applicant. In these circumstances, how would the 'fair-minded and informed' observer

see the matter? The first case to address this issue head on was *R v Elligott ex parte Gallagher* [1972] Crim LR 332, where the High Court ruled that there was no principle of law disqualifying a stipendiary magistrate from hearing a case in respect of defendants who had been before him on previous occasions. The issue was next raised in the context of a mental health review tribunal: *R v Oxford Regional MHRT ex parte Mackman* [1986] *The Times*, 2 June. In this case, the president of the patient's tribunal hearing in 1986 was the same person who presided over the patient's tribunal in 1985, with an unfavourable outcome on both occasions. The High Court did not see this as a grounds for disqualification stating on the contrary that:

'It might even be arguable that there are advantages in a President sitting on the recurring applications of a particular patient . . . It would be quite wrong for this Court to lay down that in the case of a particular applicant in successive applications . . . the constitution of the tribunal or the person presiding must as a matter of law be changed each time.'

The same principle was applied more recently in *R oao M v MHRT* [2005] EWHC 2791, in which the judge who presided over a patient's MHRT hearing in 2004 had been the sentencing judge at the patient's trial the previous year. The High Court had no difficulty dismissing the patient's application to quash the tribunal decision on the grounds of possible bias stating *inter alia* that:

'The fair-minded and informed observer would not attribute to the judge an inability or reluctance to change his mind when faced with a rational basis for doing so . . . The proceedings before the tribunal were quasi-adversarial. Oral argument plays a vital role in promoting a change of mind of the Tribunal or one or more of its members.'

The case of *Sengupta v Holmes* [2002] EWCA Civ

1104 had expressed these concepts even more flamboyantly. In this case, an appellant had been refused permission to appeal to the High Court by Laws LJ, sitting as a single judge. This refusal was then overturned by another judge, and the appeal was listed for a full substantive hearing. In answer to the question 'Could Laws LJ sit on the substantive appeal hearing, having turned down the request for an appeal?' the Court of Appeal ruled, yes he could. For the Court of Appeal were of the opinion that the 'fair-minded and informed' observer would recognise that:

'Absent special circumstances a readiness to change one's mind upon some issue, whether upon new information or simply on further reflection, and to change it from a previously declared position, is a capacity possessed by anyone prepared and able to engage with the issue on a reasonable and intelligent basis. It is surely a commonplace of all professions, indeed of the experience of all thinking men and women.'

Waiver

Finally, it should be noted that the right to an impartial tribunal that is enshrined in all of the above case law can, in principle, be waived if 'all the circumstances which give rise to the objection are known to the applicant and the waiver is unequivocal': *Millar v Dickson* [2002] 1 WLR 1615. So if it is brought to an applicant's attention that the *Porter v Magill* test, when applied to a member of their tribunal, might result in a finding of possible bias, but they choose to proceed with their hearing in any event, a subsequent bias challenge would not be permitted by the courts.

Successful challenge

So far this article has concentrated primarily on cases in which a bias challenge was not upheld by the courts. In contrast, there have been cases in which the application of the 'bias test' has led to a different conclusion. Two such cases deserve particular scrutiny.

The first is the extremely well-known case of *In re Pinochet (No 2)* [2000] UKHL 2. In this case, the eminent Law Lord, Lord Hoffman, sat on the Appellate Committee which ruled that the Chilean citizen Senator Pinochet was not entitled to rely upon his earlier status as Head of State in Chile to provide him with immunity against suit in the United Kingdom. Amnesty International (AI) was a party to these proceedings.

It was subsequently revealed that Lord Hoffman was a Director of Amnesty International Charity Ltd (AICL), a registered charity incorporated to undertake charitable aspects of the work of AI.

The House of Lords sitting a second time on the same case decided that ‘AI and AICL are . . . parts of an entity or movement working in different fields towards the same goals’. As a consequence, the House of Lords ruled:

‘If the absolute impartiality of the judiciary is to be maintained, there must be a rule which automatically disqualifies a judge who is involved . . . in promoting the same causes in the same organisation as is a party to the suit.’

. . . a High Court judge discovered on the eve of a trial over which he was to adjudicate that he was personally acquainted with a potential witness in the case . . . and this acquaintance was profound and of long duration.

This principle of law is absolute and is not dependent upon establishing any actual or apparent bias on the part of the judge in question. More, it is a restatement of Lord Hewart’s famous dictum in *Rex v Sussex Justices ex parte McCarthy* [1924] KB 256, 259:

‘It is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.’

Or in the words of Lord Nolan’s judgment in the *Pinochet* case:

‘In any case where the impartiality of a judge is in question, the appearance of the matter is just as important as the reality.’

The second important case to address the same issue was the case of *AMG Group Ltd v Morrison* [2006] EWCA Civ 6. In this case, a High Court judge discovered on the eve of a trial over which he was to adjudicate that he was personally acquainted with a potential witness in the case who had been a director of the applicant company, and this acquaintance was profound and of long duration. For a number of reasons the judge declined to stand himself down, and a bias challenge was issued by one of the parties.

The Court of Appeal upheld the challenge. They gave a number of cogent reasons why the judge should have stood down following the challenge. Not least was the fact that the judge had openly acknowledged that having known the witness for 30 years, he would have had ‘the greatest difficulty where a challenge was to be made as to the truthfulness of his evidence’.

Of particular note was the Court of Appeal’s statement that:

‘Inconvenience, costs and delay do not . . . count in a case where the principle of judicial impartiality is properly invoked. This is because it is *the* fundamental principle of justice . . . If on an assessment of all the relevant circumstances, the conclusion is that the principle either has been, or will be breached, the judge is automatically disqualified from hearing the case. It is not a discretionary case management decision.’

Professor Jeremy Cooper is a Regional Chairman of the Mental Health Review Tribunal.

BREAKING DOWN BARRIERS, PART II

In the second of two articles on interpreters, *Kerena Marchant* looks at the role of the tribunal in relation to foreign language interpretation.

THE MORAL and legal right to a fair hearing for those involved in legal proceedings is contained in Article 6 of the European Convention on Human Rights. However, the automatic right to foreign language interpretation contained in Article 6(3)(a) exists only in criminal proceedings; foreign language users do not have an automatic right to an interpreter in tribunal and civil proceedings. Thus, they do not share the broader rights of deaf parties – themselves minority language users – and those with language impairments who, under disability discrimination law, can request a British Sign Language interpreter or alternative form of language facilitation.

Obligation?

The terms ‘the interests of justice’ and ‘a fair hearing’ used by Article 6(1) set a powerful standard for a diverse and multicultural society in safeguarding full access to all forms of justice. There are at least three million speakers of other languages in the United Kingdom today, and that number is steadily growing. Some of those do not have a sufficient use of English to access fully legal proceedings. For these people, it would be impossible to have a fair hearing without a foreign language interpreter or translator.

Several tribunals, such as SENDIST, SENTW and the Asylum and Immigration Tribunal, include the right to an interpreter for oral hearings in their regulations. Others advertise that right in their ‘how to appeal’ information and appeal registration paperwork. The question is how far do tribunals morally have to go to ensure a fair hearing for foreign language users and at what stage of the appeal process should interpretation be provided?

The role of the interpreter

Language is a living thing, interwoven into a user’s sense of identity, culture and, in many cases, religion. Language is also complex, and it is doubtful that a simple translation of any criminal proceedings would satisfy Article 6(3)(a). A simple translation, anyway, may not be possible. Even when it is, much of the ethos and original meaning of the words will be lost. Many languages have different dialects, and speakers within 10 miles of each other can use the same language differently. Frequently, an interpreter will have to work hard to overcome the problems of such dialects. Most court interpreters use the word ‘interpret’ because they do more than just ‘translate’ proceedings and, in many cases, can act as a cultural go-between, translating cultural and legal concepts.

The role of the tribunal

But to what extent should an interpreter act as a cultural go-between? Is their role rather as a translating facilitator, to be used by a knowledgeable tribunal working to ensure fair treatment by making justice jargon-free and accessible to all?

The *Equal Treatment Bench Book* states: ‘Ignorance of the cultures, beliefs and disadvantages of others encourages prejudice. It is best dispelled by greater awareness. To achieve justice, judicial office-holders must be informed and aware. They should at the very least make necessary enquiries.’ This observation highlights the responsibility of tribunals to appoint people with an ongoing commitment to learn and be trained about the needs of all tribunal users, including those with minority language needs.

Putting that knowledge into practice in tribunal proceedings is another matter. Recently, on a disability living allowance appeal, I asked an appellant via a Kurdish interpreter a simple question intended to assess his ability to self-care. The question was: ‘Are you able to make a drink, such as a cup of tea for yourself?’ The interpreter translated this by asking in Kurdish if the appellant was able to fill and operate the family samovar. There is a difference between making a cup of tea from a kettle filled with enough water for one person and a large samovar! Should I have anticipated that a Kurdish family would most probably use a samovar, and asked a different kind of question, such as: ‘If I asked you to fill a kettle with enough water for a cup of tea and make that cup, would you be able to do that?’ Or should the interpreter have asked for clarification from the panel before going ahead and ‘interpreting’ my question? In this case, I believe I should have been crystal clear that I was asking about the ability to fill a cup with boiling water from a kettle partially filled. But the interpreter should also have checked before he made a cross-cultural translation from ‘kettle’ to ‘samovar’. In this instance, it was fortunate that the fact that I come from the same part of the world as the appellant enabled me to realise what had happened – the other panel members had not.

When should language access begin?

The need for an interpreter is usually only identified at the hearing, which is generally then adjourned. This is despite the fact that many tribunals advertise a user’s right to use an interpreter in their ‘how to appeal’ literature and web pages (although those are most often in English). Why then do so many appellants fail to identify their need for an interpreter prior to the hearing? Is it because they think they can get by? Or don’t realise they can request one? Or distrust the system to provide an impartial interpreter? The solution is probably for tribunals to make

such issues apparent at an early stage of the process, in a manner that is clearly understood by appellants, in their own language. A lot more work also needs to be done with linguistic and cultural minority groups through user and community groups to ensure that the tribunal system is understood at grass roots level.

Papers

The deeper question is whether compliance with Article 6(1) requires courts and tribunals to ensure that all parts of the legal process are translated, including the initial appeal forms, case

Whose responsibility is it to ensure that appellants have access to the paperwork in their own language?

statements, bundle of evidence, the oral hearing itself and the decision? Whose responsibility is it to ensure that appellants have access to the paperwork in their own language? The *Equal Treatment Bench Book* advocates: ‘Unless all parties to proceedings accurately understand the material put before them, and the meaning of the questions asked and answers given during the course of the proceedings, the process of

law is at best seriously impeded and at worst thrown seriously off course.’

In my experience, few appellants who need interpreters have actually read and understood the complex paperwork (legal and otherwise) in tribunal bundles, or even their own claim forms. This greatly impedes their chance of a fair hearing, even if they have an interpreter or representative on the day. In many cases, especially with benefits, the appeal itself is due to the fact that the appellant has not understood the forms and filled them in incorrectly, or has sought help from a well-meaning but unqualified friend, who has filled them in incorrectly and failed to read them back to the appellant. I always ask how forms came to be filled in, and whether the appellant has read and understood the papers I am referring to. The answers are varied and disturbingly revealing. Often, at the expense of tribunal time, there is a need to revisit

the paperwork and written evidence to get an accurate understanding of the facts.

The fact that appellants have not had access in their own language to legal documents can present tribunals with dilemmas. How far should tribunals go to ensure this in order to comply with Article 6, and the recommendations of the *Equal Treatment Bench Book*? Is the onus on the appellant to ensure that they have had access to the documents prior to the hearing, or for the tribunal to ensure that? I remember an Urdu-speaking mother in a SENDIST hearing appealing against the special school to which her child had been allocated. The initial hearing had been adjourned, as the need for an interpreter had been identified. At the reconvened hearing, the mother told the panel she really wanted a mainstream school, not a special school at all. It was apparent that she was unaware of her right to request one, because she had not had access to the relevant code of practice in Urdu. Should the panel have explained the law and her rights to her via the interpreter? Or granted a further adjournment to give her opportunity to read the lengthy document with an interpreter? And if so, who would pay? Or was the onus on her to research her grounds of appeal? This is an area where tribunal chairs and members have different views. We are not there to explain and teach the law to people, or to act as substitute for a representative. Every user has the chance to seek representation and advice. If they fail to do this, we can not provide it. However, if the reason that advice is not there is because of a language barrier, how far should the tribunal go to ensure a level playing field?

Finding the right interpreter

Adjournments can be avoided if tribunal chairs and members read the papers before the day of

the hearing, and alert the tribunal administration if they suspect that the need for an interpreter has been missed.

Having identified the appellant’s reasonable need for an interpreter, the question for the tribunal is where to go to find one. A tribunal should steer away from asking a tribunal user to provide their own interpreter which, in many cases, leads to an untrained family member or friend coming along, or a representative having to play a double

role, and cannot be justified, even if it avoids an adjournment. The *Equal Treatment Bench Book* strongly recommends that interpreters are able to cope with the language of legal proceedings. This means a trained, professional interpreter.

There are many agencies that can provide impartial interpreters, experienced in working in legal situations – indeed, some of the larger tribunals now use the same one. The tribunal should also ensure that that person knows the particular dialect used by the appellant and that it is culturally acceptable to them – many foreign language users come

from parts of the world where there is conflict, and the language or dialect they use may be indicative of where they stand in that conflict.

The hearing

Hearings that involve interpreters will take longer and additional time should be allowed. A foreign language interpreter will translate and repeat absolutely everything that is said during the hearing – not just the panel’s questions to the appellant or what is said by the appellant. Panel members should ensure that everything from introductions to legal arguments are interpreted, and this means speaking in bite-sized chunks that the interpreter can retain and translate. Some interpreters note key points, which is perfectly acceptable, as long as the interpretation itself is

Panel members should ensure that everything from introductions to legal arguments are interpreted, and this means speaking in bite-sized chunks that the interpreter can retain and translate.

not condensed. It is good practice to check that the pace is acceptable to both the interpreter and the appellant. It should also be borne in mind that interpreters are not legally qualified, and chairs need to monitor that they fully understand and translate accurately any key legal concepts.

While panel members may not understand the interpretation, it is possible to monitor the interpreter's body language and the way in which they are translating. If it looks as if the interpreter is giving more or less information, or even entering into long discussions with the appellant, chairs should not hesitate to check what is being translated. There may be a reason why the interpreter is giving more explanation; translation is not always a simple matter of replacing one word with another. The semantic syntax of the two languages or the appellant's ability to understand are two good reasons for further explanation – but the interpreter may have crossed the line between interpretation and help.

Support

It is critical that interpreters feel able to raise any problems that arise during the proceedings, and important that the tribunal makes it clear that asking for clarification of legal jargon will not be frowned upon, and that they are not expected to explain the law or to struggle to make cross-cultural leaps unsupported. Courts, users and interpreters need to understand, identify and work around cultural differences. Chairs and panel members are not expected to be knowledgeable about all aspects of the cultural plurality of their users, but to be alert and sensitive to their needs, and to be able to identify difficulties and assist the interpreter when needed.

The technical language, or jargon, from a particular tribunal jurisdiction often does not translate easily with its implicit meaning intact. For example, in disability living allowance appeals, entitlement turns on claimants of the care component of that benefit having needs that are 'reasonably required'. The fact that they are

not getting or refusing the care does not make them ineligible for benefit. I once heard an appeal against the failure to award the care component to a Muslim man whose disability made the panel suspect that he might have intimate care needs. His English was not good, and he had asked the community worker at the mosque to fill in the form for him, so that these needs were not mentioned. The problem was that the intimate care needs he may have 'reasonably required' were not acceptable to a man with his cultural beliefs, and the words and legal meaning of 'reasonably required' would not cross cultures and translate. It was clear that even the interpreter did not understand the legal meaning. In the end, we decided to call a break to discuss our handling of the issue to ensure there was a fair hearing. The chair needed to explain what was meant by 'reasonably required' and discuss with the interpreter how to handle the 'interpretation'.

Conclusion

There is no doubt that the ethos of Article 6 calls upon all members of the judiciary to ensure that those who use different languages have full access to justice. The question is how far do tribunals have to go to ensure that the need of minority language users is met in the context of the fair trial provisions of Article 6? And how do they meet the dilemmas and complexities that interpretation from one language to another involves during legal proceedings? At what stage of the appeal should appellants be granted interpretation? Does the need for language access go much further than the simple provision of an interpreter for oral proceedings? It is clear that the presence of an interpreter alone cannot ensure the access of minority language users to a fair hearing. This will only happen when all members of the judiciary understand the increasing cultural plurality of the UK, and have the commitment, flexibility and sensitivity needed to ensure a fair hearing for all.

Kerena Marchant is a member of the JSB's Equal Treatment Advisory Committee.

CHOICE, INCLUSION AND WEARING A VEIL

Reproduced here are extracts from the guidance recently produced and published by the JSB on the wearing of the full veil, or *niqab*, during proceedings. We intend to include an article in the future on the implications of this issue for diversity training.

Immigration case

A draft version of the guidance on veils was already in circulation and the subject of discussion by the JSB's Equal Treatment Advisory Committee (ETAC) in November 2006, when Mr Justice Hodge, the President of the Asylum and Immigration Tribunal (AIT), provided interim advice for judges in his jurisdiction on the wearing of veils by representatives of parties in cases before the AIT.

Discussion

Thus, the whole issue of the wearing of the veil in court was raised for public debate, and made the need for the broader guidance more urgent.

The JSB working group responsible for the guidance agreed that it should take each role that a woman may perform in a tribunal or court hearing, and give guidance on each. The draft went through a number of revisions, and was the subject of final discussion and debate at a meeting of ETAC in February 2007. Interestingly, the discussion centred mostly on the ease with which a witness can be questioned by a judge when she is wearing a veil.

Comments

In producing the guidance, the JSB was able to refer to a number of helpful accounts from judges on how they have dealt with such situations themselves. It was also able to draw on the wide range of expertise available to it through ETAC. It remains interested, however, in receiving comments from members of the tribunals judiciary on the substance of the guidance, and will have regard to those comments in reviewing and updating the material.

A PERSON'S religion or belief can influence the way they dress and present themselves in public. In most instances, such clothing will present few, if any, issues for judges. In practice, there are very few real clashes between the court process and different cultural practices within the UK. There is room for diversity, and there should be willingness to accommodate different practices and approaches to religious and cultural observance. While there are other examples of religious items of clothing (the Jewish skullcap – the kippah or yarmulke – is one; the Sikh turban another), the issue of religious dress is one that is most likely to arise in relation to the *niqab*, or full veil, sometimes worn by Muslim women. As the *niqab* involves the full covering of the face,

the judge may have to consider if any steps are required to ensure effective participation and a fair hearing, both for the woman wearing the *niqab* and other participants in the proceedings. Some useful guidance on the background to and religious significance of the wearing of different styles of Muslim headscarf can be found at http://news.bbc.co.uk/1/hi/world/middle_east/5411320.stm.

The following general guidance is designed to assist judges in relation to the matters that should be borne in mind if presented with this issue in courts and tribunals. While there are a range of different possible approaches, depending on the circumstances of the particular case and the

individual concerned, the interests of justice remain paramount.

In essence, it is for the judge, in any set of circumstances, to consider what difference, if any, would be made to those interests by the *niqab* being worn. It may well be, that after consideration, there is no necessity to take any steps at all. A number of judges have provided helpful accounts as to how they have dealt with such situations themselves, and to which we have had regard in formulating the following guidance. It is not possible to give advice here on any specific situation. It is possible, however, to give some indication of the factors to be taken into account in different types of case, and where the woman concerned is fulfilling different roles in the proceedings.

It is worth re-emphasising that on this issue, as in so many areas of courtroom practice, there are rarely 'model answers' in terms of a response to a given set of circumstances. Judges may find it helpful to contact Circuit Community Liaison Judges or the judicial members of ETAC if they wish to discuss further any of the issues raised.

It is important to acknowledge from the outset that for Muslim women who do choose to wear the *niqab*, it is an important element of their religious and cultural identity. To force a choice between that identity (or cultural acceptability), and the woman's involvement in the criminal, civil justice, or tribunal system (as a witness, party, member of court staff or legal office-holder) may well have a significant impact on that woman's sense of dignity and would likely serve to exclude and marginalise further women with limited visibility in courts and tribunals. This is of particular concern for a system of justice that must be, and must be seen to be, inclusive and representative of the whole community. While there may be a diversity of opinions and debates between Muslims about the nature of dress required, for the judicial system the starting point should be respect for the choice

made, and for each woman to decide on the extent and nature of the dress she adopts.

Different roles

As in all walks of life, the justice system should encourage practices that will enable as many people as possible to participate and engage with judicial processes as effectively as possible in whatever position, whether as witnesses, complainants, jurors, judicial office-holders, advocates or court staff. Each situation should be considered individually in order to find the best solution in each case.

Essentially, any consideration concerning the wearing of the *niqab* should be functional; that is, on the basis that the *niqab* prevents a person from seeing a woman's face. The primary question that needs to be asked by any judicial office-holder before coming to a decision is: What is the significance of seeing this woman's face to the judicial task that I have to fulfil? How does being capable of observing her facial expressions affect the court's decision-making, given her particular role in the proceedings? A distinction can be made, therefore, between situations where this may be useful or important (for example, when assessing the evidence of a witness), situations where it is essential (for example, for purposes of identification), and other situations where it may not be of any relevance (for example, arguably, for court clerks or ushers).

As a judge

It is where the woman concerned is providing the 'face' of justice – as a judge, magistrate or tribunal member – that the question of the 'transparency of justice' may be said most obviously to come into play. Is the constituency that is served by the courts entitled to see the person dispensing justice? In reality, it will be rare for a set of circumstances to arise in which another judicial office-holder is called upon to make a decision on this point.

Questions relating to the appointment of judges and the terms under which they hold office

are matters for the Lord Chief Justice or other appropriate members of the senior judiciary, to whom the matter should be referred if the question arises.

As a complainant

The primary aim is, as stated before, to ensure a fair hearing. What needs to be considered, therefore, is: What is required to enable a woman wearing a *niqab* to participate in the legal process, to facilitate her ability to give her best evidence and to ensure, so far as practicable, a fair hearing for both sides? It should not automatically be assumed that any difficulty is created by a woman in court, in whatever capacity, who chooses to wear a *niqab*. Nor should it ever be assumed without good reason that it is inappropriate for a woman to give evidence in court wearing the full veil.

Where, for example, the case involves domestic abuse or the possible abuse of her children, the judge may consider it contrary to the interests of justice to make her choose between giving evidence to secure a conviction and retaining her modesty.

Generally speaking, a woman who wears a *niqab* would do so because it enables her to participate in a public space, such as a court. In situations where a fair hearing may require a woman to remove her *niqab*, or where she feels she may be able to participate more effectively without her *niqab*, however, there are a whole variety of special measures available to the court (for example, live links, screens, clearing the public gallery) that may be considered. The most appropriate course will depend on the issues in the case.

As with any consideration of the permitted special measures in a criminal or family case, this is a point on which a decision should ideally be reached after discussion at a preparatory

or preliminary hearing, rather than at a final hearing in open court. As with all practices, the response must be thoughtful and sensitive. If having considered the nature of the case, the nature of the evidence and the prevailing circumstances, it is the view of the judicial office-holder that he or she cannot properly ensure fairness or record the evidence fully in a way that will do justice to the case, then careful consideration will need to be given to asking the woman concerned whether she would remove simply that part of the veil that covers the main part of her face. It should be fully explained what

the difficulty is, and why the judge considers that he or she will be in difficulty in properly fulfilling the judicial decision-making task and in ensuring fairness to all sides. Having given that explanation, one option might be to allow a short adjournment to enable the woman concerned to seek guidance or advice or possibly to enable her to attend court differently attired, or perhaps for the court to be cleared of anyone other than those directly involved with the case.

It should not automatically be assumed that any difficulty is created by a woman in court, in whatever capacity, who chooses to wear a niqab.

As a witness or defendant

For a witness or defendant, similarly, a sensitive request to remove a veil, with no sense of obligation or pressure, may be appropriate, but careful thought must be given to such a request. The very fact of appearing in a court or tribunal will be quite traumatic for many, and additional pressure may well have an adverse impact on the quality of evidence given. Any request to remove a veil should be accompanied by an explanation by the judge of their concern that, where there are crucial issues of credit, the woman might be at a disadvantage if the judge or jury is not able to assess her demeanour or facial expressions when responding to questions. The witness or party may wish to discuss the matter with her legal representative or witness support worker. It is worth emphasising that while it may be more

difficult in some cases to assess the evidence of a woman wearing a *niqab*, the experiences of judges in other cases have shown that it is often possible to do so, depending on all the circumstances – hence the need to give careful thought to whether the veil presents a true obstacle to the judicial task. Can it be said, in the circumstances of the particular case, that the assessment will be different where the judge is able to see the witness's face? In a criminal case, the position should be explained in the absence of the jury and the possibility considered of offering the use of permitted special measures, for example a television link. Where identification is an issue, then it must be dealt with appropriately, and may require the witness to make a choice between giving evidence in the case while showing her face, and not being able to be a witness.

While not exact analogies, there are, of course, other circumstances in which a judge will take evidence without being able to see the face of the witness – for example, where evidence is taken on the phone, or where the judge is visually impaired.

As an advocate

In the case of those who wish to practise as an advocate, different considerations should be borne in mind. A general policy enabling the judiciary to decide whether the wearing of the *niqab* should be permitted or refused on a case-by-case basis would place Muslim women advocates, and their clients, at a disadvantage where the woman concerned felt unable to appear in a court or tribunal without her veil. This is because she would be unable to say in advance of any hearing whether the judge would allow her to appear in her *niqab*. The starting point should therefore be that she is entitled to appear as an advocate when wearing it.

Once again the interests of justice will be paramount and the judge may need to consider whether, in any particular circumstances that arise, the interests of justice are being impeded

by the fact that the advocate's face cannot be seen. In reality, in the absence of any question relating to identification, there are few instances where an advocate or representative appearing in a *niqab* would be likely to present any real issue. Such concerns would be likely to centre on the fact that the woman could not be heard, rather than seen. So long as the advocate can be heard reasonably clearly it is unlikely that the interests of justice will be impeded. Just as in any case where a judge might have difficulty in hearing any party, witness or advocate, sensitively enquiring whether they can speak any louder or providing other means of amplification should suffice and such measures should be considered with the advocate before asking her to remove her veil.

Judgecraft

As with so much guidance in this bench book, the best way of proceeding comes down to basic good judgecraft. There is room for diversity in our system of justice, and there should be willingness to accommodate different practices and approaches to religious and cultural observance. A good understanding of the special measures that may be of use in the particular case, and of the need to identify the need for such adaptations at a preliminary hearing, are key.

When an issue relating to the wearing of the *niqab* does arise, the judicial office-holder must reach a decision on how to proceed having regard to the interests of justice in the particular case. This will include combining sensitivity to any expressed wish not to remove the *niqab* with a clear explanation, where appropriate, of the reasons for any request for its removal, and the disadvantages for the judge of not removing it. In many cases, there will be no need for a woman to remove her *niqab*, provided that the judge is of the view that justice can be properly served.

A full version of the guidance is available on the JSB's website at www.jsboard.co.uk. Comments should be sent to publications@jsb.gsi.gov.uk.

BENEFITS OF A SHARED EXPERIENCE

The JSB has produced a training DVD on mentoring skills for tribunals. *Susan Hewett* and *Mary Kane* describe how they went about it.

DVDs (and, in the past, videos) are increasingly accepted as an excellent method of supporting and supplementing a training course. They support a course by providing a core for discussion in small groups, and by provoking debate and interaction among participants. They supplement that training by providing a valuable resource after the course for individual use as a ‘refresher’. And they are relatively cheap to produce.

Metamorphosis

As with all great pilot courses, this one began as something different and metamorphosed into the current DVD. The JSB had started running mentoring materials pilot projects in early 2006 and several delegates thought that a supporting DVD would be helpful. When the funding became available, we were asked to join a working group to consider the merits, aim, scope, purpose and content of the DVD. That working group initially comprised trainers and those familiar with the world of tribunals.

It was agreed early on that, given the work on the district bench on mentoring, that jurisdiction should also be represented on the working group by a district judge, and that the group would also benefit from specialist advice on the best way of including diversity issues in the mix.

Aim

At its first meeting, the working group agreed that one DVD should be made for use by tribunals and by the district bench – in the latter case to support those with aspirations to join the circuit bench. This task was made somewhat easier by the DVD’s focus on judgecraft skills, rather than substantive law, in a generic hearing. It is also the case that, while there may be differences in the work of different judges and even in the detail of their mentoring schemes, the general mentoring principles are the same.

We agreed to create something that would be useful for mentees, as well as mentors, in demonstrating to them what they might expect from the process. It was felt that the DVD might

Scenes	Training points	Questions or discussion points	Suggestions for good practice
<p>Act 1, Scene 1: <i>Contact with mentor</i></p> <p>Hari's first contact with Lydia, his mentor. (Handout 2)</p>	<ul style="list-style-type: none"> • Mentee's expectations and anxieties. • Avoiding confusion between mentoring and appraisal. 	<ul style="list-style-type: none"> • What can the mentee expect by way of initial and ongoing contact? • Whose responsibility is it to initiate it? • Different types of mentoring – the judicial context. 	<ul style="list-style-type: none"> • Mentor should contact mentee as soon as possible either by e-mail followed up by a phone call or by phone. • Ensure that both mentor and mentee have received written guidance on aims/roles of mentoring together with an up-to-date set of JAC qualities and abilities/JSB competences – both reading from same song sheet. • Both come to the first meeting with, if possible, a list of sittings for next six months – if future sittings are not available then a plan for future meetings in order to arrange a structure for the mentoring process. • The mentor takes responsibility for monitoring the process and ensuring contact is appropriately managed. • Both need to develop a relationship of mutual trust and respect.
<p>Act 1, Scene 2: <i>The first meeting</i></p> <p>Hari goes to Lydia's office. (Handouts 3, 4, 5 and 6)</p>	<ul style="list-style-type: none"> • Getting to know each other and setting ground rules. • Inspiring confidence and trust. • Explaining confidentiality issues. • Discussing the competences. • The difference between mentoring and appraisal. 	<ul style="list-style-type: none"> • How do you ensure that the relationship works and where to go if it does not? • What kinds of matters are confidential and what are not? • How should a mentor explore with the mentee the competences, or judicial qualities and abilities, upon which he or she was appointed and assist the mentee in developing them? • How can you reassure your mentee that this is a constructive process? 	

Pages from the booklet accompanying the DVD, which is entitled ‘Supporting the Judiciary – the Mentoring Process’.

also act as a starting point for other branches of the judiciary considering a mentoring scheme, and even making their own training DVD.

In general terms, the aims of the DVD itself are to:

- Show how the right mentoring relationship could be established.
- Illustrate the working of a mentoring scheme, and reinforce the importance of confidentiality.
- Demonstrate good practice.
- Encourage discussion on how a mentor and a mentee might work together successfully.

Issues

In producing the script for the DVD, we had to try to narrow down the issues that we felt needed to be raised for discussion. We agreed that probably the most difficult issue that a mentor has to deal with is that of confidentiality – and of understanding and establishing early on in the relationship the boundaries of the mentoring ‘agreement’ within the particular scheme. Other problems can relate to the particular personalities of the mentor and mentee. The fact that two individuals have different characters does not mean that the mentoring agreement cannot work – the relationship is, after all, a professional one and they do not have to be friends. Another potential problem relating to personality type is that of the over-anxious or over-enthusiastic mentee. How much support should the mentor be expected to offer, and therefore prepared to give?

Other tricky areas relate to the career progression of the mentee, and how far the mentor should go in assisting in the career path of the mentee. Should they, for example, be expected to provide references? And how should the mentor deal with the mentee’s complaints about other colleagues – or their complaints about the mentee? Guidance is also given in other areas, of wider application – giving feedback in a constructive way being one example.

Broadly speaking, the best approach to all of the problems mentioned is to ensure that all those involved are clear from the outset about the boundaries of their scheme, its management, and what is expected of them within the mentoring relationship. Armed with the advice of the working group on what the script should contain, we went away to produce a first draft.

Draft script

The challenge came in considering what significant incident the DVD should use in portraying the mentee seeking advice from the mentor. How could a ‘one size fits all’ scheme be of relevance to different jurisdictions? It was clear from discussion in the working group that if the example was not applicable to a particular jurisdiction, it would have less impact when used for training purposes.

The DVD shows six different scenes, the first showing the initial contact and the second the meeting between the mentor and mentee. Our solution was to give two different options for the



“It’s your mentee again . . . she wants to know if this is a convenient time.”

next scene, in which the mentor is approached by the mentee, who has a problem and needs advice – one for panel judges and the other for judges sitting alone. The other scenes, showing pre- and post-appraisal discussions, and the last, where there is a conversation about the mentee's list management and future career, are also intended to be used by both jurisdictions.

The issues used as examples in the DVD would not of course be relevant to every viewer, but it was felt that they were general enough to stimulate discussion and enable viewers to build their confidence and develop their understanding of mentoring and the skills involved.

The draft script was circulated to the working group and to mentors outside the group with experience of the processes. In this way, we gathered further useful material to include in the script, based on their views and experience. In all, the script took about five days to write.

Filming

We then moved to filming. As well as writing the script, we had been asked to cast the actors and work with a film company in making the DVD. We were helped in both by the JSB's previous experience in producing training DVDs, and two auditions were held for the three actors.

Filming took place at Birmingham University in early February 2007. It was a fascinating experience watching the director, cameramen, sound technicians and actors bring our script to life, and our input was encouraged – both in giving the actors background information and on costumes.

Materials

The first edition of the DVD was presented to the planning committee in February 2007, with the draft booklet designed to accompany it. We wrote it after watching the DVD for the first time ourselves.

In writing the booklet, we were conscious of the need for the DVD and supporting materials to work in conjunction with the JSB's course *Mentoring – training the trainers* and, again, of how the materials might be adapted by different jurisdictions to meet their own needs.

In its final form, the booklet lists training points for each scene, and suggests possible questions and discussion points. Suggestions for good practice are also listed, and cross-references made to more detailed training handouts on the principles of mentoring, which are also supplied on the DVD. In this way, it is hoped that it will be used by mentors and mentees as a framework for their discussion, and be capable of use by individuals independently before meeting and during the course of their mentoring relationship.

Launch

The DVD was launched at a two-day training course for Employment Tribunal Chairmen in March 2007. It might have lacked some of the glamour of other film launches – but the DVD was well received and to our pleasure stimulated a great deal of discussion, not only about the content of the DVD but also about different styles of mentoring and the many ways in which good practice could be implemented. If that 'first night' is anything to go by, the film will run and run.

All in all, the project has been an excellent opportunity for collaborative working between different branches of the judiciary, with everyone benefiting from the shared experience.

Mary Kane sits on a number of tribunals, including the Mental Health Review Tribunal and the Parole Board. Susan Hewett OBE JP is closely involved with magisterial and mentor training at the JSB.

Copies of the DVD are available from the JSB at tribunals@jsb.gsi.gov.uk.

AN INTEGRATED PACKAGE

Michael Harris describes the changes in training he has seen in almost a decade as a tribunal president.



WHEN I arrived in the Independent Tribunal Service in 1998, there was already a well-established training regime. Nonetheless, there have been changes. The Social Security Act 1998 set up a new system, under which only those with particular qualifications could become tribunal members. As a result, we lost a large number of lay members. For the 2,000 who remained, training became less of a logistical nightmare, allowing us to develop a programme that more closely matched their needs. More attention was given to the feedback from training events. At the same time, our appraisal system – initially fairly rudimentary – has become more comprehensive and sophisticated, and has an increasingly important role in identifying training needs. The JSB’s training framework for tribunals helped us to focus training on required competences and desired outcomes.

For a long time, we resisted providing training to our medical members on specific medical issues. But, spurred on by the GMC’s revalidation programme for doctors, we now have medical training and include medical members in an appraisal regime as vigorous as that for lawyers. So, over the years, training has become part of an overall integrated package – training, appraisal and judicial information. Training itself has acquired a wider ambition – what our present training chairman, Kenny Mullan, prefers to call ‘learning and development’. There is still plenty of scope for improvement. We have yet fully to develop distance-learning packages – though we have made a start. And providing the flexibility that would allow our members to choose more freely which courses would best meet their

individual needs is still some way off. However, as a start we have developed training modules that will enable this path to be taken. In short, training has become more focused, and I strongly suspect that this increased professionalism is largely replicated across the tribunal world providing a solid foundation for the future.

One of the ambitions of the unified tribunal system is to enable those judicial members who wish (and are competent) to sit in more than one jurisdiction to do so. If we delivered training along the present jurisdictional lines, there would be a good deal of unnecessary duplication. There are core judicial skills that are relevant whatever the substantive law may be, such as conducting a hearing, questioning techniques, diversity awareness and decision-writing. It makes sense to explore the extent to which these issues can be brought together into generic training events for all tribunal members, as part of induction or refresher training. That will then leave the substantive law of individual jurisdictions to be delivered only to those who sit in the jurisdiction. The tribunals’ judiciary has set up a training group. One of the tasks it has given itself is to explore the feasibility of pursuing this option. If this is the route we ultimately take (or something like it) then it will fundamentally change the way in which training has hitherto been delivered in tribunals.

We also need to consider how appraisal will work across tribunals. It should certainly feed into any training programme. But it needs to be consistent across tribunals. Otherwise it will be difficult, if not impossible, to use appraisal as part of the assignment process. We have a rare opportunity to look at the ‘big picture’ and must not miss it.

Judge Michael Harris retired as President of Appeal Tribunals in 2007. Since 1999, he has been a regular contributor to the journal including, most recently, an article on alternative methods of resolving disputes. Punchy and to the point, he handles his expertise lightly. The JSB is grateful to him.

AN EXTENDED JURISDICTION



John Angel describes how he came to take on the presidential role at the new Information Tribunal.

SET UP in January 2005, the Information Tribunal is the reconstituted Data Protection Tribunal, which only heard about one case a year and hardly functioned. The Information Tribunal has an extended jurisdiction and covers the Data Protection Act 1998, the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Privacy and Electronic Communications Regulations 2003. It has UK-wide jurisdiction and is prepared to sit anywhere in the UK, particularly as it has no designated tribunal hearing rooms.

Applying for the role

I originally applied for the part-time position of Chairman of the Information Tribunal in 2004, thinking it was a similar type of position to previous work I had done as a member of the Employment Tribunal. It was only at the interview that I realised it was the presidential role, which, having only recently retired, was not a role I initially felt I wanted. To my amazement, I was offered the position, despite my obvious lack of judicial and contentious experience.

Early practice

I had been one of the first solicitors in the UK to obtain an MBA, with a view to moving into industry. Unfortunately, my father had a stroke and I abandoned my ambitions in order to help him in his solicitor's practice. It took me 10 years to get my career back on track. I started a software company, developing some of the earliest business applications based on PCs and built up the company before selling it to one of the clearing banks. It was during my time in the software business that I continued my association

with employment law by sitting as a part-time chairman on what is now the Employment Tribunal.

In 1992, I took a year's sabbatical and went back to university to study for an LLM in technology law, writing my dissertation on the Internet. I was invited to join the Institute of Computer and Communications Law at the Centre for Commercial Law Studies at Queen Mary, University of London as a part-time visiting professorial fellow, and joined Theodore Goddard, specialising in the telecoms, computer and e-commerce law area. Later, I was approached by Clifford Chance to head the firm's global online legal services group, before retiring to concentrate on my academic career – the sixth edition of *Computer Law* was published by Oxford University Press earlier this year.

With more time to play golf, and to support my wife's equestrian career and my son's sporting activities, life was ideal. Despite this, I decided to accept the challenge of the post of Chairman of the new Information Tribunal – and what a challenge it has been.

First tasks

My first task was to work with a tribunal project manager at the Department for Constitutional Affairs to set up the new tribunal. All four administrative staff were new appointees, with limited experience of tribunal work. Based at home, I had no formal commitment as to time, and no one seemed to have any idea how many days a week I would need to devote to the position. The other judiciary were four part-time deputy chairs (who were the other short-

listed candidates for the chairman's role), 12 lay members of the previous tribunal (many whom had never sat) and 11 newly appointed members.

Having asked the deputy chairs for their annual availability, I soon realised that the tribunal had a shortfall of about 150 days a year, and so set about recruiting five new deputy chairs and 15 new lay members in order to have a reasonable prospect of meeting the sittings forecast. Fortunately, it was some six months before we received the first appeals, and I was able to induct my existing deputies and get the recruitment process well under way before cases started to be heard.

During the first year, I worked on presidential duties rather than hearing cases, establishing the roles of the president and the secretariat. Working remotely from the administrative staff, based in Leicester, makes working relationships particularly important, and this was made more difficult by an 80 per cent turnover of staff in the first year. It took the best part of two years for the secretariat to stabilise under an excellent new tribunal manager, and I now visit Leicester monthly.

Setting up

Another initial task was the drafting of some 50 directions templates, orders and letters for use by the tribunal, and the creation of the tribunal's website – the only public face for a tribunal with no dedicated venue. Despite a limited budget, I set up mentoring and appraisal schemes, drafted practice directions and ensured the deputy chairs received the training they needed. We have an annual conference, at which the judiciary meets to discuss matters pertaining to cases, practice and the tribunal. As with all presidential roles, I am invited to a number of meetings. I am a member of the Tribunal Presidents' Group, which has had to deal with the current tribunal reforms, and sit on the Judicial Technology Board, because of my IT background.

Cases

Freedom of information is regularly the subject of press comment, as the result of disclosures providing material for articles, because of current attempts to reduce the scope of the Freedom of Information Act and the reporting of the tribunal's decisions. Freedom of information is about the right to know how decisions are made by government and the right to influence those decisions before they are made by government. The tribunal has to consider the public interest in determining whether to order the disclosure of information on matters that are often extremely important to both public authorities and citizens. The tribunal has already delivered some landmark decisions, including ordering the disclosure of the details of MPs' travel expenses, the minutes of the BBC governors' meeting at which the director-general resigned following the Hutton Report, and government reports into the viability of the National Identity Card Scheme. It has also provided a definition of 'journalism'.

The tribunal has now delivered some 50 decisions (over a quarter of them my own), and has currently some 85 cases pending. While it is receiving fewer appeals than forecast, the cases are complicated and taking longer than expected. As an appellate tribunal hearing appeals from the decisions of the Information Commissioner, the cases coming before the tribunal usually involve at least three parties with at least two being represented by counsel, and the subject matter is often of particular public interest. My average decision is about 10,000 words, but this is largely because the legislation is new so that provisions are being interpreted for the first time.

Life is very busy for all tribunal presidents, but particularly for part-timers like me. I feel very fortunate to be presiding over a tribunal with such an important constitutional-type role.

John Angel is Chairman of the Information Tribunal.

PRODUCING ‘HARMLESS FUN’

THE BEGINNING of 2007 saw the launch of the Gambling Appeals Tribunal (GAT), a newly created tribunal within the Tribunals Service. Nick Warren, a regional chairman for the Social Security and Child Support Appeals (the Appeals Service, as was), has been appointed as the new president of the tribunal, which was set up by the Gambling Act 2005.

That Act, which also set up the Gambling Commission, introduced new rules aimed at tackling serious social issues within the gambling industry. It has three objectives:

- To protect children and other vulnerable people from being harmed or exploited by gambling.
- To prevent gambling from being a source of crime or disorder.
- To ensure that gambling is conducted in a fair and open way.

The Gambling Commission is responsible for issuing licences to those businesses and individuals associated with the gambling industry in England, Wales and Scotland – such as betting shops, casinos and bingo halls – a job previously held by the old Gambling Board and magistrates’ courts. The tribunal will hear appeals from decisions made by the Commission.

Unique

The GAT is unique within the Tribunals Service because it is the first to operate on a full cost recovery basis. It operates a system whereby a fee is charged, to the appellant, for bringing an appeal to the tribunal. The fees charged vary according to the industry sector and the type of licence application decision being appealed. However, the tribunal will

also operate an exemption scheme for appellants should they have trouble meeting the cost of the fees.

If a personal appellant, such as a croupier or bingo caller, is in receipt of a benefit, such as working family tax credit, they may qualify for an exemption from fees. In addition, any personal appellants or self-employed workers who experiences financial hardship may, under this scheme, apply to the GAT for a reduced fee.

Workload

The current estimate for predicted workload volumes is for 110 appeals a year. The tribunal will not have a dedicated hearing centre – it aims to offer appellants a choice of hearing centres within specific geographical catchment areas, i.e. Scotland, Wales, London, Midlands, Yorkshire and Lancashire.

President

Nick Warren was appointed as a full-time chairman in the Appeals Service in 1992 and has served as Regional Chairman for the North

West Region since 1998. He was appointed as an Assistant Recorder in 1992 and then as a Recorder in 1996, both on the Northern Circuit.

But he has other qualifications for the role, having worked in a betting shop as a student, and, by his own admission has ‘many years experience of losing modest sums of money on the horses’. Neither does he tire of jokes on the subject matter of his new tribunal. ‘Anything in this world that produces harmless fun is to be encouraged,’ he explains.

The GAT is unique within the Tribunals Service because it is the first to operate on a full cost recovery basis.

For more information about the Gambling Appeals Tribunal, see www.gamblingappealtribunal.gov.uk.

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 4738

Fax: 020 7217 4779

E-mail: publications@jsb.gsi.gov.uk

Website: www.jsboard.co.uk