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EDITORIAL



IN THE SPRING 2008 issue of this journal, Ann Abraham considered the ambit of administrative justice in the context of the role of the Administrative Justice and Tribunals

Council (AJTC), which now keeps under review the administrative justice system as a whole. ‘When we talk about the administrative justice system,’ she said, ‘we need to have clearly in front of us a broad conception of what that expression means.’ It starts, she believes, ‘with those countless citizens who have no option but to be more or less regular recipients of the administrative decisions of the state’ and she went on to describe ‘the real prize of improving first-instance decision-making.’

The *Tribunals* journal continues to see its role as educating, assisting and informing those sitting on tribunal panels by publishing articles on the knowledge, skills and values they need in performing that role – as well as including pieces on individual jurisdictions. The editorial board has, however, been considering its future direction along the lines expressed by Ann.

Examples of first-instance decision-makers are numerous and diverse. Many are within the Tribunals Service although a number of tribunals remain outside it and are likely to do so for some time to come. Other such bodies are not tribunals at all and often would not want to be so regarded. Some are independent and impartial. Others function separately from, but often as part of, the original decision-maker. Not all are public bodies, or subject to appeal, but a primary aim for all is to hold fair hearings in the environment in which they operate.

In an attempt to find out more, we have invited a number of first-instance decision-makers to write about the function they perform and the

challenges they face – particularly in assessing evidence, structuring decisions and formulating reasons, building on the article on the work of the ombudsmen in the last issue. The first two of these articles are included in this issue: on the Independent Review Service, which reviews decisions about entitlement to social fund payments, on page 5 and on the Regulatory Decisions Committee of the Financial Services Authority on page 8.

The board plans to include articles from other such bodies in the next few issues and then to explore some of the issues arising. If there are first-instance decision-makers that you feel ought to be the subject of a future article or if

you represent one, do please get in touch.

Finally, we are delighted to be able to enclose a copy of the new *Tribunals Competences – Qualities and Abilities in Action* with this issue.

... the real prize of improving first-instance decision-making

This revised framework is designed to provide fair and unbiased criteria to help facilitate the training and appraisal of chairmen and members in tribunals, and retains its value as an aid to a competence-based approach to training, ensuring that an individual’s ongoing development needs are met effectively.

Individual training programmes are also the focus of Mark Hinchliffe’s article on page 2, in which he describes his role as the JSB’s new Tribunals Training Director – a post in which he will also be closely involved in taking forward the recommendations of the JSB’s evaluation programme, described on page 18.

Godfrey Cole CBE

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

FROM PARIAH TO PROTOTYPE



Mark Hinchliffe, the JSB's new Tribunals Training Director, describes his multi-ticketed tribunal career, and sets out his stall for the next couple of years as tribunal judges seek ever more individual and focused judicial training.

‘WHAT HAT ARE you wearing today?’ my other half will sometimes ask, as I get ready for work. The answer, of course, lies not so much in the hat, but the trousers and tie: dark suit and sober neckwear for unsuccessful asylum-seekers potentially facing deportation, and for haulage companies possibly facing closure; but perhaps something a little less portentous for motorists contesting their parking tickets; and a positive splash of colour – and maybe even chinos – for children with special educational needs and their anxious parents.

When I was first appointed to sit judicially in a tribunal, nearly 18 years ago, the then Lord Chancellor’s Department frowned on the person who collected tribunal appointments like stamps and, thereby, showed a lack of focus and dedication.

Judgcraft

This always struck me as a curious argument. After all, the High Court judges in the Administrative Court were expected to be experts in a myriad diverse tribunal jurisdictions and – whether you sat as an immigration judge, parking adjudicator or chair of the Special Educational Needs and Disability Tribunal – there were common tribunal skills and core competences that, once learned, could be applied across the board.

In those days, of course, concepts of judgcraft were distant ideas on the horizon. Today, they provide the impetus for the *Tribunals Skills Development Course (TSD)* and the *Advanced TSD*, run by the JSB for all tribunal members, in all

jurisdictions, and at all levels. And soon, with the advent of ticketing across the chambers and pillars of the new Tribunals Service, many of us have the chance to wear different hats, and to spread our judicial wings.

But before this happens we need to be trained in new ways of doing justice both within and without the new framework of the Tribunals Service, and we need a more accurate model for those common tribunal skills.

My work as a deputy coroner aside, I currently sit in five different tribunal jurisdictions, and have done so for some time. I sit alone, and also as the chairman of a panel; some of my tribunals are regulatory or penal, others purely arbitral; some adjudicate between the State and the individual, some involve just individuals with different interests; some users invariably deploy expert and high-powered representation, others rarely do so; some jurisdictions are adversarial, some inquisitorial; some are formal and virtually indistinguishable from a court with a plinth and coat of arms, others are much more informal – even intimate. I’m the original multi-ticketed tribunal person, a pariah to the Lord Chancellors of yesteryear. But a prototype for the brave new world of tribunals today.

Judicial Studies Board

In the JSB’s annual report for 2007–08, Mr Justice Langstaff described the role of the Committee as being: ‘to assure the JSB and the Senior President of Tribunals that the training needs of judicial office-holders in tribunals are being met’.

It does this by:

- Setting the training frameworks and competences on which training is based.
- Developing and delivering training programmes in those competences.
- Providing support and guidance to tribunals delivering their own training.
- Evaluating the quality of training, mentoring and appraisal provision in tribunals.

The JSB is not a talking shop, but a *provider*. It provides frameworks, courses, practical advice, and independent evaluations of what tribunals are doing. As a starting point, it seems to me that there are a number of key strands to the JSB's training strategy for tribunals. In particular, the strategy supports the implementation of the 2007 Act and, in particular, the cross-ticketing and assignment provisions, while continuing to recognise the training requirements of individual tribunal judges and individual jurisdictions.

Training strategy

The strategy's principal aims are in summary to:

- Secure agreement across tribunals to accept and adopt, without unjustified modification, the *JSB Competences – Qualities and Abilities in Action* (enclosed with this journal), so that they provide the bedrock of core competences for the whole tribunals family, and offer a clear framework for common training, appraisal and mentoring.
- Continue ongoing independent and objective evaluation of tribunals training, appraisal and mentoring programmes – set against agreed standards and outcomes, building upon previous outcomes. (On page 17 of this issue, Godfrey Cole describes the programme of evaluation to date.) Future evaluation is to be a proportionate rolling programme that enables specific elements of training, appraisal and mentoring to be reviewed in depth, with periodic reports to the Senior President.

- Work with the Tribunals Service's Judicial training and appraisal groups to develop and agree common training, appraisal and mentoring skills standards, and to devise cross-jurisdiction refresher training for all tribunal appraisers and mentors.
- Maintain conformity and consistency with wider JSB practice and experience so that tribunal judges can benefit from the same quality training resources and programmes informed by the same vision and strategy, as the courts judiciary and High Court informed by developments elsewhere in the UK and internationally.
- Develop and offer a new Prospectus of shorter, focused and modular training sessions in specific judicial and training skills which could be incorporated into a tribunal's own training or selected in order to construct an entire course.
- Continue to develop high-quality multi-jurisdiction courses in judgecraft and other generic skills such as training, facilitating, judicial leadership, appraising and mentoring.
- In collaboration with the Tribunals Service's Judicial Training Group to offer advice, support and help to tribunals wishing to develop their own jurisdiction specific training sessions.
- Encourage the development of new technology-based training platforms for use by tribunals.
- Explore ways to support the use of alternative and proportionate ways for tribunals to do justice.

Back-up

Obviously, I can't do this on my own. Happily, the JSB's Tribunals Committee is chock-a-block full of expertise from tribunals of all kinds. I am also inheriting a team of presenters and facilitators that are beyond compare, and who regularly achieve approval ratings from delegates of 95 per cent and over, as well as a highly professional and motivated team of administrators at the JSB.

The JSB has established itself as a pre-eminent provider of practical skills-based courses. Some tribunals currently teach judgecraft skills to their members; not many offer the in-depth three-day course that the JSB offers, or an opportunity to build on the experience of their judges with an advanced course in judicial skills.

A number of tribunals are, however, starting to involve colleagues from other jurisdictions in their training programmes. Recently, the Mental Health Review Tribunal invited members from tribunals likely to be in the Health, Education and Social Care Chamber to a two-day course on team-building, eliciting evidence and effective communication. Such training is to be encouraged, and the JSB would be keen to offer help and support, drawing on its own experience.

Specialist skills

As well as the core skills and competences, different tribunals do need different judgecraft skills, even within the new tribunals structure. In the past, tribunals have ‘cherry-picked’ aspects of the JSB’s judgecraft programme, incorporating sessions into their own training programme. For example, members of the JSB team have provided training on questioning skills to SENDIST, on the assessment of evidence to the Agricultural Land Tribunal, on the role of the lay member for the Family Health Services Appeal Authority, and supported a seminar on fair treatment and diversity at the Employment Appeal Tribunal.

As mentioned above, the JSB will continue to look at modular training, with the possibility that a new prospectus might offer a number of short sessions with the JSB providing both materials and speaker. This means that chambers, tribunals and judges will be able to select the specific judicial and training skills that are of interest to them. One size no longer fits all.

Appraisal

Most tribunals appraise their members. As a multi-jurisdiction person, I am already in danger

of being over-appraised. Hopefully, in the future, shared competences and a common appraisal scheme across tribunals will remove the need for every jurisdiction to undertake its own appraisal. But cross-ticketing founded on the notion that an appraisal in one jurisdiction might be accepted as evidence of competence in another jurisdiction will only be possible if tribunals are encouraged to adopt – and discouraged from unnecessary modification of – the core competences, which are the product of extensive consultation by the JSB, and upon which a common appraisal scheme across tribunals would be based.

Prospectus

A key early goal will be to encourage more tribunals to peruse the JSB’s *Tribunals Training Prospectus* and send their members for some multi-jurisdiction cross-pollination, including the ‘training the trainers’ courses and those for facilitators.

I also hope that we can offer more advanced training to those tribunal judges who, like me, have possibly become fossilised in our practices and think we have nothing more to learn. Meanwhile, both e-training and proportionate dispute resolution represent new opportunities for training, and for doing justice.

It follows that, as the new challenges become real and not merely theoretical, everyone involved in tribunal training needs to think about ‘upping the game’, and moving to the next, more advanced level. There is a lot to do. I am immensely grateful to my predecessor, Godfrey Cole, for leaving such a solid ship, and for being my mentor and friend. And I very much hope to meet you soon.

Mark Hinchliffe is the JSB’s new Tribunals Training Director. He currently sits in six different jurisdictions, including as an immigration judge and parking adjudicator. The JSB’s Tribunals Training prospectus is available at www.jsboard.co.uk/tribunals.

WHEN URGENCY REQUIRES QUALITY AND SPEED



A group of decision-makers aims to clear 95 per cent of its workload within 12 days of receipt. This is the Independent Review Service, which reviews decisions relating to the discretionary Social Fund that can have a crucial difference to a person's well-being. *Martin Keeves* explains.

THE SOCIAL FUND helps some of the most vulnerable people in society, when they are having difficulty meeting their needs from their regular income. It offers one-off payments of two distinct types – discretionary and regulated.

The discretionary scheme encompasses community care grants, budgeting loans and crisis loans. Community care grants, primarily intended to help vulnerable people on specified benefits live as independent a life as is possible in the community, are not repayable. Budgeting loans are a means of obtaining interest-free credit for people on specified benefits to help them cope with intermittent expenses, such as the purchase of household furnishings. Crisis loans are available to anyone but are awarded only in emergency or disaster situations, for example when someone has had their money stolen. There is no automatic entitlement to these payments.

What is the Independent Review Service?

The IRS independently reviews the decisions of Jobcentre Plus officers (part of the Department for Work and Pensions) for discretionary Social Fund awards. It is the final stage of the review procedure for those awards, though, exceptionally, an applicant may take their case to judicial review. It is distinct from the system for social security and child support appeals. The Social Fund Commissioner, Sir Richard Tilt, heads the IRS and is appointed by the Secretary of State for Work and Pensions.

The decision and review process

Decisions on applications to Jobcentre Plus are initially reached by a decision-maker. A

dissatisfied applicant then has 28 days in which to seek a review by a reviewing officer. In most cases, the applicant has the right to a telephone interview with the reviewing officer before the review decision is made.

Social Fund inspectors, who are employed by the IRS, only have jurisdiction to review an application once the reviewing officer has reached a decision. The IRS review is the third and final stage in the process.

Who are the inspectors?

Social Fund inspectors have very clearly defined powers which consist of:

- Examining the decision under consideration to see if the law was applied correctly in all respects.
- Setting aside any incorrect decisions and replacing them.
- Regardless of the correctness of the original decision, taking into account any new evidence or relevant changes in circumstances when deciding what the right outcome should be.

There is no professional qualification required to become an inspector. Some have previously worked in welfare rights, others have a legal background, and some are recruited from other parts of the civil service. Applicants are rigorously assessed before appointment, to ensure an aptitude for independent decision-making. This assessment includes the consideration, in exam conditions, of a number of case studies, allowing the applicants' drafting skills to be

examined, as well as their use of plain English and clear and logical reasoning, and their ability to make objective and balanced decisions based on the evidence.

Newly appointed inspectors undergo a period of in-house training. It generally takes about 12 months for a new inspector to work to the required standard. Every member of staff has an annual appraisal and mid-yearly reviews with line managers. Inspectors are measured against benchmarks relating in particular to the volume, speed and quality of their decision-making. Performance markings can affect pay.

Swift

Inspectors generally work on cases alone and typically have 45 cases under their individual control. A Social Fund payment will often make a crucial difference to a person's well-being and inspectors aim to clear 95 per cent of their routine workload within 12 days, 90 per cent of more complex cases within 23 days and 90 per cent of crisis loans for urgent living expenses within 24 hours.

Some facts and figures

During 2006–07:

- Inspectors delivered 23,243 decisions, of which 50.9 per cent changed the original decision.
- 734 indecisions were examined by IRS quality-checkers and 86.8 per cent found to meet the high standards required.
- Inspectors completed 99.5 per cent of their reviews (of non-complex cases) within 12 days.

Consistency

The IRS works hard to achieve consistent decisions, a challenging objective given the discretionary nature of the scheme. Informal support includes team development time away from decision-making. The formal support offered to inspectors includes the

Commissioner's guidance and a system of case reading by managers and peers. In addition, the Commissioner has set up a research and development team to respond to changes in the law and to examine feedback from decision-making. Their findings are debated at monthly quality forum meetings, where the Commissioner clarifies his guidance to inspectors. The Secretary of State for Work and Pensions issues directions and guidance to which all Social Fund decision-makers must have regard. Decision-makers must deal with evidence appropriately, ensure that applicants are treated fairly and apply any changes in the law as a result of judicial review.

Direct

Since April 2006, applicants have been allowed to make direct applications to the IRS, although the IRS can still only intervene at the third stage of the process. This change came about following pressure by the IRS and in particular by the Commissioner.

Previously, an application by an applicant to his local office for an inspector's review often only became apparent with the arrival of the case papers at the IRS. Now that the requests go directly to the IRS, it can manage the process and follow up any delays and the IRS has a team of staff dedicated to this role. Direct applications reinforce the independence of the IRS.

Initial stage of the inspectors' review

The inspector initially sends the applicant and their representative a letter – called the 'statement of issues' – setting out the case details. It summarises in plain English what crucial issues are affecting the case, the main facts, and questions for the applicant to answer. Questions are open and are designed to elicit as much information as possible.

A copy of the key papers from Jobcentre Plus can also be sent to the applicant, including the reviewing officer's rationale for their decision.

The applicant has the option of replying by post, fax or e-mail. The IRS also has a freephone number and a dedicated telephone team to take down the applicant's response, ensure it is read back to them, and pass it on to the inspector.

The applicant is encouraged to respond by telephone. The IRS has a freephone number and a dedicated team of trained inspectors who take down the applicant's response, ensure it is read back to them, agreed and passed on to the colleague handling the review. The applicant also has the option of replying by phone, fax or e-mail.

Evaluating the evidence

Evidentially, the starting point is that the applicant's evidence will be accepted as fact, unless there is reason to consider otherwise. The standard of proof is the balance of probabilities. In other words, inspectors must decide if something is more likely than not and can therefore be accepted as fact.

Sometimes an applicant's response will lead to further enquiries, either with the applicant or (with their consent) a third party, such as a social worker, occupational therapist or key worker. Often, this will be at the request of the applicant, to corroborate their own explanation. At other times it will be to test difficult evidence. Conflicts in the evidence, or plausibility issues, are put to applicants for their comments. No decision is made until the applicant has had the opportunity to comment on any information obtained. Inspectors have an inquisitorial duty and must pursue necessary enquiries before completing their review.

Making the decision

Decisions vary in length but are generally three pages long, with the first page consisting of a standalone summary of the decision. The following pages include the rationale for the decision, and the final part includes feedback for the reviewing officer.

A copy of the decision, again in plain English, is sent to the applicant and to the reviewing officer for implementation. The reviewing officer is thus given the opportunity to see the inspector's decision, including the inspector's comment on whether the decision was reached correctly.

Any payment is issued by Jobcentre Plus, which holds the budget. All paperwork is returned to Jobcentre Plus – the IRS does not retain any documentation.

Improving decision-making

The IRS produces quarterly and annual reports with statistics for each Jobcentre Plus region with comparisons with other regions. The IRS also travels to each region to give feedback on the report's findings, as well as on any information gained from local meetings with welfare rights groups.

Does all this improve initial decision-making? Generally speaking, the IRS expects decision-makers to learn from the feedback on each case, with an improvement on decision-making as a result. The IRS offers help in training

Jobcentre Plus staff and welfare rights groups. There has been a huge demand for this – in 2007–08 the IRS held 319 training sessions. This year, the DWP is looking at its own internal quality-checking process, and the IRS is helping to train the staff involved in this.

In providing this help, however, it is very important that the IRS remains distinct and separate from the DWP, to preserve independence. It is the Commissioner's business team within the IRS that carries out this aspect of the work of the IRS, therefore, rather than the inspectors themselves.

Martin Keeves is a member of the IRS's business team. More information about the IRS, along with its own journal, can be found at www.irs-review.org.uk.



Applying for a review

WHEN IS A DECISION-MAKER NOT A TRIBUNAL

Richard Everett gives an insight into the role of the Regulatory Decisions Committee in the Financial Services Authority's enforcement process.

THE FINANCIAL SERVICES AUTHORITY (FSA) is the UK's regulator of the financial services sector, in which role it has a number of enforcement and disciplinary powers.

These powers were much debated during the Parliamentary proceedings on the FSA's principal governing statute, the Financial Services and Markets Act 2000 ('the Act'). One result of this was a statutory obligation on the FSA to ensure that decisions about disciplinary action are not made by FSA staff who have been investigating allegations of wrongful behaviour¹. The FSA's approach was to set up a committee of its Board, the Regulatory Decisions Committee (RDC), the members of which would be co-opted from the financial services industry and the wider world. The RDC members do not include any member of the FSA Board, nor of its executive, though its chairman is an FSA employee.

Disciplinary decisions

Disciplinary decisions under the Act involve a number of formal steps and documents². The FSA is required, if it proposes to take disciplinary action, to give a formal written notice of this (a 'warning notice') which sets out the proposed action and the reasons for that proposed action.³

The recipient is given an opportunity to make representations to the FSA about this, and the FSA is required to decide whether or not to take action within a reasonable period. If it decides to do so the FSA must give a formal written notice of that (a 'decision notice') which again must set out the action the FSA has decided to take

and the reasons for taking it.⁴ Those decision notices are published on the FSA's website (www.fsa.gov.uk). If the FSA decides that it should take no action, for example in the light of representations, it must give a written notice that it is discontinuing the proceedings (a 'notice of discontinuance').⁵

Not a tribunal

In disciplinary matters it is the RDC that decides whether or not to give a warning notice, considers representations and decides whether or not to give a decision notice.

The chairman of the RDC is Mr Tim Herrington and the deputy chairmen are Ms Elizabeth Filkin and Mr Tom Luce CB. There are 11 other members. The RDC may meet as a full committee, but will ordinarily meet in panels of at least three. It meets in private.

The RDC has no role in providing an 'independent tribunal' as required under the European Convention on Human Rights. That protection is provided by the Financial Services and Markets Tribunal, which operates as part of the Tribunals Service. The RDC's decisions may lead to a reference to the Tribunal under the Act.

Meeting for oral representations

As mentioned above, the recipient of a warning notice is given an opportunity to make representations, and then to respond to any further points raised by the FSA's enforcement team or the RDC. So while the enforcement team will have the opportunity of responding to oral submissions, generally speaking the RDC

will expect the last word to be given to the recipient of the notice. The recipient may or may not be legally represented. The chairman of the meeting may ask the recipient of the notice or enforcement team to limit their representations or response in length or to particular issues arising from the warning notice; however, the person making representations is free to make whatever representations he wishes and if there are other matters relating to the substance of the case of which the RDC ought to be aware, these are drawn to its attention.

After that the RDC will deliberate, attended only by its own staff (including its legal adviser). The FSA's enforcement team will leave the meeting at the same time as the recipient of the notice and will receive no indication from the RDC about the outcome before the RDC issues its decision to all concerned. In some cases there may be issues arising during the course of an oral representations meeting which parties need to consider carefully and on which they should make further representation. In those cases the further representations are invited by the RDC to be made in writing within a short period after the meeting.

Changes

The FSA carried out a review of its processes in 2005⁶, partly as a response to criticisms of the FSA's processes by the Tribunal in the *Legal and General* case⁷, in which the RDC was found to have erred in its approach. The review's conclusions on the role and practical operation of the RDC resulted in some significant changes.

Fundamentals

The fundamental characteristics of the RDC have not changed and they continue to influence its practice.

- 1 The RDC is a committee of the FSA's Board.
- 2 It is not independent from the FSA. Its role is simply to ensure *separation* of functions within the FSA rather than full *independence*.
- 3 The RDC is an administrative decision-maker, not a judicial or quasi-judicial body. Indeed, the review considered it important that the procedures not become indistinguishable from a hearing before a tribunal.⁸
- 4 The RDC strives to make the best administrative decision that it can on behalf of the FSA, having regard to all facts and matters relevant to the decision it is making.

The changes were designed to improve transparency of the process . . . and to reinforce the separation between investigation and decision-making functions.

Increased transparency

The changes were designed to improve transparency of the process and the efficacy of the representations stage, and to reinforce the separation between investigation and decision-making functions.

The review, rightly, stressed that the RDC processes 'must be fair, and seen to be fair, as well as being efficient and effective'⁹. In particular, it noted that fairness

requires that a recipient of a warning notice should be aware of the case he has to meet, and should not 'leave those subject to [the process] with any justifiable sense that they have been dealt with unfairly'.

Although some legal commentators have expressed disappointment that the revised RDC processes do not more closely resemble a hearing, it is worth noting that the RDC has no power to compel anyone (except members of the FSA's own staff) to appear before it, and no power to require evidence to be provided on oath. One consequence of this is that it frequently has to rely on the judgments of others about the degree to which witnesses are to be regarded as credible.

Legal team

One change is that the RDC now has a dedicated legal team. This team is responsible for assisting the RDC with finalising warning notices, settling decision notices, for advising on disclosure issues and generally for ‘assist[ing] the RDC in taking an impartial and objective view of the case, enabling a greater degree of challenge to the case’ than previously¹⁰, when legal support was provided by enforcement lawyers, which tended to blur the required separation between decision-maker and investigator.

There is now a more extensive disclosure of material by the FSA than in the early days of the RDC’s operation. The recipient of a warning notice will now ordinarily receive with it a bundle of related material, including a copy of the submissions paper made to the RDC and other materials taken into account in reaching the decision. This may include communications from the FSA’s enforcement team to the RDC not otherwise in the case papers, although not the RDC’s own legal advice. The aim of this is very straightforward – to enable the recipient of a warning notice to be well-informed about the case as it was seen by the RDC when it decided to issue the warning notice, and thus to enable him to make representations on an informed basis.

Separation and its limits

This is especially important to bear in mind when matters of law arise. The RDC’s function is not to decide what the FSA’s interpretation of the law is, but to make the appropriate decision on the specific matter before it.

It is the enforcement team’s task, when making its submissions to the RDC, to present clearly and accurately the FSA’s interpretation of the law when legal issues arise. The role of the RDC is not to substitute its own view in place of a reasonable view presented to it. Enforcement will need to consider representations about points of law and assess whether the FSA’s position should

be modified as a result. Further submissions may then be made, disclosed in the usual way, expressing the FSA’s view and explaining any change made in the light of the representations received.

There is no question of the RDC merely ‘rubber stamping’ the FSA’s view as put by the enforcement team. The RDC legal adviser will assist the RDC with its understanding of the legal issues, and the RDC will test and scrutinise the legal submissions in order to be satisfied that it is reasonable, in the context of the particular case, for the FSA to rely on the legal arguments and views advanced. The RDC will apply the relevant law to the facts of the particular case in reaching its decision.

The separation requirement can be challenging in cases where the RDC seeks clarification of issues it considers to be important to its decision making. It is entirely appropriate that the RDC is clear about the basis on which it is asked to decide, although it must also fulfil the requirement that it is ‘not directly involved in establishing the evidence’ on which its decision will ultimately be based.

Richard Everett is senior legal adviser to the RDC.

¹ See section 395(2) of the Act.

² The FSA’s powers to vary the scope of an authorisation involve a slightly different sequence of notices (supervisory notices). The scope of this article is limited to the warning/decision notice process in disciplinary cases only.

³ See in particular section 387 FSMA.

⁴ See in particular section 388 FSMA.

⁵ See section 389 FSMA.

⁶ www.fsa.gov.uk/pubs/other/enf_process_review_report.pdf

⁷ *Legal and General Assurance Society Limited v The Financial Services Authority*, January 2005, FSMT Case 011.

⁸ See paragraph 6.15 of the report.

⁹ See paragraph 6.1 of the report.

¹⁰ See paragraph 6.17 of the report. Most of these changes are described in the report in chapter 6, particularly paragraphs 6.14 to 6.18 and recommendations 26 to 29.

| IS THE MOUSE MIGHTIER THAN THE PEN?



Leslie Cuthbert looks at life in the paperless tribunal, and a decision-making process that has its advantages and disadvantages.

WHEN MY colleagues and I were appointed as Road User Charging Adjudicators in November 2002, to decide appeals under the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001, we had little concept of the brave new world that awaited us in dealing with London's much-debated congestion charge. We certainly didn't realise that getting to grips with a paperless system – and the new computer software involved – was to be as much of a challenge as the appeals themselves.

How does the process work in practice?

The Parking Adjudicators' electronic system for handling parking appeals was the foundation for the software used by the new tribunal, which was created by an external supplier after a tendering exercise.

Each adjudicator is provided with a login name and password, and can log in on any of the computers at the tribunal's hearing centre. The hearing centre includes individual rooms for hearings in person and an open-plan office, to which only adjudicators and support staff have access, for other appeals.

As well as the more familiar types of software – for word processing, e-mail and internet access – each terminal has access to Case Manager, the key piece of software for undertaking appeals.

The vast bulk of the tribunal's appeals are dealt with in the absence of the appellant, and by a single adjudicator, who conducts an examination of the evidence submitted by the enforcing

authority and appellant. There are only six statutory grounds of appeal, which means that the process of deciding an appeal consists of making factual determinations and judging whether or not one of those grounds of appeal has been made out.

For this reason, Case Manager consists mainly of an 'evidence tree', a structure that allows evidence to be grouped into three main categories: appellant evidence, enforcement authority evidence, and material generated by the adjudicator or administrative staff. Each item is listed with title and date, so that locating a particular letter, photograph or representation may be done very quickly. To the left of this list, the viewscreen allows the selected evidence to be viewed and considered.

All of the appellant's evidence is available in this way, having been scanned on to the system by the administrative staff. There were some initial problems with the transition of information between the enforcement authority – Transport for London – and the tribunal, so that a number of hearings were initially resolved in the absence of their evidence. This has now been resolved.

Database

The database of undecided and decided appeals can be searched against a number of criteria, e.g. name, address, vehicle registration mark, date of decision. This database also provides the information for the statutory register of decided appeals that adjudicators must keep. A computer terminal in the waiting area of the hearing centre allows appellants to examine previous decisions.

The system records the length of each hearing from the time a case is opened until the appeal is decided and closed on the system. This is a useful means of monitoring the workload and efficiency of adjudicators and can be used as part of the appraisal process.

Pauses

During the hearing, the adjudicator may either 'stand down' the case – a temporary measure that stops the clock and removes the details of the case from the screen – or adjourn the matter to a new date. The new date can be created automatically or manually selected by the adjudicator, who may wish to reserve the case to themselves. In either event, the adjudicator must explain the rationale for the adjournment by completing a 'case action request', giving any particular actions required to be carried out by either party. The appellant is sent a letter confirming these details, while Transport for London is notified electronically.

There are many advantages and disadvantages to a paperless system . . .

The case action request is also the means by which adjudicators communicate with each other and with the administrative staff. Where an appeal has been in existence for some time, an adjudicator can trace and examine all actions involving the case. For example, a telephone call requesting an adjournment will have had a case action request created.

Sharing

Once an appeal has been opened and an item of evidence from the 'evidence tree' selected, the system allows the material to be handled in a variety of ways. Documents can be turned through 360 degrees, particular points zoomed in on or printed out. In oral hearings, a widescreen monitor fixed to a movable arm allows the adjudicator to share the evidence that is being considered with the appellant. This demonstrates that the adjudicator is examining the material and allows for any misunderstandings to be

immediately clarified. It also allows appellants to ask for material to be compared or zoomed in on if they feel that this will assist in making their representations.

Decision-making

The process for creating the decision letter is equally straightforward. Having 'allowed' or 'refused' the appeal – an action that can be changed if the wrong icon has been chosen by accident – a separate word processing window will appear which is already populated with all the relevant party details and standard paragraphs. The adjudicator simply has to enter the reasons for their judgment before the text

is automatically spell-checked and the relevant letters to appellant and enforcing authority sent into a queue to be printed off after 10 o'clock that evening. This short delay allows the adjudicator to go back and amend the decision if necessary before it is sent out.

Alternatively, in a personal appeal, the adjudicator can create and print the letter off while the appellant is still present, so that they can leave the hearing centre with their decision in writing.

Advantages

There are many advantages and disadvantages to a paperless system, some of which are set out below.

The database has a number of advantages. The tribunal handles thousands of appeals, some of which are linked, when for example the same vehicle registration mark has been captured within the zone on several occasions or a party refers to events in another appeal. The database allows these to be located quickly and any relevant matters to be taken into account when making their determination. Operational and management data and trends are much easier to gather, to report on and analyse, assisting in the compilation of the tribunal's annual report.

Although there is no precedent set by previous appeals, and adjudicators make their own determination on the facts of their particular case, they can refer to previously decided cases in order to consider the reasoning of their colleagues in relation to particular issues.

In an oral hearing, adjudicators and appellants examine the same item at the same time on the screen, which means there is less chance of misunderstanding or miscommunication. Appellants in general appear very happy with the process, and in particular with the ease with which they can direct adjudicators to a particular piece of evidence.

The software used allows all actions relating to a particular review to be recorded and reviewed efficiently, including those carried out by administrative staff. The fact that all decided cases in any day are grouped in a separate location on the system allows for quality checks, particularly by the Chief Adjudicator, who can review those decisions and case action requests made during the day and rectify any mistakes before letters are sent out.

The system allows decided cases to be assessed as part of the appraisal process, for the quality of the decisions, whether adjournments were necessary and the length of time taken to decide cases.

It also allows flexibility of working. As long as a computer terminal is available, an adjudicator can work and decide those appeals where the parties have not requested an oral hearing, even when no administrative staff are present, between 8am and 8pm from Monday to Thursday, 8am to 6pm on Fridays and 8am to 2pm on Saturdays. And there are environmental benefits, with less paper (and storage space) needed for processing or filing.

Disadvantages

There are some disadvantages, however, as is sometimes inevitable when using computers.

There was a substantial initial cost in developing the hardware and software, and a need for regular contract reviews to ensure the system continues to run smoothly. Any mid-term alterations to the contract can be expensive.

The system can on occasion freeze or break down. The contract with the supplier includes the provision of IT assistance, and covers the tribunal's costs when the system is off-line.

There can be a problem as well with poor-quality images on screen, either because of the illegibility of the original document, or because of the scanning process itself, although this is now less frequent.

Sometimes an adjournment can be necessary to obtain a better photocopy or the original document.

IT skills are essential, and adjudicators must be willing to develop them, or more time can be spent coping with the system than in considering the evidence and deciding the appeal.

Finally, there are security implications whenever information is held on a computer system. Risks from viruses are minimal as the system is not directly connected to the internet.

And despite the emphasis on the IT system, it has still been important to make clear to adjudicators and administrative staff that any print-offs that are not required should be properly disposed of in a confidential waste bin.

Our brave new world of the paperless tribunal does work well, although there are lessons to be learnt, by the Road User Charging Tribunal and others, in the use of IT in the analysis of evidence and the formulation of decisions.

Leslie Cuthbert has a number of roles including as a Legal Member of the MHRT as well as a Road User Charging Adjudicator.

STEPS TO TARGET ASPIRING JUDGES



The Employment Tribunals have a training scheme that allows for career progression, while at the same time increasing the diversity of the members and their awareness of diversity issues. *Goolam Meeran* describes how it works.

EMPLOYMENT TRIBUNALS have the power to determine over 60 different types of claim, including unfair dismissal, redundancy pay, unauthorised deduction of wages, breach of contract, sex, race, disability, sexual orientation, religion and belief, and age discrimination.

There are more than 2,000 tribunal members: 127 salaried judges, 224 fee-paid judges and 1,700 non-legal members. A hearing might be heard before a judge sitting alone, or by a panel of three – a judge and two non-legal members – depending on the subject matter of the hearing.

There are 27 hearing centres across England, Wales and Scotland – now part of the Tribunals Service. Those in England and Wales are divided into 12 regions, each of which is headed by a Regional Employment Judge.

The Employment Tribunals have developed a scheme of structured judicial career development training, which allows judges to progress through the different types of case as they complete sufficient sittings, gain experience, and pass through gateways set by the President and Regional Employment Judges.

Diversity

Tribunals vary in size, nature, and complexity of work, and the model used by the Employment Tribunals will not necessarily apply across the board, but aspects of the programme are worthy of serious consideration and may

become more important as the Tribunals Service develops its programme of assignment. Judicial career development initiatives have an important contribution to make in improving practical skills and increasing motivation and job satisfaction among the judiciary, but most significantly such programmes should form an integral part of the policy to increase diversity among the tribunals' judiciary.

The Employment Tribunals have developed a scheme of structured judicial career development training . . .

Taken broadly, the Employment Tribunals' programme of judicial career development involves targeting the appropriate and diverse pool of employment practitioners, encouraging them to apply for judicial appointments and then providing a phased programme of training aimed at the acquisition and practical application of technical legal and judgecraft skills.

Encouragement to consider applying for judicial office can come from our legal and non-legal members, in their day-to-day dealings with individuals who may have expressed an interest in such a role. Opportunities can also arise in the course of discussions between the tribunal and different groups, such as user groups and representative organisations.

Being able to demonstrate, by the results of recruitment exercises, that the system has a commitment to increasing diversity, as evidenced by the gradual change in composition over the years, is another encouragement to potential applicants. Of equal importance is our ability

to offer fee-paid judges a programme of judicial career development that not only enhances judicial performance overall, but also maximises their career progression aspirations.

Who is responsible?

The President has delegated responsibility, from the Senior President, for the provision of training for all the legal and non-legal members. The President is assisted in this task by the National Training Panel, which consists of the President and two or three Regional Employment Judges, one of whom is the Director of Judicial Training. The Panel is responsible for identifying training needs, setting training aims and objectives, and delivering and evaluating national training. The National Training Panel receives regular feedback from the recipients of training as well as the Regional Employment Judges through the recently introduced appraisal scheme which may identify further development needs.

Induction training

It is expected that on appointment fee-paid judges will have a working knowledge of employment law and the majority in recent years have had such expertise, either as practitioners, employed barristers or solicitors, or legal academics. Thus, the policy on induction training is that appointees require guidance more on the practical application of such knowledge in a judicial role. The course covers basic judicial skills including case management, conduct of the hearing, working with members, dealing with the parties and fair treatment. The underlying theme of the course is the duty to accord a fair hearing in order to achieve a just outcome.

Refresher training

There are a number of refresher courses (two substantial, and a number of shorter courses), whose objective is to develop expertise to enable the judges to handle more complex cases.

The first refresher course is attended 18 months to two years after appointment. It is designed

to prepare judges to conduct proceedings in discrimination cases and covers the framework and concepts of discrimination law. Attendance is open to fee-paid judges who have completed a minimum of 40 sittings since appointment, and are recommended by their Regional Employment Judge, indicating that they have achieved the appropriate standard of judicial performance, and confirming their ability to sit in discrimination cases. Only after attendance on this course are fee-paid judges permitted to sit on discrimination cases, which are widely acknowledged to raise complex factual and legal issues, including domestic and European law.

The second refresher course is attended two to three years after the first and is, again, subject to nominations against eligibility criteria. It is open to judges who have completed an average of 30 sittings a year since attending the first refresher course. The sittings must encompass the full range of the tribunal's jurisdictions and include cases on sex, race, disability, sexual orientation, religion and age discrimination. The sittings must also include multi-day cases, sit-alones and preliminary hearings.

Additional one-day training courses are held to refresh judges in certain areas of judicial work, such as case management, structured decision-making (including retiring room discussions and deliberations), and written reasons for judgments. Nominations for this course are made by the Regional Employment Judges. Additional areas for development can be added to the nomination.

Continuing professional development

Two additional courses follow successful completion of the refresher training programme. The first, attended every three years, covers current developments in the law and includes a refresher on judicial skills and diversity.

The second course concentrates on sensitivity to, and awareness of, the needs of a diverse group of tribunal users.

The tribunal's jurisdiction in employment discrimination means that it is at the vanguard of judicial training in equality and diversity. While all courses from induction onwards include elements of equality and diversity law, the Employment Tribunals have also recognised that a deeper understanding of actual and perceived bias, prejudice and discrimination is required in order to build sensitivity and awareness as a central core of judicial skills training. This has resulted in the development of this course for judges that attempts to deal with awareness in a very wide context, but having as its primary focus the need to be aware of, and sensitive to the needs of, a wide diversity of users and to ensure that hearings are fair both in form and substance, and demonstrably seen to be so.

Salaried judges

Generally, salaried judges are not appointed before attendance at both refresher courses. A one-day conversion course for newly-appointed salaried judges includes sessions on the challenges of the new role, the special features of long cases, and case management with a focus on the crucial importance of identifying the claims and issues at an early stage of the proceedings.

A one-day conversion course is also held for newly appointed Regional Employment Judges. This is conducted by the National Training Panel and covers areas pertinent to a judicial leadership role.

Specialist training

Specialist training is arranged, as and when necessary, for specific areas of the jurisdiction. An obvious example is equal pay, an area in which there is an increasing volume of cases and developments in case law.

Training in judicial mediation skills was undertaken by a small group of salaried judges as part of a pilot study of the effectiveness of judicial mediation. It is hoped that a successful pilot will result in a programme of judicial mediation in all regions. Further specialist and targeted training

carried out jointly with the JSB's Tribunals Committee includes mentoring, appraisals and judicial leadership.

Non-legal members

Finally, the induction for newly appointed non-legal members focuses on providing new non-legal members with a working knowledge of the jurisdiction – in particular the tribunal hearing, judicial function and structured decision-making – and issues of equal treatment and awareness. Non-legal members, like their legal counterparts, undertake a programme of observation sittings and also attend a one-day training course in discrimination a year after their induction.

Benefits

How can we measure the tangible benefits of our training programme in terms of improved standards? This is always a very difficult matter to measure, but it is my view that improved standards will result first in a greater degree of user satisfaction, both in formal surveys and at user group meetings. The second area in which indirect evidence of improved standards may be obtained are fewer appeals, requests for review and complaints about unfairness. Discussions with practitioners (not least the fee-paid judges themselves) can also provide informal recognition that over the years the Employment Tribunals have improved their standards.

Conclusion

The programme of judicial career development enhances judicial performance overall and, in relation to fee-paid judges, it maximises their career progression aspirations. Taken together with proactive steps to target the pool of aspiring judges, it will in a matter of two to three years show tangible benefits in terms of improved standards and a greater diversity among the judiciary.

Judge Goolam Meeran is President of the Employment Tribunals (England and Wales).

A STEP TOWARDS CONSISTENCY



Following his article in the Spring 2007 issue of this journal, explaining the background to the lengthy task of evaluating training, appraisal and mentoring, *Godfrey Cole* describes the JSB's findings and recommendations to the Senior President.

AFTER MUCH consultation, and with the full support of the Senior President, the JSB was invited, as an independent body, to evaluate the training, appraisal and mentoring of all tribunals. The object of the exercise was to be supportive and encouraging and not critical. There were two phases to the evaluation process. At the end of each, a report was prepared for the Senior President, including the findings from each tribunal visit and an overall list of recommendations and commendations – those areas of common concern or good practice which the JSB felt could be shared. The second report includes key messages on resources and on the value of competences as a common currency across tribunals. The tribunals evaluated, in chronological order, are shown in the panel below.

The process

The list of tribunals below demonstrates their variety – in composition, size of caseload, formality, and complexity of caseload, as well as in their likely place in the new tribunals structure. The

JSB tried to reflect these differences in the programme for each evaluation. There were common components: a preliminary meeting with the president, observation of training events, completion of self-assessment forms and a visit to the tribunal. The visit usually included a formal meeting with the president, focus-group discussions with chairmen and members and a meeting with those responsible for funding and administration. Evaluation of the smallest tribunals was limited to completion of the forms where possible and a meeting with the president.

Training

Judgecraft. The majority of tribunals now include judgecraft skills in their training programmes, and there has been an increase in the proportion of training dedicated to this area. Large tribunals deliver judgecraft skills within the context of their own jurisdictional training, which is both effective and economical, although some need was expressed for more training in judicial skills or for a better balance between judgecraft and the law, particularly in induction training. Most

Phase 1 – completed summer 2007

Special Educational Needs and Disability Tribunal
Pensions Appeal Tribunal
Mental Health Review Tribunal
Criminal Injuries Compensation Appeal Panel
Immigration Services Tribunal
Social Security and Child Support Tribunal
Lands Tribunal
Care Standards Tribunal
Information Tribunal
Finance and Tax Tribunals

Asylum and Immigration Tribunal
Employment Tribunal

Phase 2 – completed summer 2008

Asylum Support Tribunal
Transport Tribunal
Land Registry Adjudicator
Family Health Services Appellate Authority
Adjudication Panel for England
Social Security and Child Support Commissioners
Residential Property Tribunal Service
Employment Appeal Tribunal

intermediate tribunals train in judgecraft skills, but in general their training is weighted in favour of the law; some smaller ones continue to prefer to send new legal members to the JSB's tribunals skills development course.

Some panel members felt that they received less training than their legal colleagues. In one or two intermediate tribunals, they felt that opportunities for skills training were few. While small tribunals may include judgecraft as part of their continuing training, that training is often limited to one day a year. Training in questioning and listening skills and decision-writing were identified as key topics for further training.

The recommendations were for:

- A common syllabus in core competences, especially at induction – particularly important as assignment develops.
- An increase in the judgecraft training offered by intermediate tribunals, with advice and support from the JSB as necessary.
- A cross-jurisdictional approach to ensure consistent shared delivery.

Training needs, design and evaluation. All large and most intermediate tribunals have mechanisms in place for channelling identified needs into training, although some members felt their needs, which had been identified at appraisal, were not always being met in a timely manner, and in a small number of cases not at all. Small tribunals do not always need formal mechanisms to identify needs as the president knows the membership well, works closely with them and is familiar with the case load.

While larger tribunals set overall aims and objectives for each training event, few tribunals set them for each session and not many express objectives in the form of learning outcomes (i.e. what participants will know or be able to achieve once they have completed the course or session). There is evidence of a move towards

competence-based training, with members taking greater responsibility for their own learning and deciding which courses they attend. Almost all tribunals utilise some form of evaluation sheet to obtain participants' views at the end of each event. Two large tribunals conduct post-course evaluation, several months after the event, to gauge whether participants have been able to put the learning into practice.

The recommendations were for:

- Aims and outcomes for all courses and course sessions.
- A set of core competences for trainers.
- A forum for trainers to exchange good practice.
- Further advanced training skills courses from the JSB.

Facilitation and specialist training. The facilitators observed during the evaluation and reported by focus-group members were of a high standard in most tribunals. However, styles varied considerably from highly interventionist to the very passive. Groups generally adapted well to differences in style but there was an inconsistency in approach in different groups at the same events. Some focus groups reported that the quality of facilitation varied from excellent to poor. Some larger tribunals train their facilitators in-house although most send them to the JSB's small-groups facilitation skills course. Recommendations were that common facilitator competences be devised, that facilitators be selected against those competences, and that all facilitators be trained in them.

Several tribunals have specialist groups of professional members with similar qualifications, e.g. doctors. While one large tribunal provides some specialist training, most others rely on their members to keep themselves professionally up to date. The recommendation was that a cross-jurisdictional approach be developed so that specialists could receive joint training with professional colleagues in other tribunals.

Organisation and administration. Some large and intermediate tribunals have a written training policy so that members can see what to expect from the tribunal or what is expected of them. Almost all tribunals of sufficient size have an experienced judicial training head; in small tribunals, the president retains the role. Two of the large tribunals have administration teams which support judicial training. The Tribunals Service reviewed judicial support in 2007, and this part of the reports to the Senior President will inform that initiative.

Recommendations were that all tribunals have a training policy proportionate to their size and needs and have access to suitably qualified individuals to support their training.

Resources

There is considerable inequality in the resources provided for the delivery of training. Some tribunals are well funded and are able to do a considerable amount of training; others do almost as much with considerably less. Most tribunals had worked out successful ways of managing with what they had. The report was also concerned that sufficient resources be made available for training in the Upper Tier when it comes into existence at the end of 2008.

The Senior President is considering budgeting arrangements for training in tribunals, and this part of the JSB's reports will help inform that work.

Appraisal

Much work has been done to establish appraisal in tribunals. All but the smallest appraise, or plan to do so, and their schemes broadly follow the JSB model. All tribunals ensure that their appraisers receive training. The appraisal cycle was found to vary from one to three years. Those with more than one tribunal appointment felt that they were subject to 'appraisal fatigue'. Tribunals that appraise use observation of a

day's hearing to assess performance against the competences. Some focus-group members were concerned about undergoing appraisal as their sittings were so infrequent. Members with more than one appointment thought that credit should be given to the appraisals they had received in the other jurisdictions. Several tribunal presidents agreed that this should be explored.

Use of other evidence in appraisal. Two tribunals use three decisions to supplement observation and self-appraisal with legal members. Tribunals with infrequent appraisal might not be able to follow that practice, but the move away from the snapshot observational approach was welcome.

Those with more than one tribunal appointment felt that they were subject to 'appraisal fatigue'.

Outcome standards. All appraisers meet with the appraisee to discuss the observation and give feedback at the end of the hearing or at another mutually convenient time. Focus groups in several tribunals with a larger number of appraisers raised concerns about the variable quality of feedback given and the standard of report writing. Focus-group

members indicated that some reports were very detailed and included examples; others were brief and thought to be of little value. Two outcome standards – no training needs identified/in need of training – are the most common. It was thought that consistency of reporting is more likely to be maintained with two outcome standards, particularly while there were no performance indicators to provide a common measure for other levels of performance.

Link between appraisal and training. All tribunals with appraisal schemes have a mechanism to link the needs identified through appraisal to training. The link is usually made by the president, but in the large tribunals the training judge takes an active role in identifying the needs to emerge from appraisal. This has led to adaptations to existing training programmes or the provision of remedial training (e.g. attendance at the JSB's

judicial skills courses). Some tribunals already have plans in place to review their appraisal schemes or are doing so as a result of evaluation. The Tribunals Judicial Executive Board (TJEB) has set up a sub-group to look at appraisals across the TS tribunals and the findings and emerging recommendations in this report will inform the work of that group.

The recommendations made on appraisal were for:

- A common set of appraiser competences.
- Common training for all new appraisers against those competences.
- Opportunities for contact between appraisers.
- The JSB appraisal scheme to be used to assess performance against the JSB's competences.
- A common three-year cycle.
- Tribunals to consider recognising appraisals from other jurisdictions.
- Three recent decisions to be included as a part of the appraisal process.
- Two outcome standards to become the norm.

Mentoring

Nearly all tribunals offered peer mentoring to their new appointees. Arrangements were largely informal, although more jurisdictions are creating structured schemes around the JSB's model.

Where supervisory mentoring is provided, between 10 and 40 members are assigned to one judicial manager. Focus groups revealed that this often constrained the mentoring relationship, as mentees were unwilling to trouble busy judicial managers with relatively minor questions. All but one large tribunal adhere to the principle that mentors should not undertake the appraisal of their mentees. Some of the focus-group members in the tribunal where this was the case often refrained from approaching their mentor, as they did not want to appear 'less able' to someone doubling as their appraiser. They were in favour of a confidential relationship with a peer who

was not part of their line management chain. Supervisory mentoring is included in the job description for salaried judges in two of the larger tribunals. The pace of the appointment process meant that many tribunals were unable to train their mentors before they undertook the role. Other tribunals had arranged training in-house. A number of tribunals used the courses offered by the JSB to train their mentors before they introduced their mentoring schemes. The JSB has produced a training DVD, *Supporting the Judiciary – the Mentoring Process*, which has been circulated to all tribunals to provide guidance on the respective roles in the mentoring relationship. Mentors provide guidance in a variety of ways: attendance at observational sittings with their mentee, face-to-face discussions that can include a review of decisions, and telephone and e-mail exchanges.

The recommendations were that tribunals without mentoring schemes should articulate the roles and responsibilities of their mentors as they proceed to introduce schemes so that they and mentees know what is provided and expected of them. And where supervisory mentoring is provided that jurisdictions explore the benefits of peer mentoring, especially for new members.

The future

Some of the remaining tribunals, whose entry into the Tribunals Service is unlikely or unknown, have asked for an evaluation. This process will start in autumn 2008.

The recommendations in each report, always agreed with the relevant president and invariably under way, will be the subject of a third and final report to the Senior President in 2008–09. The JSB's broad recommendations are also the subject of discussion in the Tribunal Judges Training Group, on which this journal plans to include an article in due course.

Godfrey Cole is a District Chairman in the Social Security and Child Support Appeals Tribunal.

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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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