JUDICIAL COLLEGE

TRIBUNALS

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SUMMER 2012

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A team message from Sir Jeremy

The Right Honourable Lord Justice Sullivan has been appointed as our new Senior President of Tribunals, succeeding Lord Carnwath, with effect from 25 June 2012. Sir Jeremy, called to the Bar in 1968 and appointed as a Lord Justice of Appeal in 2009, has specialised in administrative law throughout a long and distinguished career as an advocate and judge.

The Senior President's remit, as set out in the Tribunals, Courts and Enforcement Act 2007, spans a wide range of topics – from fairness, efficiency and innovation in the work of tribunals in resolving disputes to the practical support and leadership of the entire tribunals judiciary, judges and other members alike. This includes ensuring that we have the legal or subject expertise required and overall responsibility for our training and welfare. Of course, he has powers of delegation! Nonetheless, it is a huge job.

Happily, Sir Jeremy has a longstanding involvement with tribunals which equips him well for this important judicial leadership role in challenging times. As Chairman of the Tribunals Committee of the Judicial Studies Board (predecessor of the Judicial College) from 1999 to 2007, he gave evidence to the Leggatt inquiry and was closely involved in the subsequent evolution of the new UK tribunals system, bringing together tribunal Presidents prior to the formation of the Tribunals Service and the legislation which underpins our system today.

Sir Jeremy says that, through this work, he gained an overall understanding of the tribunals world and, as a Court of Appeal judge, has seen a fair amount of the work of the Upper Tribunal.

In an early message to his colleagues he said:

'As you might imagine, the scale of tribunals workloads as well as the breadth and depth of my judicial and leadership responsibilities as Senior President is now becoming more apparent.

'I have inherited from Robert Carnwath an experienced support team and I very much look forward to working with them as well as drawing on the wider expertise of the Judicial Office team to help me.'

Editorial

In 2000, this journal published an interview with Jeremy Sullivan. 'Tribunals have felt increasingly confident', he commented then, 'to develop their own . . . procedures.'

That comment has as much relevance today, as he is appointed our new Senior President, and in this issue we touch on some of the newer procedures.

On page 5, Brian Thompson reviews some of the different approaches to resolving administrative disputes and, on page 2, Simon Auerbach outlines the powers of courts and tribunals to bring unnecessary civil proceedings to a close.

Elsewhere, John Aitken reports on improved processes in the special educational needs jurisdiction (page 18) and Leslie Cuthbert considers the skills required by a tribunal judge as a decider of fact (page 10).

There is also a book review (and offer), guidance on dealing with the press and an update on plans for training. I hope you enjoy this issue.

Professor Jeremy Cooper

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WHEN THE TIME HAS COME TO SAY: 'STOP'

Simon Auerbach **contrasts the jurisdiction in civil courts and tribunals to deal with vexatious litigants and considers the statutory powers and common law jurisdiction of the High Court.**

SECTION 42 of the Senior Courts Act 1981 confers a power on the High Court to issue a civil proceedings order (CPO) restricting an individual who is found to have been a vexatious litigant. In *HM Attorney-General v Barker* [2000] 1 FLR 759, Lord Bingham MR said:

> 'From extensive experience of dealing with applications under section 42 the court has become familiar with the hallmark of persistent and habitual litigious activity. The hallmark usually is that the plaintiff sues the same party repeatedly in reliance on essentially the same cause of action, perhaps with minor variations, after it has been ruled upon, thereby imposing on defendants the burden of resisting claim after claim; that the claimant relies on essentially the same cause of action, perhaps with minor variations, after it has been ruled upon, in actions against successive parties who if they were to be sued at all should have been joined in the same action; that the claimant automatically challenges every adverse decision on appeal; and that the claimant refuses to take any notice of or give any effect to orders of the court. The essential vice of habitual and persistent litigation is keeping on and on litigating when earlier litigation has been unsuccessful and when on any rational and objective assessment the time has come to stop.'

Order
CPO (Civil proceedings order)
RPO (Restriction of proceedings order)
CRO (Civil restraint order)

Enabling power
Section 42, Senior Courts Act 1981
Section 33, Employment Tribunals Act 1996
Civil Procedure Rules, rule 3.11; PD 3C

The person against whom such an order is made may not bring proceedings before any court without the permission of the High Court. In *IB v Information Commissioner* [2011] UKUT 370, the Upper Tribunal (Administrative Appeals Chamber) held that the First-tier and Upper Tribunals were courts in respect of which a section 42 order applied. The Upper Tribunal did not, however, have the power to give the permission required to bring proceedings before such tribunals.

Employment tribunals

Vexatious litigation can also, of course, be conducted in the Employment Tribunal and section 33 of the Employment Tribunals Act 1996 enables the Attorney-General to apply to the Employment Appeal Tribunal (EAT) for a restriction of proceedings order (RPO).

An RPO is an order to the effect that no proceedings may be instituted or continued in either tribunal without the permission of the EAT where the addressee has 'habitually and persistently and without any reasonable ground' either instituted vexatious proceedings in one or other of those fora, or made vexatious applications in any such forum. An RPO may last for either an indefinite or a specified period. Unsurprisingly, the threshold for the grant of an RPO order is high and the elements of the test are cumulative: the EAT must be satisfied that each of the proceedings relied on was vexatious and that their pursuit has been habitual and persistent and unreasonable.

Right to a fair trial

In *Attorney-General v Wheen* [2001] IRLR 91, the Court of Appeal considered the compatibility

of the section 33 power with article 6 of the European Convention on Human Rights. The court agreed:

> 'That is not an absolute right. A balance has to be struck between the right of the citizen to use the courts and the rights of others and the courts not to be troubled with wholly unmeritorious claims. The administration of justice has to be taken into account. But in any event the order which has been made against Mr Wheen provides for access to the employment tribunal system by him so long as permission is obtained. That is a necessary feature of an order obtained under s33. That is a familiar feature of many proceedings which take place in our judicial system. It is not something which in my judgment can amount to a breach of Article 6. Access to the courts is not prohibited; it is provided for on certain terms. It is in my judgment wholly unarguable that s33 of the Employment Tribunals Act conflicts with the European Convention on Human Rights.'

Indefinite order

A recent, particularly extreme, case was *AG v McCluskey* UKEAT/0118/09. In that case, the litigant had presented seven claims alleging various detrimental treatment and discrimination, all of which had been either dismissed or struck out, a further four claims against judges and court staff and a further claim against some 23 respondents. These claims had in turn spawned multiple review applications and appeals to the EAT, which observed:

> 'But, in this case, there is the additional factor of the insidious attack on those who are doing the public's business for them, be they judges who are required to be robust, but even more so staff at the various courts and tribunals who are not employed to be, or expected to be, robust, other than, no doubt, in their courteous dealings every day with the public. They are certainly not expected to be themselves the object and the subject matter of litigious proceedings over and over again, and there must be a risk that the carrying out of their activities on behalf of the public is affected if they are fearful at all times that they can be bombarded by proceedings.'

In that particular case an indefinite RPO was made.

Civil restraint order

While the Employment Tribunal itself cannot grant an RPO, individual litigants in the civil jurisdiction can apply, in a given set of proceedings, for a civil restraint order (CRO), which comes in three forms.

A limited CRO restrains the addressee from making any further application in the proceedings in question without first obtaining the permission of a judge. It may be made where a party has made two or more applications which are totally without merit.

An extended CRO restrains the addressee from issuing claims or making applications in any court specified in the order 'concerning any matter involving or relating to or touching upon or leading' to the proceedings in which the order is made, without first obtaining the permission of a judge. It may be made where the addressee has persistently issued claims or made applications which are totally without merit.

Finally, a general CRO restrains the addressee from issuing any claim or making any application *in any court* without prior permission. It may be made where a party persists in issuing claims or making applications which are totally without merit. An extended or general CRO will last for a maximum of two years.

Civil courts only

However, the power to grant a CRO applies to litigation in the civil courts only and may only restrain claims or applications in the High

Court or county court. Accordingly, a party who perceives themselves to be the victim of vexatious litigation in the Employment Tribunal cannot themselves institute an application under section 33 of the 1996 Act, nor can they ask the High Court to make such an order to restrict further tribunal litigation.

Inherent jurisdiction

However, the court has long had an inherent jurisdiction to grant CROs and this was considered in *Law Society of England and Wales v Otobo* [2011] EWCA 2264. Mr Otobo had been the subject of three CROs in the civil courts. However, he also brought discrimination claims in the Employment Tribunal, which the Law Society contended had been pursued both because of the different costs jurisdiction and because it was not covered by the CRO. The Law Society applied to the High Court for a CRO to be made, where the central question was whether the court's inherent common law power to grant a CRO could extend to the restriction of litigation in the Employment Tribunal.

'. . . where the inferior court has no jurisdiction of its own to make a CRO restraining proceedings before it, the High Court has the power to do so as part of its inherent jurisdiction.'

Complements

In the judgment, Proudman J noted that it was already established that tribunals are courts for the purposes of the law of contempt; and that the statutory power of the High Court to make CROs does not replace the common law jurisdiction, but complements it. Against that background, and in an extensive review of the authorities and scholarly commentary upon the historical development of the common law jurisdiction, she concluded (at para 49) that 'in a case such as this where the inferior court has no jurisdiction of its own to make a CRO restraining proceedings before it, the High Court has the power to do so as part of its inherent jurisdiction.'

The Court went on to make an order in the form of a general CRO, but extending to claims in the Employment Tribunal.

Assisting others

One feature of note in *Otobo* was that it was found that Mr Otobo had also been assisting another litigant to bring similar proceedings to his own claims, although Proudman J did not consider it appropriate to take this into account in deciding whether to grant the CRO.

In *Paragon Finance plc v Noueiri* [2001] EWCA Civ 1402, the Court of Appeal made an order restricting an individual 'from taking any steps whatever within the Royal Courts of Justice by way of acting or purporting to act on behalf of persons other than himself in legal proceedings except with the permission of a judge of the High Court or the Court of Appeal'.

In *HM Attorney-General v Branch* [2008] EWHC 2872, the High Court granted an interim injunction where it was found (per Dyson LJ at para 2) that Mr Branch, having already been the subject of a CPO under the 1981 Act, had pursued 'many hopeless, abusive and vexatious pieces of litigation on behalf of others, often using the litigation as a vehicle for airing claims of himself or his family, which claims were ultimately the cause of the section 42 order that was made against him.'

Where no High Court claim?

Finally, in *Otobo* the order was made pursuant to an application in one of Mr Otobo's High Court claims. Whether an application could successfully be made for an order restraining Employment Tribunal litigation where *no* High Court claim has been brought remains to be tested.

Simon Auerbach is an employment judge.

Prevent, reduce, resolve and then LEARN

Brian Thompson **outlines *Putting it Right*, the recent Administrative Justice and Tribunals Council's report on resolving administrative disputes.**

In 2004, the White Paper *Transforming Public Services, Complaints, Redress and Tribunals* introduced the new concept of Proportionate Dispute Resolution. Inevitably this term was abbreviated to its initials PDR. Expressed like that, it seems very similar to the more familiar term ADR (Alternative Dispute Resolution), but as the White Paper made clear, PDR was envisaged as a staged approach to resolving disputes in civil and administrative justice in which the 'aim is to develop a range of policies and services that, so far as possible, will help people to avoid problems and legal disputes in the first place; and where they cannot, provides tailored solutions to resolve the dispute as quickly and cost-effectively as possible'.

The AJTC considered that the time was ripe for a survey of this approach to resolving administrative disputes, to review and evaluate the various developments, and to make recommendations on how it might be taken forward.

In *Putting It Right – A Strategic Approach to Resolving Administrative Disputes*, the AJTC's analysis has developed the approach presented in the White Paper by:

- Making the organising principle that of appropriateness and proportionality.
- Conceiving the administrative justice system as a four-stage cycle.
- Improving navigation for users by distinguishing between complaints and appeals.

Appropriate and proportionate dispute resolution

PDR aims to match the technique of resolution to the nature of the dispute. As well as speed and cost-effectiveness, factors to be considered in making that match are:

- User preference.
- The characteristics of the dispute and the parties.
- The importance of the issue and its impact upon the individual and the organisation.
- The variety of concerns raised by a user, and whether they are rights, which may give rise to an appeal, or issues about service, which may give rise to a complaint.

A proportionate approach does not simply mean allocating the dispute to a particular resolution method, but recognises this as a late stage in a four-stage cycle comprising:

1. Prevention of disputes.
2. Reducing the escalation of disputes.
3. Resolution of disputes.
4. Learning from disputes.

1 Prevention of disputes

A high level of complaints and successful appeals indicates poor decision-making, which in turn causes injustice and cost to the taxpayer. The Work Capability Assessment in claims for employment and support allowance is an example of deficient planning for social security policy implementation which has led to a large number of appeals of which around 40 per cent are successful.

Ways of preventing disputes are:

- Simplifying complex laws.
- Providing clear guidance for users.

- Providing independent advice to users with queries and concerns.
- Embedding a 'right first time' culture in public organisations.
- Developing strategic intervention.

The AJTC's 2011 report *Right First Time* presented ways to inculcate a 'right first time' culture. This included better legislative design of the substantive law and implementing procedures, which could contribute to the correct application of rules and their acceptance by the public through greater clarity and in explanations of decisions. The AJTC welcomes, for example, the joint work of the Department for Work and Pensions and HM Revenue and Customs in tackling fraud and error in the benefit and tax credits systems, but wishes to see more work on error prevention, which deprives the vulnerable of their entitled benefits. Such work, if it is to be effective, must be part of an integrated cross-government approach.

It is crucial that there should be access to independent advice for people in dispute with public bodies, both in terms of principle and pragmatism. If that advice suggests no or weak grounds for a challenge, then a misconceived appeal is less likely to be made, with consequent savings.

2 Reducing the escalation of disputes

Poor communication between an individual and a decision-maker may lead to a successful appeal when the tribunal uncovers new information. Better communication would improve initial decision-making and any reconsideration following queries about the decision.

This logic underpins section 102 of the Welfare Reform Act 2012, which confers a power to require reconsideration as a prerequisite for an appeal to a tribunal in some social security benefits. This initiative followed the trial of a new approach to reconsideration in some benefits following a critical report by a House of Commons Select Committee in 2010. The new method is characterised by a more engaged and critical approach where the customer is contacted by telephone, enabling the discovery of new relevant information in a way a desk review of the file is unlikely to do.

The AJTC recommends that to reduce the escalation of disputes there should be better explanation of decisions, better opportunities for a person to query a decision and opportunities for internal review or reconsideration which can correct mistakes or uncover relevant new information. Such a review or reconsideration process should avert complainant fatigue and the discontinuance of a justifiable claim.

3 Resolution of disputes

The procedural rules for tribunals include an encouragement to seek alternative procedures for the resolution of the dispute – for example, rule 3(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (see panel below). The spectrum of techniques used to resolve administrative disputes includes: third-party review; mediation; early neutral evaluation; ombudsmen; and dispute resolution without hearing, including tribunals considering papers only.

Tribunals and courts are not as clearly differentiated as they once were, with distinctions in accessibility, speed, informality, specialisation

Rule 3(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 reads:

'The Upper Tribunal should seek, where appropriate—

(a) to bring to the attention of the parties the availability of any appropriate alternative procedure for the resolution of the dispute; and

(b) if the parties wish and provided that it is compatible with the overriding objective, to facilitate the use of the procedure.'

and lower cost. Today we have tribunal-like courts, in for example the resolution of small claims and housing cases. The courts are also faced with a rising number of parties who are self-represented. The AJTC has drafted some general principles to assist the matching of resolution techniques to particular disputes. In doing so, they drew upon academic research and discussions with practitioners as well as the Australian Administrative Appeals Tribunal's ADR Guidelines.

Some examples of the general approach and indicative factors can be given here.

Any dispute is potentially capable of resolution without a formal hearing. Administrative justice resolution schemes should adopt an inquisitorial approach with a trend for fact-finding to be conducted by trained administrative staff using the telephone and/or electronic communication. A triage process, normally undertaken by trained administrative staff, should identify the issues in dispute and other relevant circumstances and decide which route should be pursued.

Factors to be considered are:

- Capacity of the parties to participate effectively.
- Whether and how the parties are represented.
- Context of the case, including the history of past disputes.
- Any identified need for urgency.
- Nature, importance and complexity of the issues in dispute.
- The likelihood of an agreed outcome.
- Cost to the parties and to the taxpayer.

Factors favouring a traditional hearing are:

- Fundamental rights cases, such as asylum and mental health review adjudications where the liberty, life or safety of individuals may be at stake.
- Cases where there are allegations of fraud or where the credibility of an individual is directly at stake.
- Cases, especially those turning on medical considerations, where the presence of the individual is essential.
- Cases (e.g. many employment disputes) where there are allegations or counter-allegations about conduct.

Factors favouring mediation are:

- There will be an ongoing relationship and future disputes could be limited by an exploration of the issues or explanation of the system.
- An apology, concession or explanation could assist resolution.
- Flexible options need to be explored.
- The matter is complex or likely to be lengthy.
- The matter involves more than two parties.
- Legitimate desire of parties to keep the dispute confidential.

For mediation to be successful, it will require adequate funding to ensure that mediators, users and advisers understand the system and to keep it free of charge, as most tribunals are. It should not unduly prolong the overall process and there must be a framework for the regulation, training, accreditation and supervision of mediators.

Access to these processes is another important factor. The public does not understand the important distinction between the nature of, and different procedures for, complaints and appeals, and indeed current arrangements do not cope well with disputes comprising both of these

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When FACTS come first

Michael Duncan **describes the support offered to judges by the judicial press office.**

You only need to read the newspapers each day to realise that what happens in tribunals is of great interest to the press and public, whether it is an alleged terrorist appearing before the Special Immigration Appeals Commission or a company appearing as a respondent at an employment tribunal. In fact, the number of press queries about tribunals is second only to the number regarding criminal cases. In these examples, and many more, the judicial press office has a role to play.

Journalists and interviews

But we don't just wait for journalists to call. Our small team in the Judicial Office support all court and tribunal judges in press matters. This includes advice on dealing with interview requests, the misreporting of cases and all other media-related issues. While the press may not always write stories that are supportive of the judiciary, our job is to make sure that whatever they write is factually correct and does not misreport anything a judge may have said.

Any tribunal . . . that deals with a high-profile individual or issue is potentially something the press will be interested in.

If, however, in the course of your work you are contacted by someone from the press, you should always refer them to us. If they try to draw you into a discussion that you feel uncomfortable having, you can tell them to speak to the press office, who will take details and get back to them on your behalf. It is also important to alert a senior colleague. Senior colleagues also need to be made aware if you are approached to do an interview.

Transparent

When dealing with the press, we seek to be as open and transparent as we possibly can in giving information we are asked for and in explaining why sometimes that is just not possible. It can be frustrating for journalists to realise not everything that happens in a hearing can be reported. If they fail to understand why some hearings are heard in private or why certain judgments are not available, we try to explain the reasons to them.

High profile

There are obviously certain tribunals that are of more interest to the press than others. Many of the enquiries we receive are related to Immigration and Asylum Tribunal cases or Employment Tribunals. Any tribunal, however, that deals with a high-profile individual or issue is potentially something the press will be interested in.

If you know of a case that you will be dealing with that is likely to be of interest to the press, please let us know as soon as possible so that we can plan how to support you and get the case covered accurately.

And this works both ways. We can let you know about press interest in any case you may be dealing with and will handle press enquiries on your behalf. We can also let you know how your high-profile cases are being reported in the press.

We often publish judgments on the judiciary website (*www.judiciary.gov.uk*) and send them to journalists. This helps journalists understand the issues surrounding cases more fully and helps them to write more accurate press reports. So if you know a decision is coming, let us have a copy which we can use as soon as it is in the public domain.

Websites

It is important to remember that journalists can legitimately use any information about you

already in the public domain. This could be an entry in *Who's Who* or biographical details on an official website, but also extends to anything on social network sites such as Facebook or Twitter. It is for this reason that you should take care with any personal information you publish on the web. In particular, photographs, personal details and comments you post online can be viewed by anyone, unless you apply the appropriate privacy settings.

There is helpful guidance on this in the *Guide to Judicial Conduct* on the judiciary website at *www.judiciary.gov.uk/about-the-judiciary/the-judiciary-in-detail/how-the-judiciary-is-governed/guide-to-judicial-conduct*. But a good rule of thumb is not to publish or say anything online you would not be happy seeing in a newspaper.

And finally, a mention for the HMCTS press office as well. We work closely with them – they deal with listings and administrative questions, while we deal with anything judicial.

Michael Duncan is a senior press officer at the judicial press office.

There is further media guidance for all tribunal judges on the judicial intranet at *www.judiciary.sut1.co.uk/docs/info_about/mediaguide2012.pdf*

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elements. Instead of requiring the user to determine which category and procedure, a better approach would be to have a common access or 'one door' approach, either nationally or within the agency, where a triage process would check what the user's desired outcomes were and could then assist the user accordingly. This could be a virtual portal within the *Direct.gov* website and include arrangements for cases to be transferred – with the individual's consent – to another, more appropriate, institution.

4 Learning from disputes

Getting feedback and acting upon it is good practice in complaint-handling in tribunals. A feedback workshop, organised by the Ministry of Justice and bringing together representatives from departments, the judiciary, independent third-party review organisations and ombudsmen would allow the best mechanisms for learning lessons to be discussed. In social security, the provision of feedback is changing from broad picture comments to benchmark decisions directed at particular issues. The aim of benchmark decisions is to promote consistency in initial decision-making by suggesting an approach that could lead to a fair, justifiable result underpinned by good evidence.

The AJTC recommends that the senior tribunal judiciary extend the use of benchmark decisions across tribunal jurisdictions.

Conclusion

The AJTC's recommendations are addressed not only to the Ministry of Justice but to other departments, and to those involved in policy, appeals and complaints. The strategy for better resolution of administrative disputes requires a coordinated cross-government approach so as to secure redress and administrative improvement cost-effectively.

Brian Thompson is a Member of the AJTC and Senior Lecturer in the School of Law, University of Liverpool.

The report is available at: *http://ajtc.justice.gov.uk/docs/putting-it-right.pdf*

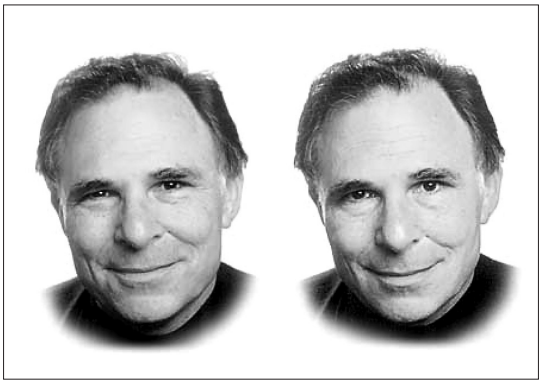
THE SHIFTY LIAR AND OTHER ANCIENT MYTHS

Assessing an individual's credibility is often a key factor in a judge reaching a determination. *Leslie Cuthbert* dispels some common beliefs about body language and what it can tell us about an individual's motives, feelings and statements.

ONE OF THE SMILES below is a 'genuine' smile and the other is a 'fake' smile. Are you able to distinguish which is which? A potential answer is at the end of this article. It's OK – you can go and look now before reading further.

Watching a witness

During hearings you are probably unlikely to be concerned about whether or not a person's smile is genuine – but what goes through your mind if you are listening to a witness or party in a hearing and you see them cross their arms? Do you conclude that they are being defensive about what they are now saying? What do you think if you see a person giving evidence look up and to the right as they are talking? Do you decide that they are accessing their imaginative side of the brain and so are more likely to be lying?



It is incredible the number of people who still believe that they can 'tell' when someone is lying simply by assessing the person's body language. While many research studies on communication have demonstrated that body language is a crucial element in how we communicate, other studies have shown that people are far worse at spotting liars based on body language than they realise.

One study showed that the average adult can only distinguish truth from falsehood 54 per cent of the time.[1] Research suggests, perhaps surprisingly, that the more confident you are in your ability to detect that someone is lying, the worse you may in fact be.[2]

Commonly held beliefs

Some of the commonly held beliefs about body language include:

- When a child tells a lie, they will often cover their mouth; as adults, they become more sophisticated but may quickly touch near their mouth or nose shortly after having told a lie – akin perhaps to 'speak no evil'.
- Individuals will often touch or try to cover their eyes when lying; attempting perhaps to 'see no evil'.
- People wringing their hands are working hard to hide something.
- People will wriggle or shuffle about, whether standing or sitting down, when telling a lie.
- A person's rate of blinking may increase when they are lying.
- The person may flush when they know they are lying.
- People avert their gaze when lying.

Dangerous

Let me take just one of these commonly held beliefs – the idea that liars cannot look directly into the eyes of another person they are trying to deceive. Were this true, it might lead a judge

to challenge what the person is saying. Research suggests, however, that:

> 'Gaze aversion is not a reliable indicator of deception . . . Evidence that eye movements indicate deception is lacking. Even those authors who suggested that this relationship exists never presented any data supporting their view".[3]

If someone isn't lying what then may be the cause of their averting their eyes? Many reasons are possible such as the person feeling anxious, nervous or stressed; it may be due to their culture or upbringing. If anything, there is a suggestion that people who maintain greater eye contact may be people with some form of personality disorder, psychopathy or are habitual liars.[4] This is because knowing the myth about gaze aversion they may strive to make greater eye contact to convince the listener of the truth of what they are saying.

Rigorous steps

In order to be able to interpret body language, a person would need to undertake certain rigorous steps.

- They would need to obtain a baseline for the individual's behaviour in a number of situations, such as telling the truth, lying, being annoyed and feeling calm.
- They would need to record visually and audibly the entirety of what the person is saying to them.
- They would need to then spend a much longer period of time watching the recording back in an effort to identify the 'micro-expressions' the person reveals as the conversation progresses.

Micro-expressions are the minute facial or bodily ticks that someone will make when their words and feelings are contradictory.[5] The difficulty in reading someone's body language is that people become very good at squashing these expressions so that they take place in a micro-second. Neither is it realistic nor practical to expect to obtain a baseline for a person's behaviour in a hearing or to be able to record them and have the time to watch it back or to pick up on micro-expressions.

An example of when this kind of rigorous analysis is used, and can become a very high predictor of behaviour, is in the work of John Gottman who has a reputed 90 per cent accuracy rate for identifying whether or not married couples will stay together or go on to divorce.[6]

It would never do to give the reason for a decision that 'I had a gut feeling that the witness was lying'. Yet, equally, is it sufficient for a decision-maker to merely state, 'I find Mr X to be an honest witness'?

The relevance for tribunals

As decision-makers, assessing an individual's credibility is often a key factor in reaching our determination. Be wary, therefore, of colleagues who make assertions such as: 'Well, he was obviously lying.' Probe to uncover why they have that view and, if it is based upon a body language myth, challenge them.

Equally, be careful when people refer to simply having a 'gut feeling' about someone. This is very often code for having reached a view based on that person's body language while they gave their evidence. It would never do to give the reason for a decision that 'I had a gut feeling that the witness was lying'. Yet, equally, is it sufficient for a decision-maker to merely state, 'I find Mr X to be an honest witness'?

Decision-makers need to identify what led them to conclude that the person was being honest and thereby credible in their evidence, but without relying upon inappropriate interpretations of body language.

Self-deception

There is also always the possibility that the speaker believes their own narrative, in other words that there is a degree of self-deception. This was highlighted by Sedley LJ who said:

> 'Credibility, in other words, is not necessarily the end of the road: a witness may be credible, honest and mistaken, and never more so than when his evidence concerns things of which he himself may not be conscious.' [7]

For yourself, be wary of jumping to conclusions based on your perception of what an individual's body language implies. Don't change your open-minded, impartial approach simply because a witness is not behaving as you would expect an 'honest' person to behave. Finally, no matter how great your experience, never believe that you are an expert in assessing someone's body language.

. . . be wary of jumping to conclusions based on your perception of what an individual's body language implies. Don't change your open-minded, impartial approach simply because a witness is not behaving as you would expect an 'honest' person to behave

There are other ways to assess a witness's truthfulness, including linguistic analysis – the subject for another article. Readers may be assisted in the meantime by looking at two previous articles written by Andrew Bano on the rational process by which a tribunal can establish the facts of a case and decide the weight to be given to a particular piece of evidence.[8] Also likely to be of interest is Lord Bingham's essay 'The Judge as Juror: The Judicial Determination of Factual Issues'[9] in which the author examines what the judge's factual task involves and how he or she sets about it.

The answer

And finally, in relation to the pictures at the start of this article, body language experts would tell you to look to the smiler's eyes. A genuine smile usually involves the muscles around the eyes as well as those around the mouth – which means it is more likely than not that the photograph on the left is the genuine smile. You can try out more attempts at distinguishing fake and genuine smiles at *www.bbc.co.uk/science/humanbody/mind/surveys/smiles*.

Why did I say that this is only a 'potential' answer? Very simply, because such a distinction can often be very subtle and 10 per cent of people are able to manipulate the muscles around their eyes as well as those around their mouth when smiling.[10]

Leslie Cuthbert sits on the First-tier Tribunal (Mental Health) and Road User Charging Adjudication Tribunal.

[1] Charles F Bond Jr and Bella M DePaulo, 'Accuracy of Deception Judgments', *Personality and Social Psychology Review* 10 (2006): 214–234.

[2] PB Seager and R Wiseman, 'Can the Use of Intuition Improve Lie Detection Accuracy? as noted in PB Seager's 'Detecting Lies: Are You As Good As You Think You Are?' *Forensic Update* 77 (2004): 5–9.

[3] Aldert Vrij, 'Detecting Lies and Deceit', John Wiley and Sons, 2000, pp36–39.

[4] Ibid.

[5] To see just how difficult it is to spot micro-expressions, go to: *www.cio.com/article/facial-expressions-test*.

[6] John M Gottman and Nan Silver, 'The Seven Principles for Making Marriage Work', Three Rivers Press, 1999, pp29–31.

[7] Para 25, *Anya v University of Oxford and Another* [2001] EWCA Civ 405.

[8] *www.judiciary.gov.uk/Resources/JCO/Documents/Tribunals/14%20Establishing%20facts%20-%20Bano.pdf* and *www.judiciary.gov.uk/Resources/JCO/Documents/Tribunals/11%20Finding%20facts%20and%20weighing%20evidence%20Bano.pdf*

[9] 'The Business of Judging: Selected Essays and Speeches', Tom Bingham, Oxford University Press, 2000.

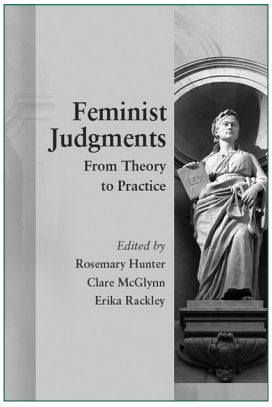
[10] Mary Dunewald, 'The Physiology of Facial Expressions', *Discover*, January 2005.

An opportunity missed

Edward Jacobs suggests that the inquisitorial approach of tribunals – a subject not covered in _Feminist Judgments_ – can redress the imbalance a woman may feel in presenting her case.

Imagine that the gender roles are reversed. There is a Lady Chief Justice and only one man among the Justices of the Supreme Court. The Judicial Appointments Commission is considering ways to make the judiciary more attractive and accessible to men. Would this make any difference to what the law is or how it is applied? The contributors to *Feminist Judgments*[1] have tried to answer that question.

The book is part of the Feminist Judgments Project.[2] The idea originated in Canada and involves feminist scholars writing alternative judgments in leading cases. These judgments take up the bulk of the book. The key features of feminist scholarship are conveniently summarised as: noticing gender implications of supposedly neutral rules; including women in legal discourse and the construction of legal rules; challenging gender bias; reasoning from the reality of women's lives; improving the legal position of women; promoting equality; and drawing on feminist scholarship.



Feminist Judgments: From Theory to Practice, Hart Publishing 2010 (editors Rosemary Hunter, Clare McGlynn and Erika Rackley) £24

Writing judgments

Chapter 3 deals with the art and craft of writing judgments. This chapter is worth reading even if you're not interested in feminist judging. It contains excellent advice on how to write a decision: 'Use short sentences, plain language and clear reasoning to communicate the outcome in a way that persuades its diverse and distinct audiences of the correctness of the author's decision.'

The remainder of the book is devoted to a series of fictitious judgments. Some are presented as additional judgments in real appeals. Others are presented as judgments on assumed appeals. Each judgment is introduced by another scholar, who explains the original case and analyses some of the techniques employed in, and implications of, the feminist judgment that follows. The subject matter is not limited to the obvious targets for feminist scholarship. They cover parenting, property and markets, criminal law and evidence, public law and equality. Sometimes the feminist judgment comes to a different result; sometimes it comes to the same result on different reasoning. The oldest case was decided in 1925.

Any one of these judgments would be worth a review on its own. It would be fascinating to take the original judgments and compare the techniques used and the different consequences that would follow from the divergent approaches. And it would be interesting to try to identify the differences of approach within feminist scholarship as they are apparent in these judgments.

Court-centred

Anyone with a tribunal background will be disappointed, but not surprised, that this book is court-centred. The word 'tribunal' does not appear in the index. The closest any contributor comes to a tribunal is in a supposed appeal to the Court of Appeal from the decision of the Employment Appeal Tribunal in *Del Monte Foods Ltd v Mundon* [1980] ICR 694. Tribunals hear far more cases than the courts. The decisions in social security cases (nearly 500,000 a year) affect far more women than would a right to protest in shops and showrooms, which is the subject of chapter 10. Was it not possible, even in a project that focused on the appellate courts, to find space for at least one case that would have affected the way that tribunals operate?

This may just reflect the blinkered approach of many academics and practitioners to the existence of tribunals. But it may also reflect the extent to which the law applied in tribunals is already consistent with a feminist approach. In *Kerr v Department for Social Development* [2004] 1 WLR 1372, the House of Lords treated public law decision-makers as engaged in a cooperative process with claimants. The overriding objective encourages a cooperative approach to proceedings once the case reaches a court or tribunal. And the inquisitorial approach to a tribunal hearing can redress the imbalance that women may experience in presenting their cases. All these are surely consistent with a feminist approach.

Unreality

But this is to criticise the book for not being what it does not claim to be. Does it succeed on its own terms? For a work by scholars, there are some surprising slips. If AP Herbert (born 1890) really was writing his *Misleading Cases* at the turn of the last century, he was a truly precocious child. And one supposed Lady Justice knows that the court has refused permission to appeal to the House of Lords before she has given her judgment. There is inevitably a degree of unreality in the judgments. They cite research and academic literature uncritically that would have been dissected and subjected to forensic analysis by counsel and the bench. Nor do the contributions always distinguish between feminist views and views of feminists.

Ultimately, the authors of the feminist judgments do not achieve their aim. They pretend to be judges engaged in the development of the law. But that is not how they approach their judgments. The feminist critique is that the law purports to be neutral but is in its substance and operation male-orientated. If there is a case to answer, it is that the law is one-sided. But that does not make the opposite view right or even better. The authors' approach is as partisan and objectionable as the one they criticise. Judges with the responsibility for developing the law, which is what the authors pretend to be, cannot simply argue for an opposing position. If they wanted to be creative rather than just critical, if they wanted to be effective rather than just eloquent, they should have identified and argued for the circumstances in which one approach is more appropriate than another. Or they should have identified a position that reconciles the opposite extremes or, at least, represented an acceptable compromise between them.

Constructive

I must now take my own advice and be constructive rather than just critical. By ignoring tribunals, the authors have missed a glorious opportunity to test their hypothesis. About 40 per cent of tribunal office-holders are women. That is well ahead of most other sections of the judiciary; only the Principal Registry of the Family Division comes close. Not all the women who hold office in tribunals are necessarily feminist. But statistically the feminists are more likely to be found there than in the courts. If the feminist perspective does really make a difference to what the law is and how it is applied, the best place to look for evidence of it is in the decisions made by tribunals. A suitable research project should be able to identify whether gender really does have the effect that the contributors claim. And if there is a difference, it is one that affects the everyday lives of many more women than the decisions discussed in this book.

Judge Edward Jacobs sits in the Administrative Appeals Chamber of the Upper Tribunal.

[1] Hart Publishing 2010 (editors Rosemary Hunter, Clare McGlynn and Erika Rackley)

[2] See *www.kent.ac.uk/law/fjp*

2013 to see increased use of e-learning

In his previous article in the spring issue, *Jeremy Cooper* provided an outline of the structure and the strategy of the new Judicial College. Here, he provides a further update on the activities of the college's work with tribunals during the first half of 2012.

During 2011–12, the Judicial College delivered 51 residential courses and 330 non-residential courses (including evening meetings) to judicial office-holders in tribunals. This equates to the provision of more than 13,000 training days to individual office-holders. The great majority of training provided for tribunal judges and members is delivered within individual jurisdictions, in line with the requirements of Chamber Presidents. But the College Board also believes that there should be space within our overall training programmes to deliver some more imaginative, generic types of training that cut across the jurisdictional divide.

Generic training

Accordingly, in 2013, the college will pilot some new approaches to generic training at both pre-induction and advanced level. The pre-induction course will be the first to be delivered exclusively by e-learning and will aim to provide all newly appointed judicial office-holders with a medley of advice and support to help them settle into their new roles. The advanced course – which will also include some e-learning elements – will be piloted for judges of some experience, and will cover such topics as assessing the credibility and reliability of evidence including the evidence of children and other vulnerable witnesses; dealing with unexpected and high-conflict situations in courts and tribunals; oral and written delivery of decisions; making the best use of interpreters in courts and tribunals; judicial conduct and ethics and the general management of judicial life.

DVDs

Two bespoke DVDs have been produced within the college in the past months, to be used for multiple purposes in tribunal training. The first DVD is a lecture by Mark Hinchliffe, in which he explores various ways in which diversity and fair treatment issues can be woven into substantive training modules. The second, produced by a team of doctors and judges based in the First-tier Tribunal (Mental Health), examines ways of reducing risks of violence in the hearing room.

The second [DVD], produced by a team of doctors and judges . . . , examines ways of reducing risks of violence in the hearing room.

There have been 10 recorded violent incidents in the past two years on panel members in the mental health jurisdiction, as well as another nine incidents of actual aggression and 13 incidents of threatening behaviour that were not reported. In the Social Entitlement Chamber, judges have panic buttons to alert security staff and interconnecting doors to other tribunal rooms, providing a safe escape route to the next room in an emergency, and the DVD could be of benefit to other tribunal jurisdictions, where panels may also be exposed to potential safety risks with little offered to them by way of additional protection or security.

Learning management system

Autumn 2012 will see the launch of the new Leaning Management System (LMS). The intention is that all HMCTS judicial office-holders will be able to transfer seamlessly between the LMS and the new password-protected judicial intranet. Initial training is due to begin at the end of August 2012 with the

eventual aim of fully using the system for the administration of college courses as well as for the delivery of all online training. Eventually tutors will be able to place all their learning materials on the LMS, for course participants to access and download.

News of the work of the college visitors, new courses, guest speakers and so forth will also be made available on the LMS. Most important of all, every judicial office-holder will be given a personalised password, which will enable them to access the LMS online from a computer anywhere in the world. Further technical development work will continue during the autumn, where the main online booking system and the course evaluation mechanisms will be configured to the LMS. In addition, exploratory work will be undertaken, working with Ministry of Justice Library Services, on the feasibility of seamless integration with the eLis library, together with a range of other publications.

The LMS will also house its own international section which will provide extensive information about our international activities, exchange programmes and the visitors we regularly receive from all parts of the globe. Finally, the college is also in the process of acquiring from the Academy of European Law, which is based in Trier in Germany, an e-learning package (in English) on the law and institutions of the European Union which we hope to make available to all the judicial office-holders whom the college serves.

Developing further training programmes for senior judges in leadership and management skills is high on the college agenda for the coming year…

Course design

The college's education and development advisers have recently delivered, in collaboration with tribunal training leads in the mental health and immigration and asylum jurisdictions, a new course focused on the art of course design and delivery, which was very well received. The participants were all experienced judicial trainers. The course will be repeated on several occasions throughout 2012 and 2013 and offered across all jurisdictions. A further course will be available as an introduction to training methods and techniques, including work on group dynamics, for all new college trainers. The education and development advisers have also designed and delivered a course specifically for judges with management responsibilities, in the immigration and asylum jurisdictions, on the topic of stress management. Developing further training programmes for senior judges in leadership and management skills is high on the college agenda for the coming year, and has been identified by the Judicial Executive Board, which is chaired by the Lord Chief Justice, as a future priority.

Putting the user first

Earlier this year, the college organised in central London a one-day seminar on the theme 'Putting the User First: the Tribunal Experience'. The seminar was attended by around 30 senior tribunal judicial office-holders (judges and members) from a wide range of jurisdictions. It was designed to return to the core origins of the concept of the tribunal in the United Kingdom and to explore the evidence base for the assertion that tribunals 'put the user first'. When delivering his report on tribunal reform in 2001, Sir Andrew Leggatt had emphasised the following message:

> 'It should never be forgotten that tribunals exist for users, and not the other way round. No matter how good tribunals may be, they do not fulfil their function unless they are accessible by the people who want to use them, and unless the users receive the help they need to prepare and present their cases.'[1]

The stated aim of the seminar was:

> 'To allow a group of experienced tribunal judges and members from a variety of different jurisdictions to explore the procedures, rules, techniques and behaviours that should ensure that the focus of a tribunal is firmly on the user. Such a focus lies at the heart of the concept of a tribunal's jurisprudence that is distinct from that of a court.'

The participants' intention was two-fold: to test how tribunals seek to place the user first, in any given case; and to establish to what extent they succeed in this venture. Following a full day of intense debate, the organisers of the seminar are in the process of writing an article on this topic for the *Civil Justice Quarterly*, which they hope will be published later this year. A number of shorter articles arising from the seminar are being commissioned for this journal in the course of 2013, starting with a piece on multi-jurisdictional hearing rooms in the autumn 2012 issue.

Reason-writing

It is part of the college strategy that we will 'promote awareness of the college's work among judicial office-holders and in the wider community'. Tribunals have more than 25 separate jurisdictions, all within the college remit. They each provide a range of training programmes as appropriate to their jurisdictional set of requirements. While the principle of jurisdictional autonomy in the design and delivery of training materials is established as the most appropriate method to provide training in tribunals, we are also enjoined to disseminate and share best practice in such a way that, as a college, we all learn from one another. It also makes financial and organisational sense to share what is good, and thereby avoid unnecessary repetition of core materials once they have been tried, tested and benchmarked for quality.

The Tribunals Committee has considered how best to disseminate good practice in line with the above principles. In light of this discussion, I have been given the task, as Director of Training for Tribunals, to develop a workbook of generic training modules covering a range of judgecraft areas, showcasing best practice including modules on such issues as team working, fact-finding, questioning techniques, and assessing credibility. The first theme to be covered in the workbook will be reason-writing.

Academic programme

A key component of the college strategy is to develop a parallel academic programme to allow judicial office-holders to widen their intellectual horizons in the company of distinguished speakers and teachers on themes related to their work. To this end, the college will be organising a series of four lectures to be delivered in London, Cardiff, Manchester and Oxford in the course of 2013, on the theme 'Being a Judge in the Modern World'. We are delighted that the Lord Chief Justice, Lord Judge, Lord Carnwath and Lord Justice Leveson have each agreed to deliver one of the lectures. The lectures will be open to all HMCTS judicial office-holders on a first-come first-served basis. We hope to announce details of dates and venues later this year.

A key component of the college strategy is to develop a parallel academic programme to allow judicial office-holders to widen their intellectual horizons . . .

Evaluation

Finally it should be noted that following an extensive consultation process, the college has agreed a common evaluation strategy which we will be applying to all our training programmes. An article on this topic will also appear in the autumn issue.

Professor Judge Jeremy Cooper is Director of Training (Tribunals) at the Judicial College.

[1] *Tribunals for Users*, Sir Andrew Leggatt, March 2001, page 6.

Efficiencies help improve decision-making

John Aitken **describes an attempt in the Special Educational Needs and Disability (SEND) jurisdiction of his tribunal to bring initial decision-makers and tribunal judges and staff together to think of ways they can improve the processes for claimants.**

In 2011, the Administrative Justice and Tribunals Council issued an important report entitled *Right First Time*[1], which highlighted the waste of public money and poor service that was sometimes present in initial decision-making. The conclusion was that practical steps should be taken by tribunals to ensure that poor decisions and service by initial decision-makers were identified and eradicated.

While pointing out that the departments concerned must take the lead in improving quality, the report rejected the notion that this was a problem to be left only to the department concerned and identified that the tribunals ended up with a heavy share of the financial burden for such failures.

The notion of 'polluter pays' was the ultimate conclusion of the report, suggesting that only in this way could behaviour be sufficiently improved.

Their formal recommendation was that we should highlight situations in our decisions where cases exhibit serious systemic problems, and those issues should be highlighted in annual reports. A key aspect of such a system is ensuring that tribunals decisions can effectively be used as a mark of the quality of the original decision taken.

Trial

The SEND jurisdiction of the Health Education and Social Care Chamber of the First-tier Tribunal has taken a radical approach to improving the usefulness of tribunal decisions in raising the awareness of the original decision-maker. A trial has been conducted under the auspices of the 'lean' system – which emulates good production practice by focusing resources on improving the experience of the user (or customer). Some readers may be familiar with the effects of lean programmes, most evident in the early stages by walls of tribunal offices covered in diagrams and timelines adorned with graffiti.

The lack of knowledge among initial decision-makers of how and why the tribunal goes about its business was a major revelation . . .

In adapting this system for our own use, and recognising that a tribunal is not, to a user, an entirely separate part of the journey they may be on to obtain a correct decision, the administrative team decided to experiment with joining the decision-makers and bodies representing users in an analysis of the entire process, rather than simply identifying weaknesses and potential improvements which might be within the direct control of the tribunal.

Surprising

The initial results are very encouraging and at times surprising. The lack of knowledge among initial decision-makers of how and why the tribunal goes about its business was a major revelation and the opportunity to educate them about the processes seen as a potentially major improvement.

To give an example, in some special educational needs cases a statutory assessment of a child's needs is sought, and when refused by the local authority, that decision appealed to the tribunal. It was discovered that, if the parents disagreed with the assessment, the local authority would review their decision, but only after the period of the parent's right to appeal had ended.

Consequently, the parents had to appeal to protect their position, but in many cases the review result meant that the appeal itself was a waste of time – for the parents in preparing and filing it, the tribunal in registering it and issuing directions, and the local authority in complying with those directions.

Here, until the processes of both the decision-makers and the tribunal had been laid out, no one had thought to ensure that such a waste of effort was avoided. In future, those local authorities involved understand that it is better to make an initial indication of what their decision will be, then review if there is a dispute, before issuing a final decision.

As well as saving time and money, in keeping with *Right First Time* it will also produce a more accurate reflection of the proportion of cases in which a local authority truly gets the decision right or wrong.

Further

The changes are, however, likely to go much further. Everyone who took part agreed that the length of time taken by SEND appeals led to multiple requests for additional evidence, some simply because of the passage of time and its effect upon a child, meaning that the tribunal often made a decision on an entirely different basis to that of the original decision-maker.

Arguably, it would be unfair to apply a 'polluter pays' requirement in such circumstances.

A quicker decision-making process would lead to a more accurate assessment of the value of the initial decision and review process and it was agreed that reducing the tribunal's target time of dealing with cases from 22 weeks to around half of that was to be a priority. A further advantage to this approach would be that cases would be likely to be less complex.

Plainly, some cases will still require relevant and previously unseen additional evidence, and this may cause problems in a shorter case timetable.

Plainly, some cases will still require relevant and previously unseen additional evidence, and this may cause problems in a shorter case timetable.

The solution seems to be to have the local authority undertake to review the decision, with the benefit of the new evidence, and issue a new decision within a short time. A new right of appeal will arise if that further decision of the local authority is not accepted.

Whether this route will be by inviting parents to withdraw until a new decision is issued, or the appeal stayed if that is not agreed, is something upon which careful consultation will be required. It will be the aim of the tribunal, however, to ensure that, if a case is stayed for a further decision, that it could still be dealt with within the same timeframe.

Conclusion

The 'lean' initiative within the SEND jurisdiction allowed us to explore possible efficiencies and has had a very human benefit for users lurking in its midst.

Judge John Aitken is Deputy Chamber President of the Health Education and Social Care Chamber of the First-tier Tribunal.

[1] *http://ajtc.justice.gov.uk/docs/AJTC_Right_first_time_web(7).pdf* See also *Tribunals* winter 2011 issue, page 7.

AT FOREFRONT OF SCRUTINY

The work of the Immigration and Asylum Chamber of the First-tier Tribunal is often high-profile. *Michael Clements* describes some of the characteristics of the work.

THE FUNCTION of the Immigration and Asylum Chamber of the First-tier Tribunal is to hear appeals from immigration decisions made by UK Border Agency officials. Further onward appeal lies to the Upper Tribunal and thence the Court of Appeal.

The immigration jurisdiction is a young one, reflecting the huge growth in international population mobility. Immigration adjudicators were originally civil servants within the Home Office, often holding no legal qualification. Since that time, however, the development of a body of immigration jurisprudence has led to the formation of an independent judiciary, a fact reflected in the change of title to that of judge. There are around 500 salaried and fee-paid judges. Most are drawn from private practice; all are selected by competition. Many also sit in other jurisdictions – in the courts as recorders or deputy district judges or in other tribunal jurisdictions, including the Upper Tribunal.

Judges are encouraged to take an interest in the better administration of the business . . .

Range

Cases are heard at 10 hearing centres throughout the country from Scotland to south Wales. The two largest are the London centres at Hatton Cross, with 26 hearing rooms and satellites, and Taylor House with 25 courts. On any given day, hearings are taking place in 105 hearing rooms across the country. The work covers a broad spectrum. A judge's daily list may include appeals by asylum seekers from any part of the world; applications by family members claiming an entitlement to settle in the UK under the Immigration Rules or European Economic Area regulations; or appeals by those convicted of serious crimes seeking to avoid deportation to their countries of origin.

The work is also at the forefront of public scrutiny, and is often high-profile. The majority of appeals involve points arising under international conventions, including the European Convention on Human Rights, and domestic law. Much of the development of human rights law stems from immigration cases.

Interpreters

The vast majority of hearings are conducted through interpreters. A significant minority of appellants are self-representing. Many are very unfamiliar with life and customs in the UK and are often extremely anxious. All decisions have to be typed and promulgated in writing. Each hour of hearing requires on average some three hours of preparation, dictation and checking.

Training

The Immigration and Asylum Chamber, encompassing the First-tier and Upper Tribunals, has a full training and development programme focusing on the important issues of judgecraft – for example, dealing with self-represented parties – as well as with both specialist and routine training in the law and the writing of decisions and welfare and career development schemes. Judges are encouraged to take an interest in the better administration of the business and to engage with administrative colleagues, both through consultative committees and professional association.

With the increasing and welcome bringing together of the judicial family within HMCTS, there is a lot to be learned by courts and tribunals in the exchange of knowledge and expertise.

Michael Clements is President of the First-tier Tribunal, Immigration and Asylum Chamber.

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 College, although the views expressed are not necessarily those of the College.

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