JUDICIAL COLLEGE

TRIBUNALS
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WINTER 2011
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Leadership through lively **DISCUSSION**

Following his recent appointment as Chief Social Security and Child Support Commissioner for Northern Ireland, Kenny Mullan has decided to resign from his position as chairman of our editorial board. We would like to record here our indebtedness to Kenny for his service to the journal over many years and to wish him well in his new post.

Kenny joined the editorial board in July 2007. In 2009, he became board chairman. Under his leadership the board achieved a great deal in a short space of time. Democratic in approach, thorough and diligent, Kenny maintained an atmosphere of lively discussion at editorial meetings, reflecting his own energy and focus. One of his notable achievements was the launch of the e-mail companion to the journal, alerting readers to the contents of each forthcoming issue, and linking to associated material on the web.

Kenny has contributed several important articles to the journal over the years. In 2002, he wrote about the process by which a tribunal finds facts, applies the law to them and arrives at a decision – in which he condensed a great deal of experience into clearly expressed guidance.

In 2008, he assessed the implications of the 2007 Act, managing with admirable dexterity and economy of style to sum up the likely impact of the legislation, and the reform challenges it posed. The year after, he considered how a tribunal should record the reasons for a decision where there have been divergent views and made a series of practical suggestions in a difficult area.

Kenny's involvement with the new Judicial College will continue in his role as special adviser to the Judicial College Board on training issues in Scotland and Northern Ireland. Kenny is succeeded as chairman of the editorial board of this journal by Jeremy Cooper.

Kenny's past articles can be found at *www.judiciary.gov.uk/publications-and-reports/judicial-college.*

Editorial

This winter 2011 issue of the *Tribunals* journal sees the start of a new series on the delegation of judicial functions to staff, often termed 'registrars'. Two articles consider the parameters within which any registrar scheme should operate. On page 2, Catriona Jarvis emphasises the importance of retaining appropriate judicial oversight and, on page 5, Edward Jacobs and Jill Walker describe a well-established and highly evolved scheme in the Administrative Appeals Chamber of the Upper Tribunal.

Employment law remains a politically volatile area with the Government recently announcing its plans for reform. On page 16, Susan Corby describes research that has been taking place on the role of non-legal members in employment rights cases, and which will help inform the intended evaluation, after one year, of judges sitting alone in more cases. Also on the theme of non-legal members, on page 12, David Bleiman considers the continuing professional development of tribunal members and suggests some easy ways of maintaining a reflective approach to one's own style.

On pages 7 and 9, Richard Thomas and Walter Merricks provide an insight into the advisory work of two bodies closely associated with administrative justice, and on page 19 Nick Warren describes the work of the General Regulatory Chamber of the First-tier Tribunal.

Professor Jeremy Cooper

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Support that meets highest STANDARDS

Catriona Jarvis **considers the merits of delegating judicial powers to lawyers and administrators and suggests care in embracing change.**

Change is the constant with which we humans live, the continuum of which we are a part, in our working lives no less than in any other aspect. It follows that change will happen and it may therefore be argued that it is always best to simply embrace it.

I want to suggest here that the embrace be discerning rather than unquestioning, and say, to that extent, as my son put it in a piece of graffiti painted on his bedroom wall: 'Resistance is fertile!'

The particular changes that I have in mind are those that involve the work of judges being done by people who are not judges.

On page 5, in the first of a series of articles on schemes where registrars carry out some judicial tasks, Edward Jacobs and Jill Walker describe the most evolved of those schemes, in the social security field in the Administrative Appeals Chamber. Future issues of the journal will include articles on pilots currently taking place in the Health, Education and Social Care and Social Entitlement Chambers.

While welcoming this informative article (which points out that registrars have also proved especially helpful in mental health, information rights and in the work of special educational needs), I want to sound a note of caution and call for the closest possible scrutiny as we move to consider further changes regarding the allocation of judicial work across tribunals.

. . . a need to be sure that all and any such changes do not adversely affect the independence of the judiciary in its ability to fulfil its tasks . . .

Reserve

My initial reserve is born not out of any 'restrictive practices' approach, but rather stems from a need to be sure that all and any such changes do not adversely affect the independence of the judiciary in its ability to fulfil its tasks, or otherwise compromise our justice system and its users.

Senior President

At times of change it is necessary to scrutinise afresh the role of the judiciary and the role of the administration in respect of the judiciary.

In November 2010, I attended the Senior President's Conference when, unsurprisingly, given the economic climate, there was a great deal of discussion on the best allocation of judicial tasks, as well as other ways in which tribunals might improve the service they deliver, including systemically and operationally.

There was, of course, the now very familiar proposal – at least in the Immigration and Asylum Chamber – of 'front-loading', that is, providing the resources necessary to enable full, fair and high-quality first instance decision-making without delay by administrators, described as Entry Clearance Officers and Home Office case owners.

My working group also suggested, among other things, that there be a further look at the possible wider use of the legally qualified registrar.

Checks and balances

Edward Jacobs explains that under the 2007 Act and the Senior President's practice statement on delegation of functions to staff, legally qualified members of staff at the Administrative Appeals Chamber of the Upper Tribunal are given authority to carry out judicial functions under the Tribunal Procedure (Upper Tribunal) Rules 2008, and examples are given.

Importantly, where a registrar exercises a power, for example the giving of directions or prohibiting disclosure, the parties are given 14 days in which to apply in writing for the decision to be considered afresh by a judge.

While that interlocutory step is both vital and reassuring in terms of checks and balances, it is time consuming, a cause of delay and of cost, so that it may be the case that such a system would not meet with favour, for example in the Immigration and Asylum Chamber where there are already time limits and targets to be met.

Judicial independence

As a touchstone in the search for the vital fine checks and balances that must guide our work on making effective change, we could do worse than recall the Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and Judicial Independence of June 1998 (which of course apply to all Commonwealth countries, including the UK).

These are guidelines on good practice governing relations between the executive, Parliament and the judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the earlier Harare Principles.

These are guidelines on good practice governing relations between the executive, Parliament and the judiciary in the promotion of good governance, the rule of law and human rights . . .

Under section IV, Independence of the Judiciary, the objectives read:

> 'An independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice. The function of the judiciary is to interpret and apply national constitutions and legislation, consistent with international human rights conventions and international law, to the extent permitted by the domestic law of each Commonwealth country.
>
> . . .
>
> (c) Adequate resources should be provided for the judicial system to operate effectively without any undue constraints which may hamper the independence sought.
>
> (d) Interaction, if any, between the executive and the judiciary should not compromise judicial independence.'

Section II, Preserving Judicial Independence, includes the guideline that the judicial appointments process should be designed to guarantee the quality and independence of mind of those selected for appointment at all levels of the process, based on merit. It also states that the judiciary should be provided with sufficient and sustainable funding including supporting staff.

Dutch example

About 10 years ago I was fortunate enough to be among a group of United Kingdom judges from the immigration and asylum jurisdiction who were welcomed by colleagues in the Netherlands, from whom we were able to learn about their legal system and, in particular, how the judiciary then dealt with asylum appeals. What struck us most of all was that the Dutch judges each have a legally

qualified clerk who works with them and who prepares a draft decision for every case that is heard. We UK judges marvelled at this degree of support and began to fantasise as to how such a system of working could help to release us to concentrate on tasks that make the best and most appropriate use of our judicial time, bearing in mind not least the cost of that time to the public purse.

High standards

But how do we ensure that those whom we appoint as members of our supporting staff, in order to delegate to them some of our judicial tasks as opposed to administrative tasks, while retaining appropriate judicial oversight, are the right people for the job and that they are themselves enabled to fulfil those functions to the highest judicial standards that are demanded of us as judges?

What precisely are the duties that are to be constructed around the delegation of powers? How are they to be fulfilled and by whom? How shall we monitor the quality and effectiveness of their work?

Clearly we already have existing examples of delegated powers in a number of UK tribunals. There are judicial assistants to be found in the Court of Appeal and Supreme Court. There are the Dutch judges who each have a legal clerk who even draft their judgments.

No doubt the Court of Justice of the European Union and the European Court of Human Rights will also have relevant models to be examined, as will other common law jurisdictions. We can cast our net as wide as we wish in order to inform our interrogation.

Then the task of identifying and realising the needs of each particular chamber and its users is something that must be done through careful consultation with all concerned.

Tensions

The administrative staff of Her Majesty's Courts and Tribunals Service, of which the registrars and other staff who may come to be delegated powers are members, are required to wear more than one hat at the same time, in that they are tasked with the role of supporting the judiciary, an independent pillar of government, but also answerable to the other pillars.

What precisely are the duties that are to be constructed around the delegation of powers? How are they to be fulfilled and by whom? How shall we monitor the quality and effectiveness of their work?

While it is usual for the effort to be that of a team pulling together to the same end, that is the delivery of high-quality service and decisions to users without undue delay, tensions inevitably arise, including over matters such as how good the quality needs to be and the imposition of targets for delivery of decisions, especially in times of financial crisis and the pressure to implement cost-saving measures, such as that with which we are currently faced.

Conclusion

It is the final paragraph of Edward Jacobs's article that contains what is, in my view, the nub of it.

There he emphasises that the most important duties of registrars are not to be found in the formal delegation of powers by the Senior President, but instead are constructed around that delegation in the context of the needs of the particular chamber, and that they only function properly with the confidence and support of the judges of that chamber, for, in his words, 'the benefit of those for whom the tribunal system ultimately exists: the users'.

Judge Catriona Jarvis sits in the Immigration and Asylum Chamber of the Upper Tribunal.

Expert assistance in an inquisitorial arena

In this, the first in a series of articles looking at jurisdictions in which some judicial tasks have been delegated to registrars, *Edward Jacobs* and *Jill Walker* describe the role of the registrars of the Administrative Appeals Chamber of the Upper Tribunal.

Often a person's true value is found not only in their formal duties but also between the lines of those duties. So it is with the registrars of the Upper Tribunal's Administrative Appeals Chamber (AAC).

The registrars

The AAC inherited its registrars from the Social Security Commissioners. Their role has changed over the years, but their core work remains as advice and research, and their duties are central to the chamber's case management system. Their role arises from the AAC's need to operate in an essentially inquisitorial system that interprets and applies complex legal provisions.

The AAC also has a judicial review jurisdiction which has created new challenges, including the need in certain cases for transfers to the High Court.

Registrars come from a variety of legal backgrounds. All are barristers, solicitors or advocates in the Government Legal Service. All are required to acquire a detailed knowledge of the procedural legislation as well as the substantive law relating to the subject matter dealt with by the First-tier Tribunal Chambers from which appeals lie, and to be experts in social security work.

As a result of the new jurisdictions added by the Tribunals, Courts and Enforcement Act 2007, the AAC now undertakes work previously done by the High Court. Each judicial team dealing with these areas has at least two registrars assigned to it who provide specialist advice and assistance. The registrars have proved especially helpful in areas such as mental health, information rights and the work of special educational needs and disability, which have additional demands and particular requirements – often of exceptional urgency. The AAC also has a judicial review jurisdiction which has created new challenges, including the need in certain cases for transfers to the High Court.

The legal framework

Under the 2007 Act, decisions are taken by judges and other members of the Upper Tribunal. However, section 8 confers on the Senior President of Tribunals the power to delegate functions to staff appointed under section 40(1). He has exercised this power through a practice statement on the delegation of functions to staff. This gives legally qualified staff authority to carry out judicial functions under the Tribunal Procedure (Upper Tribunal) Rules 2008. Examples of delegated powers include exercising general case management powers under rule 5, with limited exceptions; dealing with irregularities; striking out and reinstating proceedings; substituting or adding parties; prohibiting disclosure or publication of documents and information; giving directions and consenting to the withdrawal of a case or its reinstatement.

When the registrar exercises a power, the parties are told they have 14 days in which to apply in writing for that decision to be considered afresh by a judge. This power is conferred by rule 4(3) and is restated in the practice statement. Registrar work of advice and research, and

interlocutory duties and exercising judicial functions are often separate and case-specific. However, they can come together, especially in work on block cases, of which the 'right to reside' block is the largest.

The 'right to reside' block

Since 2004, social security legislation has used the right to reside in the United Kingdom as a condition for entitlement to a number of benefits. This has generated the AAC's largest single block of cases. The decisions are taken by a small number of judges, but the overall management of the block is the responsibility of one registrar and a deputy.

The administrative staff refer all 'right to reside' cases to the registrar on arrival. He maintains a record of the progress of the case and prepares a note for the judge summarising its key features, identifying any relevant issues and setting out the current state of the case law. The judge decides whether or not to give permission to appeal or, if permission has been given by the First-tier Tribunal, what directions to give on the appeal.

All subsequent file movements go through the registrar who acquires an overview of all the cases and can monitor their progress. He provides additional advice, particularly when the submissions are complete and the case is ready for decision. He then summarises the case, including the parties' submissions, and the current state of the case law.

Overseeing

A registrar's oversight is not limited to the cases before the AAC. They are also responsible for monitoring developments in the senior courts and the European Court of Justice, keeping judges informed of those developments and advising on whether cases need to be stayed pending the decisions in those cases.

Assistance

The vast majority of claimants involved in right to reside cases come from other member states of the European Union, mostly from eastern Europe. They seldom have sufficient command of English or the necessary skills to make effective representations on the complex factual and legal issues that may determine the outcome of their cases. Many are not represented. Even some of the representatives may find themselves out of their depth. For these claimants and their advisers, the registrar is able to provide some assistance by issuing directions that set out the issues in a clear and straightforward way and summarise the effect of the relevant case law.

The most important duties of registrars are not to be found in the formal delegation of powers by the Senior President.

For the more important cases, the registrar may be able to help the party obtain legal representation from charitable bodies, such as the Child Poverty Action Group or the Free Representation Unit.

Similar duties are undertaken by other registrars in relation to other aspects of the work of the AAC, but the sheer size and complexity of this block demonstrate the importance of the work of the registrars to the efficiency of the AAC's operation.

Conclusion

The AAC has been fortunate to have the services of its specialist registrars. Their experience shows that the most important duties of registrars are not to be found in the formal delegation of powers by the Senior President. Rather they must be constructed around that delegation in the context of the needs of the particular chamber, with the confidence and support of the judges of the chamber, for the benefit of those for whom the tribunal system ultimately exists: the users.

Judge Edward Jacobs sits in the Upper Tribunal and Jill Walker is the Senior Registrar in the AAC.

SPECTRE OF UNINTENDED CONSEQUENCES

The latest report of the Administrative Justice and Tribunals Council describes a system at risk and requiring continuing independent, evidence-based and user-oriented scrutiny if it is to continue to develop. *Richard Thomas* outlines its contents.

THE SUBJECT MATTER handled by the various parts of the administrative justice system is diverse and important to many citizens. Social welfare, immigration, education and tax all come within the system's definition and remit, and the treatment of the user at the hands of decision-makers, complaint-handlers, ombudsmen and tribunals all have an impact on the public's experience and perception of fairness. The size of the system is significant too. Tribunals are now handling more than 650,000 hearings a year – many more than the courts – with these cases representing only the tip of the iceberg; decision-makers across the UK are making thousands of decisions day after day.

Fair access

At a time of austerity, the administrative justice system will of course undergo its share of cuts and changes. It is essential, however, that any decisions are guided by a number of key considerations. First, equal and fair access to the administrative justice system must be maintained. All members of society, including those most vulnerable to the impact of cuts and changes, must be guaranteed fair treatment when they seek to challenge a decision of the state. Second, government must ensure that decisions taken to achieve cost savings are designed to realise this goal – it is important to avoid false economies and the spectre of unintended consequences looms large. Third, we believe that steps can be taken to simultaneously reduce costs *and* improve the way in which the system functions.

Report

The AJTC's recent report, 'Securing fairness and redress: administrative justice at risk?' seeks to evaluate the current state of the system, identifying areas where there is potential for cost savings and improvements, and also warning of areas where fairness may be jeopardised.

Good laws

The need for good laws to underpin the administrative justice system is evident, as individuals, decision-makers and appellate bodies must share an understanding of the rules that govern entitlements in order for the system to function at all, let alone in a coherent and consistent manner. Laws and associated policy guidelines are often impenetrable to members of the public and even to professionals versed in their use. When laws are overly complex and ambiguous, the inconvenience and cost accumulated creates a burden for all involved, and ultimately calls into question the credibility of the system itself.

'Right first time'

The need for decisions to be 'right first time' is closely tied to the need for a 'right first time' culture to develop across the public sector. The AJTC's report of the same name was the subject of an article in the summer 2011 issue of this journal. Not only can such an approach be justified on the grounds of good public administration, but also of cost.

Representation

The need for help, advice and representation in pursuing redress was considered by Leggatt in 2001. He came to the conclusion that while most tribunal users should be able to represent themselves at tribunal hearings, individuals would need appropriate support and advice in

advance of doing so. Where the subject matter is particularly complex, or the user particularly vulnerable, representation before a tribunal might remain necessary. The AJTC takes the view that these basic requirements still hold true.

However, proposals contained in the Legal Aid, Sentencing and Punishment of Offenders Bill will remove from the scope of legal aid most administrative justice matters. The lack of early advice and help may cause some people's problems to escalate over time, with greater support necessary as a consequence. Others will manage to challenge decisions on their own, but will struggle to participate properly in tribunal or other proceedings, costing the system time and money as cases take longer to process. In addition, weak claims will no longer be discouraged, with additional costs as a result. If the Government pursues its proposals, equal access to justice will only survive if the system learns to make allowances for unadvised litigants, and encourages new ways of promoting public legal education. For these reasons, the report advocates close monitoring of the actual impact of the reforms on individuals, families and the operational efficiency of tribunals.

It is of paramount importance that the distinctive features of tribunals are understood and protected . . .

Reforms

The reforms to the tribunals system enacted under the 2007 Act are rightly applauded as a success story. Similarly, the more recent work of tribunal administrators and judges in responding to the unprecedented levels of appeals in a number of jurisdictions is hugely to their credit. However, as the tribunals system seeks to cope with high demand, it is essential that fair treatment of tribunal users is not compromised.

Long delays in hearing cases have a disproportionate impact on the individual making an appeal when compared to the impact on the state. When added to the prospect of charging tribunal users fees for making an appeal, this lack of equality between the state and the individual causes us considerable concern. Tribunal policy-makers and managers must take steps to ensure that processes and procedures do not constitute a barrier to justice.

The recent HMCTS merger was viewed with some concern by the AJTC and it was feared that merging the administration of tribunals and courts would risk undoing the achievements of recent years. It is of paramount importance that the distinctive features of tribunals are understood and protected, and the report urges vigilance in this area. A further concern is that little consideration appears to have been given to those tribunals not under the HMCTS umbrella.

Wider strategy

The AJTC actively promotes the concept of an administrative justice 'system', and believes that stronger efforts must be taken by those working within this system to ensure that disputes are treated in a coherent and consistent fashion. The report suggests that there is scope to understand better the varied nature of disputes, and to be more imaginative in matching the complaint to an appropriate dispute resolution mechanism. Done correctly, this could reduce the number of cases that proceed to tribunals or ombudsmen, reducing delays and costs for all concerned.

The future of the AJTC is now in considerable doubt, but for as long as we remain in existence we will strive to provide constructive comment and input. As part of this, we have produced this report to describe a system which we believe to be at risk – and which, if it is to develop satisfactorily, needs the kind of systematic, independent, evidence-based and user-oriented scrutiny that the AJTC has provided to date.

Richard Thomas chairs the Administrative Justice and Tribunals Council.

Short life that may leave lasting LEGACY

Walter Merricks **believes that the work conducted in the Office of the Health Professions Adjudicator's short life may turn out to have been the catalyst for a wider focus on the functioning of professional disciplinary systems.**

The Office of the Health Professions Adjudicator (OHPA), established under the Health and Social Care Act 2008, will have had a short life by the time it is formally abolished. But despite never having become properly active or exercised any of its powers, there is a good chance that its impact and its legacy of ideas will live on well past its demise. It has played a significant part in shining a spotlight on an understudied area of the administrative justice system – the world of professional regulatory and disciplinary tribunals. Sadly, the also doomed Administrative Justice and Tribunals Council was never able to bring this wide field within its field of remit.

The OHPA background

In her inquiry report into the serial killer doctor, Harold Shipman, Dame Janet Smith noted that the doctors' disciplinary system, under which the General Medical Council (GMC) was responsible both for presenting cases before its fitness to practise panels and also appointing those panels, was unsatisfactory, and she recommended a separation of these functions and a system of independent adjudication. So the system that was provided for under the 2008 Act would have assured patients and the public that their protection from doctors not fit to practise (either through incompetence, criminal or unethical behaviour, or incapacity or ill health) was in the hands of a wholly independent tribunal. The Act also provided for the system to be extended to cover cases before other health professional regulators, such as opticians, dentists, nurses and midwives. Having been established in January 2010, we were put on hold only six months later, and the final decision taken that we should be abolished in December 2010.

We could see that there were very substantial savings to be made in applying these principles and techniques.

Economies of scale

However, as we examined the systems of adjudication we were to take over, we were surprised how far they had failed to keep up with developments in the mainstream administration of justice. In the civil and criminal courts and in tribunals, the emphasis of recent reforms has been on effective judicial case management, and proportionality of cost and case length. We could see that there were very substantial savings to be made in applying these principles and techniques. Not only would the financial burden on regulators (which is of course passed on to registrant professionals) be reduced, but cases could be speeded up for the benefit of complainants, witnesses, employers and registrants. In due course there would have been significant economies of scale in a single administration, back office system, a central panel of tribunal members and hearing room estate. This would have followed the Government's own programme for rationalising, coordinating and reducing the cost of tribunals through the Tribunals Service, with which we had explored the possibility of partnership arrangements.

Adversarial

The problems we identified were common across most of the regulatory panel systems, but were at their most obvious in the GMC.

While the system was in theory an investigation into the fitness to practise of doctors, it was in practice highly adversarial. Many doctors have professional defence cover and in proceedings before GMC panels they are represented by barristers, many of whom started their careers in criminal defence work. Naturally the GMC itself has to instruct counsel to present the case, and in important cases QCs will be instructed on both sides. Over the years the jurisdiction had begun more and more to take on features of criminal procedure. One of the most regularly seen and relied on publications in hearing rooms was *Archbold: Criminal Pleading Evidence and Practice*. Yet there was no effective system of pre-hearing directions, disclosure of evidence, or judicial case management. None of the reforms to criminal, civil or tribunal procedure had seeped through to this jurisdiction. Those who work in the mainstream tribunal or court system would be surprised at many of the current features of fitness to practise hearings. The average length of hearings has mushroomed with over half the hearing time spent *in camera*.

The panel system resembles tribunals in many ways, but there are no full-time salaried members and no hierarchy of senior chairs or presidents. That has left the panel members somewhat adrift.

Hearings

The hearings are conducted by panel members, of whom at least one is a medical practitioner and the others are lay members. These have been appointed by the GMC on the recommendation of the Appointments Commission. Those who chair the panels may be doctors or lay members. While some of the lay members happen to be lawyers, the notion of legally qualified chairs – almost universally adopted in the Tribunals Service – has not been adopted. Instead, panels are attended and advised by legal assessors, who adopt a role similar to that of a justices' clerk. Neither panel members nor assessors play any role prior to the hearing, even in those cases expected to last a number of weeks. Moreover, allegations have to be read out to the panel (in substantial cases this can last a day), and all witness evidence must be given orally, even if it is not disputed. The system for entering what in the criminal process would be called a guilty plea – where a doctor accepted the allegations made – for a rapid disposal, did not exist or was hardly ever used. Days or even weeks can be spent by panels hearing undisputed evidence.

The panel system resembles tribunals in many ways, but there are no full-time salaried members and no hierarchy of senior chairs or presidents. That has left the panel members somewhat adrift. They are employed by and remunerated by the regulator to be independent adjudicators, but because the regulator is a party to the proceedings, communications between the panellists and the regulator responsible for the system are extremely limited for fear of undue or improper influence. Poorly performing chairs or panellists cannot easily be called to account. There is no judicial leadership that can exercise an appropriate influence to bring about overall or individual improvements in performance.

OHPA reform programme

Accordingly OHPA drew up a list of policy proposals. In outline these would have provided for:

- The appointment of a tribunal President to take an active leadership role in ensuring consistency and quality case handling and in decision making.
- More effective, consistent training and appraisal systems for panellists.
- The employment of legally qualified chairs, some on a full-time basis, thus dispensing with the legal assessor role.
- Procedural rules setting an overriding objective

of proportionate, expeditious and economical dispute resolution.

- Active pre-hearing case management with clear directions given to the parties.
- Oral hearings or statements only where necessary to resolve matters that are disputed; greater acceptance of written evidence.
- Limiting the number of allegations to those required for a fair and just determination.
- A costs regime to provide a discipline on the parties to cooperate with effective hearing management and to comply with directions.

The OHPA team envisaged that these reforms would result in a major speeding up in the disposal of cases and a very substantial reduction in the costs incurred by the regulator in adjudication costs and by the parties in the costs of legal representation.

GMC reform programme

When the Government announced its decision to abolish the OHPA, it also stated that the GMC intended to reform its own procedures. The GMC has indeed taken a number of significant steps to adopt large parts of the OHPA programme. It has consulted on proposals to include a greater discussion with doctors with a view to encouraging them to accept proposed sanctions without a public panel hearing. More significantly it plans to establish an adjudication function, operationally separate from the rest of the GMC, to be known as the Medical Practitioners Tribunal Service (MPTS). This body is to be headed by a legally and judicially qualified chair who is expected to have significant tribunal experience. The proposals include legally qualified chairs for some or all cases, pre-hearing case management by chairs, disposal of cases by agreed orders. The MPTS would manage the tribunal function, appoint tribunal members and develop appropriate training for them, maintaining a strict separation from those parts of the GMC responsible for investigating and presenting allegations of unfitness. The GMC is also seeking a right to appeal against decisions of the MPTS.

Healthcare regulators

The Council for Healthcare Regulatory Excellence (CHRE) – a body that has an overarching oversight of all the health regulators – has also identified that there is considerable scope for and a willingness to change – partly driven by the increasing financial costs of adjudication and increasing caseloads. It calls for greater consistency between regulators, joint training of panellists, better use of pre-hearing case management, shared use of hearing rooms, harmonised sanctions, a shared pool of panellists and shared guidance on indicative sanctions for common areas of professional misconduct.

The individual tribunals do not see themselves as part of any larger whole, with any lessons to learn from each other.

Other professions, regulators and tribunals

What might a review of all major professional disciplinary tribunal systems have revealed, had the AJTC had the time and space to conduct one?

First, any such attempt would involve breaking new ground. An early task would be to compile a list. The individual tribunals do not see themselves as part of any larger whole, with any lessons to learn from each other. They see themselves as more closely linked to the regulatory system of each profession. There is virtually no contact across professions between them. They rarely share hearing rooms, member training or administration. Against this however, many of the lay members are to be seen having multiple roles on many of the tribunals or regulatory bodies. Within HM Courts and Tribunal Service such 'cross-ticketing' is a growing, albeit semi-structured phenomenon.

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A personal exercise plan in 'judgecraft'

Tribunal members bring a range of specialist skills and experience. But don't rest on your laurels. *David Bleiman* suggests ways of taking charge of your own professional development.

You may be a new tribunal member, keen to develop your effectiveness, or an experienced member wanting to refresh your skills. Whatever your personal circumstances, with little expenditure beyond your own intellectual energies, you may readily take charge of your own professional development. This article suggests a simple, methodical approach to continuing professional development (CPD), which you may customise to suit your own needs.

Tribunal competences

Start by familiarising yourself with the tribunal competences which are expected of all tribunal members. These cover the following five areas:

A Knowledge and values.

B Communication.

C Conduct of cases.

D Evidence.

E Decision-making.

Designed to set the benchmark for training and appraisal, this competence framework is equally suitable as a personal development yardstick.

Example

Let us take competence D – Evidence – as an example. All members are expected to be able to undertake necessary preparatory work for all cases, identify and assimilate relevant facts and expert evidence and ask questions concerning material issues. Performance indicators are provided for each competence. One such indicator for Evidence is 'Asks questions in such a way as to elicit evidence relevant to the issues'. So the tribunal member needs to ask: How good am I at asking questions in the right way to obtain evidence from witnesses which is relevant to the issues at stake in the case? How can I improve my questioning skills? How will I know when I have achieved the improvement?

This is just a small example. Look over the competence framework and assess your own strengths and development needs in a systematic way. What you will develop is what is often called a personal development plan.

Widely applicable skills

These competences – sometimes referred to as judgecraft skills – can be applied across many areas of your professional life. This is important, as many tribunal members sit infrequently and in only one jurisdiction. It may seem disproportionate to devote significant time to developing your tribunal skills, but remember that development in another professional role is likely to be helpful, at least in part. Working up your tribunal competences will likewise assist you in other areas of your professional life, especially in other adjudication work.

Most appointments procedures use a form of competence framework to assess candidates. The reflective tribunal member will be well equipped with examples relevant to other roles involving analysing, questioning, team deliberation, reasoning and reaching and explaining decisions.

Your own approach

Each profession has its own approach to professional development. Whereas induction, training and mentoring are led by employers or professional bodies, the emphasis in continuing professional development is on individual responsibility. The Chartered Institute of

Personnel and Development describes it as 'a combination of approaches, ideas and techniques that will help you manage your own learning and growth' – with the focus firmly on results. It goes on to explain that one size doesn't fit all and it is instead a question of setting yourself objectives for development and then charting your progress towards achieving them. 'Our approach,' it continues 'is based on reflection that focuses on outcomes and results, rather than "time spent" or "things done".'[1]

Training resources in tribunals are limited and, while induction of new tribunal members is universal, appraisal and mentoring may not yet be. Even where there is plenty of training, taking control of your own development will meet your own individual needs better than relying solely on formal training.

Key resources

You will have access to the legislation and case law specific to your own jurisdiction. If you need to range more widely, a good source is the British and Irish Legal Information Institute (BAILII).[2]

This aide memoire will provide a bank of examples which will assist in appraisals and interviews.

The Equal Treatment Bench Book is a comprehensive handbook on the wide range of diversity issues which can arise in the daily work of tribunals. An accessible starting point is the summary version, Fairness in Courts and Tribunals.[3]

For a broad overview of the principles which we should all strive to achieve in our tribunal work, see Principles for Administrative Justice,[4] issued by the Administrative Justice and Tribunals Council.

Articles on key skills

A selection of articles on judgecraft skills from this journal is available online. Sticking with our example of Evidence, there have been articles about reading the papers, listening and asking questions, weighing the evidence, assessing credibility, expert evidence and effective fact-finding. Over the years, each of the five competences has been covered, often from a variety of enlightening viewpoints.

Do make good use of this resource. Set about your reading as an active process, as a reflective practitioner. When you read an article, take time to reflect on what the author says which makes you think about your own practice and note any things you will now do differently. Or if not, why not? Engage with the issues, take any opportunity to discuss with colleagues any points you find instructive, difficult or controversial.

Your personal record

Do keep some record of the events, incidents and experiences from which you have learnt. This aide memoire will provide a bank of examples which will assist in appraisals and interviews. The format is of no consequence. I write my own reflections on scraps of paper or on my computer, simply putting a date on each. The key points to note are what I learnt, what I did well and what I will do differently in future. I pop these notes into a file at home and get the file out from time to time to see how I am getting on. There is nothing onerous involved.

Keep in mind the importance of confidentiality. Your reflections on a particular case are likely to be for your own eyes only and should not be written in a way which identifies the parties or your fellow tribunal members.

How did it go?

Sometimes you will come away from a hearing with a good feeling about how you and your colleagues worked as a team. There will be other days when you are left wondering how you might have acted differently to handle problems which beset the hearing. If we are honest, we all make mistakes. The trick is not to deny

error but to reflect on and learn from our own mistakes and those of others. They provide the best learning opportunities. It is also valuable to reflect on what you did well, to reinforce your own skills, build your confidence and assemble evidence for your personal record.

Keeping the tribunal competences in mind, try to do some reflection after every hearing. If something has gone seriously wrong, you may feel motivated to do some research, for example to look up the relevant case law and work out how the problem might have been better handled. As an example of this, I often see full transcripts of previous hearings, which form part of the bundle of papers for review hearings. When I first saw a transcript of a hearing in which I had been on the panel, I was presented with an opportunity, which came as a bit of a surprise, to study my own questions to the parties. I read some sharp and intelligent questioning, which helped to elicit key pieces of information necessary to our decision-making, but also some rambling prose. This was a superb occasion for reflection on how to improve my questioning skills.

I also observed a striking example of the benefits of informality in the approach of a Traffic Commissioner questioning an elderly man.

Opportunities to observe

One of the best ways to enhance your understanding of judgecraft skills is to watch how others do it. All courts and most tribunals – up to the Supreme Court – are open to the public, and most have a welcoming approach. The judgecraft skills required in tribunals and courts have much in common, and some striking differences – notably that we have to give reasons for our decisions, while a jury does not. But it is not the case that everything in a court is adversarial while all that occurs in a tribunal is inquisitorial.

It is possible to learn by comparing and contrasting. You will understand better the procedures and style of your own tribunal by seeing how it is done elsewhere. You will see some memorable examples of practice, good and not so good. You will certainly see some things which you will want to emulate.

Take opportunities which present themselves, using time which would otherwise be idle, such as when you find yourself finishing early with an afternoon to kill before your train. Every city and town has courts and tribunals going on every day of the week. You don't need to see the whole case – a snapshot of an hour or two will be a useful learning experience. Watch the behaviour of the judge or tribunal members and see what you can learn.

Examples

Here is one example of my notes of how a High Court judge put a witness at his ease:

> 'Mr M, please make yourself comfortable. You can stand or you can sit. Make sure that there's a glass of water in front of you. That microphone in front of you will not amplify your voice, that is simply for recording your evidence, so I am going to have to ask you to try to speak up when you are answering questions.'

No rocket science here, but I can learn from this.

The same judge had also to guide counsel before they prepared their closing submissions. He said:

> 'In this case there are about 20 specific allegations of fraudulent statements. I am going to have to decide whether each of these individual statements was untrue and, in each case, if so whether it was said with fraudulent intent. And in each case, taking into account what the authorities say. So bear this in mind when you make your submissions so that you can bring to bear the

authorities in relation to these questions in respect of each of the incidents.'

This approach helped me to reflect on the interaction between a tribunal and counsel appearing before us. We usually think of litigants in person as needing our help to get their case across. Counsel may be allowed to do their own thing in their own way, interrupted only by some robust questioning and reminders of the time allotted to the case. But here was an example of a judge being transparent about the reasoning tasks which he himself would face, and inviting them to help by guiding them on the best way to focus their submissions.

I also observed a striking example of the benefits of informality in the approach of a Traffic Commissioner questioning an elderly man. The old man, on the witness stand, was struggling to come to terms with an exhibit comprising the documents in front of him. Seeing his difficulty, the Traffic Commissioner stepped down from the Bench and, standing at his shoulder, pointed him to the relevant passages and, in a gentle way, guided him through the documents. This is not something which I will emulate in the tribunal in which I sit! But it was fascinating to observe, it certainly worked in that hearing in that jurisdiction and it gave me an opportunity to reflect on the scope for responsiveness to the particular needs of the parties and for an element of creativity consistent with the interests of justice.

Over to you

My learning needs are different to yours, as are the various experiences which have given me cause for reflection. I hope I have encouraged you to enjoy taking charge of your own professional development and, at little or no cost, to maintain and extend your judgecraft skills. Adequate resources for formal training are both necessary and valuable, but everything I describe here has been done for free.

David Bleiman sits on the Employment Appeal Tribunal and on the Investigating Committee of the Nursing and Midwifery Council.

[1] *www.cipd.co.uk*
[2] *www.bailii.org*
[3] *www.judiciary.gov.uk*
[4] *www.justice.gov.uk/ajtc*

Continued from page 11

Outside it what is remarkable is how many individuals are pursuing careers as almost 'professional lay' members, with full diaries of hearing engagements, earning daily rate fees from a variety of sources.

The standard of proof varies between different tribunals. In healthcare fitness to practise, it was changed from the criminal standard (beyond reasonable doubt) to the civil standard (balance of probabilities). Veterinary surgeons and solicitors however can only be struck off if the evidence reaches the criminal standard, while actuaries and chartered accountants in Scotland are subject to the civil standard. The procedural rules, the sanctions and powers available all differ. Not surprisingly all these professional bodies come within the remit of different government departments – almost a guarantee of lack of coordination.

If the AJTC cannot provide the overview, the individual regulatory bodies do not see any connection, nor do government departments, and the area is ignored by academics, it is perhaps left to the growing cadre of lawyers practising before a number of these disciplinary bodies to interest themselves in these issues. For it is clear that, with the demise of legal aid remuneration, regulatory law is an increasingly attractive and lucrative area of practice. The Association of Regulatory and Disciplinary Lawyers is growing rapidly.

Walter Merricks CBE is chair of the Office of the Health Professions Adjudicator.

'Balance' that adds value to DECISION-MAKING

Susan Corby and *Paul Latreille* **consider the role of non-legal members in employment rights cases and describe recent research into the views of judges and representatives, as well as of the non-legal members themselves.**

What is the role of non-legal members (NLMs) in employment tribunals and the Employment Appeal Tribunal? In what ways do judges think NLMs contribute? What are the views of the NLMs themselves? Do those representing the parties value their presence?

These were some of the questions that we sought to answer in an independent academic study, carried out in 2010–2011 and funded by the Economic and Social Research Council.[1] They are not, however, new questions. The Leggatt report and subsequent white paper questioned the role of NLMs in UK tribunals generally, while the Gibbons review[2] did likewise in relation to the Employment Tribunal. A few months after we started this study, the subject became topical when the Government issued a consultation paper on resolving workplace disputes. This included proposals to enable Employment Tribunal judges to sit without lay members on unfair dismissal cases and to remove Employment Appeal Tribunal NLMs altogether, with reversion to tripartism at the judge's discretion in both instances.

Background

Employment tribunals, which date back to 1964, were constituted on a tripartite basis: a judge and two lay members, one with experience as a representative of employers and one with experience as a representative of employees. In 1975 an appellate body, the Employment Appeal Tribunal, was established and similarly constituted on a tripartite basis.

Over the last 50 years there have been many changes, the most important in this context being that for almost two decades successive governments have empowered employment judges to sit alone in a growing number of specified circumstances. These now include claims for breach of contract and a range of payment cases, but even where specified, the judge has discretion to opt for a full tribunal, for instance where there is likely to be a dispute on the facts. Where a case is heard by a judge alone at the Employment Tribunal, the default position is judge alone on appeal.

. . . successive governments have empowered employment judges to sit alone in a growing number of specified circumstances.

Methods

We devised four questionnaires, which were returned anonymously, for the judges and NLMs of both tribunals. Response rates were high, particularly from NLMs, perhaps because they felt that their role was threatened.

To obtain the views of the parties, 20 interviews were held with those with experience of representing parties, whether legally qualified or not, and those in organisations which provided such representation or lobbied on their behalf. We did not interview claimants and respondents, as government-commissioned research[3] suggests that unrepresented parties' views are coloured by whether they win or lose their case. The findings from the interviews are indicative only and should be treated with caution.

Employment Tribunal responses

The majority of Employment Tribunal judges said they preferred to sit alone at least some of the

time, with only 16% 'always' wishing to do so. Interestingly, in the light of the Government's proposals, the majority of judges and NLMs considered that the present basis of division between judge alone and tripartite tribunals was 'completely' or 'broadly' appropriate and very high percentages of both judges and NLMs (80% and 100%) assessed unfair dismissal as a jurisdiction where NLMs added value to decision-making. Discrimination was another jurisdiction where a high proportion of that group saw lay members as adding value.

As to Employment Tribunal NLMs' overall contribution, few judges or NLMs assessed this in terms of the lowest score, although judges were significantly less likely than NLMs to opt for the highest score (17% and 61% respectively). Unpicking this, we distinguished between NLMs' presence, their activities and the frequency of their contribution to the judges' part in decision-making. According to the judges, in respect of NLMs' presence, their most important contribution was in providing general workplace experience, second in giving parties confidence because decisions are reached by three people rather than one person and third, in ensuring a balance between legal and workplace perspectives. The last of these was the main contribution NLMs perceived for themselves.

According to the judges, NLMs' most important activity was the provision of a non-legal perspective, followed by acting as the eyes and ears of the judge. In contrast, a far higher percentage of NLMs saw their most important activity as identifying issues during hearings and only a tiny percentage saw their most important role as acting as the eyes and ears of the judge (3% compared with 33% of judges). As to a question about the frequency of contribution to decision-making, both regarded NLMs' most frequent contribution as assessing the evidence and/or finding the facts. Strikingly, whereas 9% of judges thought lay members 'often' spotted points that might otherwise be missed, 41% of NLMs did so.

Strikingly, whereas 9% of judges thought lay members 'often' spotted points that might otherwise be missed, 41% of non-legal members did so.

Employment Appeal Tribunal responses

Turning to the Employment Appeal Tribunal responses, only a few judges (like their Employment Tribunal counterparts) 'always' preferred to sit alone and most felt that the present basis of division between judge alone and tripartite tribunals was 'completely' or 'broadly appropriate' (73%), but NLMs were less sanguine; 49% said it was 'not very appropriate' and 14% said that it was 'not at all appropriate'.

We also found that the judges and NLMs saw NLMs' most frequent contribution to decision-making as providing workplace knowledge and expertise. As to assessing the facts, 19% of judges thought that NLMs 'often' contributed, compared with 67% of NLMs.

Furthermore, few assessed their overall contribution in terms of the lowest score, though judges were significantly less likely than NLMs to opt for the highest score and Employment Appeal Tribunal judges held less favourable views of NLMs' overall contribution than did Employment Tribunal judges. Also, although a large minority of judges were neutral in respect of a statement that 'NLMs add more value in the Employment Tribunal than in the Employment Appeal Tribunal', the balance was clearly towards agreement; Employment Appeal Tribunal NLMs, in contrast, typically disagreed. As to how to enhance the role of NLMs, ranked in first place by Employment Tribunal judges and NLMs and Employment Appeal Tribunal NLMs was more frequent sittings, but Employment Appeal Tribunal judges opted for better quality training.

Comments on the role of NLMs on the Employment Tribunal

'I don't think you can underestimate the importance of the reassurance factor.'

'Everybody I've taken in front of a tribunal has felt some comfort.'

'Where you are adopting a kind of broader, more purposive approach, you're more likely to want a full tribunal.'

Comments on the role of NLMs on the Employment Appeal Tribunal

'I'm not sure [EAT] lay members are necessary at all to be absolutely honest.'

'I'd be a bit more relaxed about removing lay members from the Employment Appeal Tribunal than from the Employment Tribunal.'

'I think the insights of lay members are also critical at the Employment Appeal Tribunal level.'

Interviews: Employment Tribunal

Turning to the interviews with those directly or indirectly representing claimants and/or respondents, most said that they valued the presence of Employment Tribunal NLMs because they were able to reassure the parties that it would not just be a lawyer who would be deciding their case and often tempered the legal nature of the proceedings. As one said: lawyers 'are often brought down to earth by a lay member'.

Interviewees mostly were of the view that Employment Tribunal NLMs' workplace experience usefully contributed to the decision-making process where the case revolved around factual issues, but a judge alone was preferred if a case revolved around legal technicalities. Nevertheless, most interviewees admitted that they rarely requested a tripartite tribunal where the default position was judge alone and many voiced a caveat: they said that it was hard to assess the impact of NLMs as they were not privy to post-hearing deliberations.

Interviews: Employment Appeal Tribunal

Interviewees had mixed views about the role of NLMs on the Employment Appeal Tribunal. Some considered that they were superfluous on a tribunal that determined questions of law. Nevertheless, a few interviewees held a contra-view. One commended EAT lay members for their 'more worldly experiences as well as often a very good understanding of the law'. Other interviewees were equivocal. As one admitted, although he had 'struggled' to work out why there were lay members on a court that heard appeals on points of law only, there were some cases where it was 'obvious'; that judges were 'highly dependent' on the EAT wing members. Another echoed this, but admitted that was 'probably in a minority of cases'.

Conclusions

Given the political context, it is perhaps not surprising that NLMs rated their role more highly than our other respondents. To sum up, however, Employment Tribunal judges and NLMs responding to our questionnaires and those whom we interviewed broadly endorsed the role of lay members at Employment Tribunals and essentially accepted the present division between cases where judges sit alone and cases where there are tripartite tribunals. Such endorsement of the role of NLMs on the Employment Appeal Tribunal, however, was more muted by Employment Appeal Tribunal judges and those whom we interviewed.

Susan Corby is Professor of Employment Relations at the University of Greenwich. Paul Latreille is Professor of Economics, Swansea University.

[1] ESRC grant: RES-000-22-4154.

[2] Gibbons M (2007), *A review of employment dispute resolution in Great Britain*.

[3] Peters M, Seeds K, Harding C and Garnett A (2010), *Findings from the Survey of Employment Tribunal Applications*.

A first home for new rights of appeal

As the home for new, smaller jurisdictions, the General Regulatory Chamber has an important role, and one that requires strong, early links with each new regulator. *Nick Warren* describes the ways in which this is carried out.

The General Regulatory Chamber (GRC) covers a diverse range of subject areas, including charity, consumer credit, estate agents, gambling appeals, immigration services, information rights and transport.

During his two years as Acting President, John Angel helped nurse the chamber into existence, and had judicial responsibility for abolishing more than half a dozen diverse tribunals to form the chamber as well as for the introduction of a new jurisdiction arising from civil sanctions in environmental protection. John now remains with us as Principal Judge (Information Rights).

Caseload

The GRC has a varied but comparatively small caseload. Over the last year, there has been a significant increase in information rights appeals, probably related to improved productivity in the Office of the Information Commissioner. By contrast, the local government standards caseload has declined. It appears that the Government's signal that it intends to repeal the legislation has led local committees to seek to deal informally with the less serious incidents. Environment cases have been delayed pending government discussions on the use of civil penalties. This moratorium does not affect matters controlled by the Welsh Assembly which has introduced some new appeal rights.

Oddity?

Is the GRC anything more than an oddity – a place to park cases which do not seem to belong elsewhere? It certainly looks different from the great chambers of, for example, immigration and social entitlement. It must work differently too – and a rationale for its workings is beginning to emerge.

New rights of appeal

First, it does make sense to have a place where new smaller jurisdictions can 'start off'. In the past, it has often been necessary to create a new tribunal when Parliament created a new right of appeal with that tribunal at risk of later isolation, especially if work was less than predicted.

Is the GRC anything more than an oddity – a place to park cases which do not seem to belong elsewhere?

Now the GRC can offer an immediate home. Administrative staff are in place. There is a judicial structure, with links to mainstream tribunal training, and other forms of support. There is access to premises, IT systems, and a set of procedural rules. The GRC must therefore develop an expertise in the efficient introduction of new rights of appeal, especially from regulators. This means strong links with the Ministry of Justice's new jurisdictions team.

Early discussions on the nature of an appeal right can be helpful. Although the regulator will be in some sense an arm of the state, they will often be unfamiliar with appeal systems. There may be a tendency to reduce the risk of challenge by restricting the right of appeal. Might this merely, however, stimulate expensive judicial review challenges or encourage wasteful argument as to whether particular arguments could be fitted in to particular grounds of appeal? The GRC can advise on the appeal rights proposed.

Flexible

It will be essential also to enable the regulator to use the appeal system with confidence. In ordinary cases, we should be true to the Leggatt ideal that it should not be necessary for parties to pay for legal representation. We should reach agreement on the content of responses, minimising the amount of extra work the regulator will have to do, and encouraging a positive approach to the disclosure of all relevant material.

We need to discuss proportionate solutions to difficulties so that regulators are flexible enough to concede a good case and strong enough to ask for hopeless cases to be struck out. We need to discuss with the regulator whether any specialist members are required and then cooperate with the Judicial Appointments Commission for their recruitment.

Training

The regulator may also be able to provide suggestions for sources of policy information to be included in our induction training along with the substantive law. Training is important for established jurisdictions too. In the next two to three years, working through the new Judicial College, the GRC will hope to borrow and adopt training modules already used by the larger chambers in skills such as judgement writing and questioning techniques. Small tribunals could not develop these alone.

Upper Tribunal

Another advantage for the older jurisdictions in joining the GRC is to be brought within the supervision of the Upper Tribunal. Up till now appeals to the High Court or the Court of Appeal from our tribunals have been rare events. The Upper Tribunal is much more user-friendly and I welcome the greater scrutiny this brings to our decisions. It will be some years before the impact of this aspect of tribunal reform can be properly assessed. It may become less common, for example, for previous decisions of the First-tier Tribunal to be referred to in subsequent hearings.

The GRC rules permit the transfer of some charity and information rights cases to the Upper Tribunal. Here too, we are still feeling our way.

On the one hand, it seems sensible for such cases as Attorney-General references to go straight to the Upper Tribunal. On the other hand, it would be wrong automatically to send upstairs any case involving an important point of law. The parties might be quite satisfied with a First-tier Tribunal decision and, in any event, the development of the law can often benefit from a full decision at first instance.

The GRC generates only a fraction of the case load of the Upper Tribunal. Nevertheless the two Chamber Presidents there involved have been careful to establish proper arms-length channels of communication with the GRC and I am grateful to them for doing so.

Administrators

The GRC jurisdictions make special demands on administrators who have inherited different working practices from the old tribunals. They have to be flexible and creative while still adhering to important common standards. Tribunal staff generally are used to 'first time' appellants who need guidance through the system. In the GRC, public authorities who may use the tribunal only four or five times a year may need similar support.

The more we can do in common for different cases, using a core administrative model, the simpler things will be for the tribunal user – and for the staff. We will start by looking at urgent hearings, the allocation of tribunal members to cases and appeal forms.

Judge Nick Warren is President of the General Regulatory Chamber of the First-tier Tribunal.

This article is an edited extract from the Senior President of Tribunals' Annual Report for 2011 which will be published in February 2012.

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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