



JUDICIAL
COLLEGE

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CHALLENGES MET WITH CHARM



Congratulations to Lord Justice Carnwath, who has been appointed as a Justice of the Supreme Court and will step down from his role as Senior President of Tribunals in spring 2012.

A wider judicial family

Gary Hickinbottom considers the influence of the Senior President in establishing coherence and comity in the judicial system.



IN HIS TIME as Senior President, Sir Robert Carnwath has overseen the most fundamental review of tribunals that there has ever been, and also the most important changes to the justice system as a whole for over a hundred years.

Background to appointment

The 20th century saw a proliferation of statutory schemes for the regulation of many aspects of our lives and, with it, the growth of ad hoc tribunals for the determination of disputes between the citizen and the state under those schemes. Those tribunals were run by sponsoring departments (i.e. the arms of government whose decisions they reviewed), and without any consideration of other similar bodies formed under different statutory provisions.

Given that historical background, it was unsurprising that, in his March 2001 Report, *Tribunals for Users: One System, One Service*, Sir Andrew Leggatt identified two main problems with tribunals, namely their lack of independence and their lack of coherence. He recommended the rationalisation of tribunals into a system 'that is independent, coherent, professional, cost-effective and user-friendly', with the aspiration that they would acquire 'a collective standing to match that of the court system' and focused on the needs of users.

In 2004, Lord Justice Carnwath was appointed to meet those formidable challenges.

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EDITORIAL



THE APPOINTMENT of Robert Carnwath to the Supreme Court allows us to assess the distance travelled since his appointment as Senior President of Tribunals in 2007.

One of the most exciting developments has been the emergence of a body of tribunal jurisprudence, building on decisions centring on the core procedural rules and defining the Upper Tribunal's place among the superior courts. On page 4, Kenny Mullan considers the possible bases of appeal from the Upper Tribunal to the Court of Appeal in the light of the decisions of the Supreme Court last year in *Cart* and *Eba*.

The enabling role of tribunals is a distinguishing characteristic, encouraging an inquisitorial approach. The term 'inquisitorial' is often used – and scrutinised in some detail by Andrew Bano on page 9. The expertise available on a panel of judges and members is another characteristic – and one that John Aitken considers on page 12 in relation to a pilot in the use of registrars for decisions on interlocutory matters.

Finally, the creation of the Tribunals Service foreshadowed the unification of the courts and tribunals administrations in HMCTS last year – and with them, the unification of judicial training. On page 15, I have updated our readers on the work of the new Judicial College during its first year.

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Structural reforms

Implementing the structural reforms was a prodigious task in itself, requiring the transfer of tribunals out of sponsoring departments into a new Tribunals Service under the Lord Chancellor's wing, their reorganisation into a coherent administrative body (both centrally and regionally) and their eventual transfer into a combined HM Courts and Tribunals Service. As part of those reforms, there was the passing and then implementation of the Tribunals, Courts and Enforcement Act 2007.

The fact that the executive, administration and judiciary have perhaps never worked more harmoniously or productively on a project was due to what might be described as the Senior President's determined charm, but also resulted from his practical application of firmly held principles. However, structural reform was not the only challenge.

Harmonising the rules

Robert has been committed to procedural and jurisprudential, as well as administrative, coherence, setting up a Tribunals Procedure Committee with a brief to harmonise the rules of tribunals so far as possible. That initiative has been a resounding success. He also encouraged judges in both the court and tribunals systems, when working within the scope of tribunals, to identify and develop consistent principles of both law and procedure. In everything he has done, he has been focused on the needs of users.

Mutual respect

However, perhaps the greatest challenge lay in addressing the different cultures of court and tribunal judges. Because of the historical divide between courts and tribunals, at the beginning of the reform process, there was a lack of trust between the two. Court system judges were sceptical about the 'quality' and even independence of some of their tribunal counterparts; while many in tribunals considered that the courts

undervalued their contribution to the justice system as a whole, and failed to understand the nature of their specialist areas. Tribunals were not regarded as properly part of the justice system.

Robert was perceptive and visionary in his understanding of the need for mutual respect between judges who do different work. Substantive mutual respect has steadily grown, borne of better understanding through Sir Robert's tireless efforts, speaking and in his judicial work, and in his encouragement to judges to learn more about what other judges do and how they do it.

The designation of all those who fulfil judicial functions as 'judges', who take a judicial oath upon taking office, was an important symbol of the new parity. The fact that we can now refer to 'the judicial family' to include those who perform judicial functions in the court system and in tribunals is very largely due to him and his vision. The result of Robert's work has therefore been, not simply structural reform and integration, but a constructive remodelling of the way judges are regarded by each other and by the public. That is a significant, and hopefully lasting, legacy.

Further steps

Of course, the tribunal reform programme has not yet fully run its course. Over the coming months and years, I expect the judiciary of the courts and tribunals will work more closely together, with cross-assignments being more common, and the judiciary of England and Wales at some early stage being formally united under the Lord Chief Justice. As these further, positive steps are made in the reform of the judiciary, we should remember the part Sir Robert Carnwath has played in them, and the debt all those who care about the justice system owe him.

Mr Justice Hickinbottom was the Deputy Senior President of Tribunals until 2009, and was judicial lead on implementation of the Tribunals, Courts and Enforcement Act 2007.

A persuasive champion

Peter Handcock describes how Lord Carnwath's convictions led to the establishment of the combined Tribunals Service.



I FIRST MET Robert back in 2004, when I was looking to move on from the then newly created Her Majesty's Court Service and he had been selected to wrestle with the challenge of reforming tribunals. As Senior President designate, he was involved in the selection process for a chief executive for the new service, and it was my very good fortune to get the job.

Clear view

It was very obvious from the start that Robert had a clear view about what it was going to take to deliver the Leggatt vision of 'one system, one service'. He started out with an evident passion for the role of tribunals as an integral part of the justice system, and a real sense of their importance to the public, and that has never left him. This was essentially new territory for me but I quickly came to share Robert's understanding of the undervalued but vital service provided by tribunals, not least to the 500,000 or more people who need decisions from them each year.

Vigorous and forthright

Although the system had not altered much in 60 years and despite Leggatt's view that they were often too close to their sponsor department, individual tribunals were – and still are – vigorous and forthright in asserting their independence and uniqueness.

Some tribunals embraced the coming change and welcomed the move of their administration into the then Department for Constitutional Affairs, and there were other powerful and determined supporters such as the late Tony Newton, chair of the then Council on Tribunals (see obituary, page 11). But others were much less enthusiastic and took quite a bit of winning over.

Leadership

Robert's leadership through this period was absolutely critical. He quickly established himself as a persuasive champion for the whole tribunal system and as a leader who listened, but also took tough decisions when necessary.

Robert's clear and decisive leadership of the judges made my life a bit easier, as did his policy of moving quickly to practical solutions and not standing too often on his constitutional dignity (although I expect he will remember the odd difficult conversation with ministers, particularly on tribunal judges' pay!) Fortunately he and I generally had much the same view about the direction of travel for the new service and the overall process of reform; that shared vision of what change might deliver made it an absolute pleasure to lead the administration of the tribunals system into its new integrated future as the Tribunals Service.

Landscape

Although the service had a relatively short life before joining with Her Majesty's Court Service to create Her Majesty's Courts and Tribunal Service, there is no doubt that it changed the landscape of the justice system forever.

The importance of the tribunals system is widely recognised and their organisation and structure is now fit for purpose as Leggatt intended. The influence that Robert brought to bear made all of this possible and will influence the development of the tribunal system for years to come. And within HMCTS, the influence of the former Tribunals Service is much stronger than the relative pre-integration size of the two organisations might have suggested; the vigour, energy and can-do approach that Robert's leadership helped create will now benefit the whole of the civil justice system. He will be a hard act to follow.

Peter Handcock CBE is the Chief Executive of HM Courts and Tribunals Service.

CHOICE ARGUMENT ON BITES OF THE CHERRY



By limiting judicial review of Upper Tribunal decisions to cases with an important point of principle or another compelling reason, the Supreme Court seems to be preaching caution. **Kenny Mullan** describes how this view is borne out by recent Court of Appeal decisions.

ARE DECISIONS of the Upper Tribunal susceptible to judicial review, and, if so, what is the appropriate standard to be applied?

Following close scrutiny, analysis and discussion both within and without the courts below, this question was answered by the Supreme Court in *R(Cart) v Upper Tribunal*¹ and (in relation to Scotland) *Eba v Advocate General for Scotland*.²

Having identified a choice of three possible approaches which the court could take to the resolution of the question, it favoured and adopted a middle ground ‘... foreshadowed by Dyson LJ (with the enthusiastic support of Longmore LJ) in *R (Wiles) v Social Security Commissioner* [2010] EWCA Civ 258 but rejected by the Court of Appeal in *Cart*, namely that judicial review in these cases should be limited to the grounds upon which permission to make a second-tier appeal to the Court of Appeal would be granted.’³

Such an approach would recognise that ‘... the new and in many ways enhanced tribunal structure deserves a more restrained approach to judicial review than has previously been the case, while ensuring that important errors can still be corrected.’⁴

What are the second-tier appeal criteria? They are to be found in section 55 of the Access to Justice Act 1999 which provides that there can be no appeal to the Court of Appeal from a decision

of the county or High Court unless the Court of Appeal considers that:

- a) The appeal would raise an important point of principle or practice; or
- b) There is some other compelling reason for the Court of Appeal to hear it.

Interestingly, section 13 of the Tribunals, Courts and Enforcement Act 2007 provides a right of appeal, on a point of law only, and subject to permission, to the ‘relevant appellate court’.

Section 13(6) gave a power to the Lord Chancellor by order to restrict the grant of permission. The Appeals from the Upper Tribunal to the Court of Appeal Order 2008,⁵ made under the Section 13(6) power, provided that such permission should be restricted according to identical criteria as that set out in section 55 of the Access to Justice Act 1999.

What are the second-tier appeal criteria? They are to be found in section 55 of the Access to Justice Act 1999...

So much for the identification and statement of the underlying principles. How would those principles be applied in practice?

Kuteh [2011] EWHC 2061 (Admin)

Almost immediately after the decision in *Cart* and *Eba* we were given some guidance as to how the courts would approach the advocated test in practice.

A First-tier Tribunal (Health, Education and Social Care Chamber) had upheld a decision of the Secretary of State that the applicant was guilty of misconduct and that this gave rise to

a situation in which he was unsuitable to work with children. One aspect of the purported misconduct was an alleged assault on a child. At the hearing before the First-tier Tribunal, a witness statement which supported the applicant's assertion that he was acting in self-defence was added to the bundle of documents at a very late stage. The statement of reasons for the tribunal's decision made no reference to the late-added witness statement. An application was made to the Upper Tribunal for permission to appeal against the decision of the First-tier Tribunal.

The application was initially considered on the papers and was dismissed, and was renewed by way of oral hearing, where the issue of the absence of reference to the witness statement in the statement of reasons was raised. The submission was that there was a serious procedural defect in the First-tier Tribunal's handling of the case, in failing to consider an important piece of evidence.

Upper Tribunal Judge Wikeley accepted that it appeared to be the case that the relevant witness statement did not appear to be in the file of papers obtained by the Upper Tribunal. Having considered the relevant statement, however, he concluded that he could not say that it was arguable that the tribunal had erred in law in not referring to it given that it had more than 400 pages of evidence to consider.

On the application for permission to apply for judicial review, it was not sought to be argued that the first of the two second-tier appeal criteria – that the proceedings raised an important point of principle or practice – was relevant but rather that the second had the potential to apply, namely that there was some other compelling reason for it to be heard.

If the Upper Tribunal judge had concluded that there was a significant procedural error on the part of the First-tier Tribunal, then it was arguable that there was a further procedural error on the part of the Upper Tribunal judge, in refusing permission to appeal, thereby refusing access to the mechanism whereby the procedural error could have been remedied.

Reference was made to the judgment of Dyson LJ in *Uphill (Widow & Administrator of the Estate of Malcolm Earnest Uphill) v BRB (Residuary)*

*Ltd*⁶ where he had set out some basic principles on the meaning of the phrase 'some other compelling reason'.⁷ These included persuasion by the court that '... the hearing was tainted by some procedural irregularity so as to render the first appeal unfair'. It was argued on the part of the applicant that the circumstances of his case fell four-square within Dyson LJ's description of what was a compelling reason. Mr Justice Wilkie agreed and gave permission to apply for a judicial review.

PR, SS and TC v Secretary of State for the Home Department

The guiding principles of Lord Justice Dyson in *Uphill* were returned to by Lord Justice Carnwath in giving the judgment of the Court in *PR (Sri Lanka), SS (Bangladesh) and TC (Zimbabwe) v Secretary of State for the Home Department*.⁸

This case concerned the application of the second-tier appeals test for appeals to the Court of Appeal⁹ from decisions of the Upper Tribunal under section 13(6) of the Tribunals Courts and Enforcement Act 2007. That test is the same as the Access to Justice Act 1999 section 55 test, and as the decision in *PR et al* undertook an analysis which included *Cart* and *Eba*, it is beneficial to consider its principles.

If the Upper Tribunal judge had concluded that there was a significant procedural error . . . then it was arguable that there was a further procedural error on the part of the Upper Tribunal judge, in refusing permission to appeal . . .

Following a comprehensive analysis of the background to the second-tier appeal test,¹⁰ Lord Justice Carnwath stressed that the judicial guidance emphasised the narrowness of the ‘compelling reason’ exception:

‘The prospects of success should normally be “very high”, or (as it was put in *Cart* para 131) the case should be one which “cries out” for consideration by the court. The exception might apply where the first decision was “perverse or otherwise plainly wrong”, for example because inconsistent with authority of a higher court. Alternatively a procedural failure in the Upper Tribunal might make it “plainly unjust” to refuse a party a further appeal, since that might, in effect, “deny him a right of appeal altogether”.

‘In *Cart*, Lord Dyson, following Laws LJ, characterised such a case as involving “a wholly exceptional collapse of fair procedure” (para 131). Similarly, Lord Hope in *Eba* referred to cases where it was “clear that the decision was perverse or plainly wrong” or where, “due to some procedural irregularity, the petitioner had not had a fair hearing at all”.’¹¹

The implementation of the Tribunals, Courts and Enforcement Act 2007 established the Upper Tribunal as an expert appellate forum for the majority of tribunal appeals. The jurisprudence of the appellate courts had already urged restraint in interference in the decisions of such specialist tribunals.

The inclusion of a similar second-tier appeals test for appeals from the Upper Tribunal to the Court of Appeal meant that ‘... the point of principle or practice should be not merely important, but one

which calls for attention by the higher courts, specifically the Court of Appeal, rather than left to be determined within the specialist tribunal system’.¹²

Further, the provision, through the TCEA 2007, for involvement of the court judiciary in the judicial leadership and management of the tribunal system, permitted senior court judges to make an active contribution to the quality of the Upper Tribunal through ‘... direct involvement, rather than simply

by the corrective mechanism of appeal ... Parliament has thus provided a statutory framework within which the Senior President and Chamber President should be able to ensure that the gateway to appeals to that level is controlled by judges of appropriate status and experience.’¹³

Finally, the risk of a breach of international obligations and the derivation of guidance from what was said during the course of the passage of the TCEA should play no part in the interpretation of the ambit of the test.

The implementation of the Tribunals, Courts and Enforcement Act 2007 established the Upper Tribunal as an expert appellate forum for the majority of tribunal appeals.

Khan et al

In *PR*, Lord Justice Carnwath was keen to emphasise that while Lady Hale and Lord Dyson in *Cart* had acknowledged the potential relevance of the extreme consequences for the individual in deciding whether the second-appeal criteria were met, such matters were not seen as constituting a free-standing test.¹⁴ In that sense compelling meant legally compelling.

In *R (Khan) v Secretary of State for the Home Department and the Upper Tribunal (Immigration and Asylum Chamber)*,¹⁵ and in dismissing the individual application relating to Ms Khan, Mr Justice Ouseley concluded that the fact that a decision might have adverse consequences for the

appellant or that there might be disadvantageous consequences in relation to the medical services in the area in which she had been working, did not amount to a compelling reason to permit permission to apply for a judicial review of a decision to refuse permission to appeal.

In a second application relating to *Olavoyin*, the judge found that a procedural defect in the refusal of permission by the judge at First-tier level was cured when the application for permission to appeal was reconsidered at the Upper Tribunal.

There was an obligation of extra care when an obvious error in the first decision was recognised but the initial error alone was not a compelling reason to give permission to appeal. The judge also dismissed the application in the case of *R*, concluding, contrary to the submission made on behalf of the appellant, that the tribunal judge's conclusions on the medical evidence which was before him were conclusions which he was entitled to reach.

Analysis

It is arguable that in permitting judicial review of unappealable decisions of the Upper Tribunal but limiting such appeals to cases where the appeal would raise an important point of principle or practice or where there is some other compelling reason for the Court of Appeal to hear it, the byword of the Supreme Court in *Cart* was caution in the development of the principles.

Lady Hale made reference to the existing jurisprudence of the appellate courts which had exhorted against interference by the appellate authorities in decisions taken by specialist tribunals. In *AH (Sudan) v Secretary of State for the Home Department*,¹⁶ Lady Hale had reflected on such jurisprudence, in concluding that:

[Carnwath LJ] thought that the restraint principle had been enhanced by . . . the development of a rational and coherent expert and specialist two-tier system . . .

'This is an expert tribunal charged with administering a complex area of law in challenging circumstances. To paraphrase a view I have expressed about such expert tribunals in another context, the ordinary courts should approach appeals from them with an appropriate degree of caution; it is probable that in understanding and applying the law in their specialised field the tribunal will have got it right: see *Cooke v Secretary of State for Social Security* [2001] EWCA Civ 734, [2002] 3 All ER 279, para 16. They and they alone are the judges of the facts. It is not enough that their decision on those facts may seem harsh to people who have not heard and read the evidence and arguments which they have heard and read. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently. I cannot believe that this eminent tribunal had indeed confused the three tests or neglected to apply the correct relocation test . . .'¹⁷

This was a theme taken up by Carnwath LJ in *PR*. He thought that the restraint principle had been enhanced by the changes made in tribunal justice which had seen the development of a rational and coherent expert and specialist two-tier system under the leadership and management of senior court judiciary and which permitted control and oversight from within without constant resort to external corrective mechanisms.

All of this led Lord Phillips in *Cart* to arrive at an initial inclination that the new two-tier

tribunal system should be treated as ‘wholly self-sufficient’.¹⁸ Despite that, he came round to the view that, for a period at least,¹⁹ that there was a need for some overall judicial supervision of the decisions of the Upper Tribunal, what Lady Hale had called a ‘restrained approach to judicial review’ recognising the the new enhanced tribunal structure.

All of the judges on the principles thought that the proper approach to the application of the second-tier appeals criteria should also be one of restraint. Lord Phillips was concerned with process. A disproportionate response would be for judicial supervision to extend to a four-stage system of paper and oral applications, first to the Administrative Court and then to the Court of Appeal.

Note was taken of the fact that an applicant would usually have had a hearing before the appeal tribunal at First-tier, consideration of an application for leave to appeal against its decision by that tier involving a review²⁰ of that decision, and re-consideration of an application for leave to appeal by the Upper tier, most certainly on the papers, and perhaps by way of a further oral hearing. Judicial resources are limited and a judicial process should not be duplicated.

Lady Hale and Lord Phillips raised concerns about the likely reaction to the possibility of seeking judicial review in asylum and immigration cases, Lady Hale observing that for such appellants there can be every incentive in lengthening the judicial process.²¹ The decision in *Khan* may be evidence that the response of the courts will be robust.

The decision in *Kuteh* may lead to a conclusion that the fears of duplication of judicial process, and the possibility of second bites of the cherry on receipt of an adverse decision, are becoming real. On the other hand, however, it might be arguable that the true issue was one of procedural irregularity incapable of remedy through any

other form of judicial mechanism. Was it, however, ‘a wholly exceptional collapse of fair procedure’ or ‘an error of law which has caused truly drastic consequences’?²²

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¹ [2011] 3 WLR 107, [2011] UKSC 28.

² [2011] 3 WLR 149, [2011] UKSC 29.

³ [2011] 3 WLR 107 at para 38. The other two approaches were (i) the ‘exceptional circumstances’ approach as adopted by the courts below in *Cart* that the scope of judicial review should be restricted to pre-*Anisminic* excess of jurisdiction and the denial of fundamental justice and (ii) nothing had changed and that judicial review of refusals of leave to appeal from one tribunal tier to another had always been available and ‘... with salutary results for the systems of law in question’.

⁴ *Ibid* at para 57.

⁵ SI 2008 No 2834. The order makes provision for appeals to the Court of Appeal for England and Wales and the Court of Appeal for Northern Ireland. Equivalent provision has been made for appeals from the Upper Tribunal to the Court of Session in Scotland by rule 41.59 of the Act of Sederunt (Rules of Court of Session 1994) (inserted by SSI 2008 No 349).

⁶ [2005] EWCA Civ 60.

⁷ At para 24.

⁸ [2011] EWCA Civ 988.

⁹ Section 13(6) makes reference to an appeal to the ‘relevant appellate court’ which is the Court of Appeal in England and Wales of the Court of Appeal in Northern Ireland, as appropriate.

¹⁰ In paras 3 to 32.

¹¹ At para 35.

¹² At para 37.

¹³ At para 38.

¹⁴ At para 36.

¹⁵ [2011] EWHC 2763 (Admin).

¹⁶ [2007] UKHL 49.

¹⁷ At para 30.

¹⁸ [2011] 3 WLR 107 at para 91.

¹⁹ ‘... at least until we have experience of how the new tribunal system is working in practice’.

²⁰ ‘Review’ in the context of seeking permission to appeal and where the First-tier Tribunal is satisfied that there was an error of law in the decision.

²¹ [2011] 3 WLR 107 at para 47.

²² Examples of ‘compelling reasons’ given by Lord Dyson in *Cart* at para 131. The example of ‘exceptional collapse of fair procedure’ was drawn from the comments of Laws LJ in the Divisional Court in *Cart* – [2009] EWHC 3052 (Admin) at para 99.

INTERVENTION: A DELICATE FEAT OF BALANCE



In the summer 2011 issue, **Andrew Bano** considered the importance of tribunals being able to act 'inquisitorially'. Here, he considers further the meaning of this commonly used term.

THE TERM 'inquisitorial', as applied to tribunals, was originally used to mean that tribunals are not bound by many of the restrictions that apply to proceedings in the ordinary courts. Thus, in *Hubble*¹ the Divisional Court held that a tribunal was free to decide an appeal on a basis that had not been raised by either party. Tribunals are also not generally bound by exclusionary rules of evidence² unless the exclusion is necessary to protect some right, such as legal professional privilege.³

A power and a duty

But a power to act in a particular way will often imply a duty in law to do so. In carrying out the enabling role envisaged for tribunals by the Leggatt report, an inquisitorial approach may be necessary at each step of the proceedings: in identifying the issues that have to be decided, at the stage of case management, and at the hearing itself.

Identifying the issues

Sometimes the first stage is the most difficult. The Leggatt report referred (at para 7.4) to the need for tribunals to 'be alert for factual or legal aspects of the case which appellants may not bring out, adequately or at all, but which may have a bearing on possible outcomes'. Tribunals need to consider the public interest when deciding how far to act inquisitorially and a tribunal will normally have to consider a relevant point which is obviously apparent from the evidence.

However, there are limits to the extent to which tribunals must investigate issues that

have not been raised by the parties. In *Mongan v Department of Social Development*⁴ the Court of Appeal in Northern Ireland gave guidance on the extent of the tribunal's inquisitorial duty to investigate issues itself, which was approved by the Court of Appeal in England and Wales in *Hooper v Secretary of State for Work and Pensions*:⁵

'[17] Whether an issue is sufficiently apparent from the evidence will depend on the particular circumstances of each case. Likewise, the question of how far the tribunal must go in exploring such an issue will depend on the specific facts of the case. The more obviously relevant an issue, the greater will be the need to investigate it. An extensive inquiry into the issue will not invariably be required. Indeed, a perfunctory examination of the issue may often suffice. It appears to us, however, that where a higher rate of benefit is claimed and the facts presented to the tribunal suggest that an appellant might well be

entitled to a lower rate, it will normally be necessary to examine that issue, whether or not it has been raised by the appellant or her legal representatives.

'[18] In carrying out their inquisitorial function, the tribunal should have regard to whether the party has the benefit of legal representation. It need hardly be said that close attention should be paid to the possibility that relevant issues might be overlooked where the appellant does not have legal representation. Where an appellant is legally represented the tribunal

'Whether an issue is sufficiently apparent from the evidence will depend on the particular circumstances of each case.'

is entitled to look to the legal representatives for elucidation of the issues that arise. But this does not relieve them of the obligation to enquire into potentially relevant matters. A poorly represented party should not be placed at any greater disadvantage than an unrepresented party.’

Conscious exercise of discretion

In social security cases, such as *Mongan*, the tribunal is permitted by statute not to consider any issue that is not raised by the appeal.⁶ In *R(IB) 2/04* it was held that in such cases there must be a conscious exercise by the tribunal of its statutory discretion and an explanation in the reasons for the decision as to why the discretion was exercised in the way that it was.

If the tribunal intends to consider an issue that is not raised by the appeal in a way that may disadvantage the appellant, natural justice will require the tribunal to give the claimant warning of its intentions, so that the claimant can deal with the issue, or withdraw the appeal. The tribunal in *Hubble*, which decided to remove the claimant’s entitlement to benefit without being asked to do so, would therefore nowadays be held to be under an obligation to warn the claimant of what it had in mind before allowing the appeal to proceed.

Implicit

Although the Tribunals, Courts and Enforcement Act 2007 (TCEA) does not expressly require tribunals to act inquisitorially, an inquisitorial approach is implicit both in the principles of tribunal justice set out in section 2 of the Act and in the way in which the Act requires the rule making powers conferred by the Act to be exercised. Section 22(4) of TCEA provides that the power to make tribunal procedure rules must be exercised with a view to securing the objectives set out in the subsection including, at paragraph (e), the requirement that ‘the

rules where appropriate confer on members of the First-tier Tribunal or Upper Tribunal responsibility for ensuring that proceedings before the tribunal are handled quickly and efficiently’. In order to ensure that tribunal members can comply with their responsibility for the speedy and efficient handling of proceedings, the case management powers conferred by the rules of procedure can almost always be exercised by the tribunal on its own initiative.

Equality of arms

Case management powers are generally very flexible and provide the principal means for enabling tribunals to comply with their responsibility for ensuring that proceedings are conducted quickly and efficiently.

But the powers given to tribunals by their rules of procedure may also play a valuable part in ensuring equality of arms. For example, in the War Pensions and Armed Forces Compensation Chamber, rule 24 of the procedure rules enables the tribunal to arrange and pay for an expert’s report on a medical or technical question that arises in an appeal.

The expert nature of tribunals is one of the defining characteristics that distinguish tribunals from courts . . .

The expert nature of tribunals is one of the defining characteristics that distinguish tribunals from courts, where parties are generally expected to obtain and pay for any expert evidence that they need. However, there may be cases where the expertise of the tribunal needs to be supplemented by additional expert evidence, and in such cases a tribunal’s ability to commission an expert’s report ensures that an appellant who cannot afford to instruct an expert is not placed at a disadvantage.

Enabling role

As previous contributors to *Tribunals*⁷ have pointed out, the ways in which a tribunal performs its inquisitorial role at a hearing will depend on all the circumstances. Leggatt

(para 7.4) identified the need for the tribunal to ‘understand the point of view, as well as the case of, the citizen’, and defined the enabling role as one of ‘supporting the parties in ways which give them confidence in their own abilities to participate in the process, and in the tribunal’s capacity to compensate for the appellant’s lack of skills or knowledge’.

Statutory context

As we saw in the previous article in the summer 2011 issue, the statutory context of a dispute is important in determining the extent of the need for a tribunal to act inquisitorially. Tribunals recognise this instinctively, so that for example a social security tribunal will generally conduct a disability living allowance appeal very differently from an appeal involving a fraudulent overpayment. But there may be a myriad other factors to take into account, for example: the complexity of the issues; whether the appellant is represented and, if so, the skill of the representative; the appellant’s own grasp of the relevant issues; and any obstacles, such as language difficulties, which appellants may have to overcome in presenting their case.

Too much or too little

The balance between too much and too little intervention is, as Leggatt recognised, a delicate one. But in the tribunal context, the principle of fairness, enshrined in the legislation passed in response to the Leggatt report as well as in domestic and ECHR law, generally requires the tribunal member to play an active role in the proceedings – a role in which human skills and legal knowledge may often both be needed in equal measure.

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¹ *R v Medical Appeal Tribunal (North Midland Region) ex parte Hubble* [1958] 2 QB 228.

² See the discussion in *Jacobs, Tribunal Practice and Procedure*, 2nd edition (Legal Action Group) at paras 10.40–10.58.

³ See *LM v London Borough of Lewisham* [2009] UKUT 204 (AAC).

⁴ [2005] NICA 16, R3/05 (DLA).

⁵ [2007] EWHC 1319, R(IB) 4/07.

⁶ Similar provisions apply in child support and war pensions and armed forces compensation cases.

⁷ See, for example, the articles by Leslie Cuthbert and Julia O’Hara in the spring 2011 issue.

TRIBUNAL REFORMS IN THE UK

A CONSULTATION on the Scottish Government’s proposals for a new tribunals system opened in March 2012. Proposed is a single unified system for the devolved Scottish tribunals, internally organised according to case type and with clear rights of appeal to an Upper Tribunal. Important questions are raised for tribunal members in Scotland, including grounds of appeal, procedural rules, judicial leadership, judicial remuneration and cross-jurisdictional sitting.

It proposes to guarantee in statute the independence of the tribunals judiciary and to make new arrangements for appointments, tribunal processes and providing tribunals with the necessary administrative resources.

The tribunals to be transferred initially are the five currently administered by the Scottish Tribunals Service but the proposal is amenable to the future integration of further tribunals, although this is contingent on discussions between the Scottish Government and the Ministry of Justice. The consultation, which closes on 15 June 2012, can be found at www.scotland.gov.uk/Publications/2012/03/8967.

Readers may also wish to note that the Tribunal Presidents Group in Northern Ireland has discussed the proposals contained in the 2011 discussion paper and resolved to continue to highlight the requirement for commitment to definitive action to take matters forward. The discussion paper is available at www.dojni.gov.uk/index/public-consultations.

HARNESSING THE BEST MIX OF STRENGTHS



John Aitken describes the benefits of adding the case management expertise of legal advisers within the special educational needs jurisdiction of the Health Education and Social Care Chamber of the First-tier Tribunal to the jurisdictional expertise of the panels hearing the cases.

TRIBUNALS EVERYWHERE have expertise at their core. The application of that expertise enables often less formal but more focused examination of the real issues in dispute.

That expertise is built during the course of hearing many cases, and with training. Often it is supplemented by the inclusion on a panel of a member with particular knowledge in a subject. The corollary is that no one tribunal member can claim to be an expert in all areas and it is to the benefit of all users of a tribunal that expertise is appropriately applied.

Knowing your forte

To give a non-legal example, some years ago I injured myself skiing in France. Back in the UK, I received expert medical attention, but when the orthopedic surgeon came to reattach the cast to my leg, I could see that bandaging was not his forte. Within a few hours I was at my GP's surgery with the practice nurse tutting and putting the bandage on properly. The surgeon was drastically overqualified to bandage injured knees, but he was still not very good at it.

In the special educational needs jurisdiction of the Health Education and Social Care Chamber we have a great deal of expertise in the needs of children and a similar amount in conducting such hearings. Until recently, we had also employed a good deal of expertise on interlocutory matters,

such as adjournment applications and the admissibility of late evidence.

Practical

Our difficulty in relation to interlocutory matters was a strictly practical one. The judges who could deal with the applications were spread across the country, ideally located to attend

hearings convenient to the parties, but not close to Darlington, where files are held. Scanning was of limited use, because an experienced judge knew which documents were likely to be useful, but it was almost impossible to predict which would be needed in advance, and scanning the entire file was not practical. Posting the files was insecure and took time. Requests for more information from the judges dealing with applications was slowing down the whole process.

In the end, the judges were brought to Darlington, with hours spent in travel or overnight stays. The large pool of judges required meant a dilution of expertise, with a further slowing down of the process. Users reported that decisions sometimes seemed inconsistent – though not

neccessarily wrong – with a variation in approach which they found difficult to deal with.

Pilot scheme

A pilot scheme in the use of registrars to process these applications was begun to deal with these issues. Legal advisers from the magistrates' court,

The large pool of judges required meant a dilution of expertise, with a further slowing down of the process. Users reported that decisions sometimes seemed inconsistent – though not neccessarily wrong – with a variation in approach which they found difficult to deal with.

experienced in family proceedings and case management, were recruited. They were trained alongside new specialist members – learning the basics of the jurisdiction, attending hearings to see the tribunal in action and receiving legal training from the jurisdictional lead judge. They then sat alongside the lead jurisdictional judge for three days observing and making attempts to decide and draft responses to applications.

Expertise

For the first few days thereafter the registrars checked each response with the lead judge. In that way they were able to marry their already proven expertise in dealing with applications, mastering files, identifying the key issues and the like with jurisdictional-specific ones. What they have brought to the jurisdiction is their expertise in dealing rapidly with applications; what they have learned is how we want things done. They are available to the administrative staff who have a query throughout working hours, and have themselves access to a judge at Darlington one or two days a week to whom they can refer for advice. Any application they feel ought to be looked at by a judge is passed on for that to happen.

Timely

The result has been astonishing. User meetings have been effusive in their praise. Applications are dealt with in a much more timely fashion and users have praised the consistency. The quality has not been affected. All case management decisions can be subjected to an application to revise, but the numbers who have sought to do so when the registrars have made the decision has fallen. In fact, during the course of the pilot, only four applications have been made to revise

a direction, out of a total of around 2,500 directions made – and all were refused.

Revisions

It should be noted in this context that all registrar decisions are accompanied by a notice indicating that any decision may be placed before a judge by a party who wishes to have it looked at again. In fact all decisions allow for an informal second look under the case management section of our procedure rules.

The decisions are . . . subject to a number of layers of protection, from the notice indicating that it can be revisited by a judge within 14 days . . . to permission to appeal to the Upper Tribunal, who will allow a renewed application orally where appropriate.

Appeal

The decisions are therefore subject to a number of layers of protection, from the notice indicating that it can be revisited by a judge within 14 days, through the usual revision of a case management decision on application where appropriate, to permission to appeal to the Upper Tribunal, who will allow a renewed application orally where appropriate.

Safeguards

It would be wrong to say that the scheme is perfect. Occasionally there has been a misunderstanding born of some lack of familiarity with the jurisdiction. However, requiring perfection in a new system that was not present in the old is particularly demanding – what is sought is a tangible improvement.

Here, the safeguards are strong and every person who has had close contact with the system has found that there is a great benefit to be had from harnessing the case management expertise of the legal advisers and adding that to the jurisdictional expertise of the panels hearing the cases.

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

UNCHARTED FUTURE CALLS FOR CREATIVITY



On the first anniversary of the creation of the Judicial College, **Jeremy Cooper** describes its significance for judicial training.

IN APRIL 2011, the Judicial College brought the training of all judiciary and tribunal members (collectively described hereafter as ‘judicial office-holders’) in England and Wales (and also many tribunal office-holders in Scotland) – 36,000 in total – into a single, centralised professional learning and development institution.

Unification

The idea for the Judicial College first began to emerge around 2008 as the natural corollary to the wider unification of the courts and tribunal services. Once judicial office-holders were appointed by the same independent body¹ sworn to abide by the same judicial oath, and increasingly encouraged to considering sitting in several jurisdictions, the argument for creating a common training organisation became very powerful.

Feasibility

Thus in 2009 the Lord Chief Justice and the Senior President of Tribunals announced an ‘in principle’ decision to harmonise judicial training into a single organisation and as a result set up a small board under the chairmanship of Lord Justice Sullivan, to report on the feasibility of such an idea.²

By July 2010, the board had concluded that there was sufficient common ground to justify the establishment of a joint judicial training college which could build on the strengths of both tribunal and courts training systems.³ The Lord Chief Justice and Senior President of

Tribunals concurred. Shortly thereafter a full college planning board was established under the chairmanship of Hickinbottom J⁴ and the college came into being some six months later.

Common standards

The idea underpinning this project is simple: a single training college enhances judicial independence and promotes public confidence by providing reassurance that all judicial office-holders are trained to common standards, receive up-to-date specialist training and are able to benefit from the cross-fertilisation of ideas within a common supportive training forum.

Other positive features of unification include the provision of an enhanced capacity to create administrative efficiencies and make more effective use of resources and opportunities to strengthen collaboration with other bodies both across the UK, into Europe and across the wider common law world. The college also intends to develop an academic programme

to complement its specific training activities. The overarching vision of the college project is to create a Judicial College that will ‘become and be recognised as a world leader in judicial education’.⁵

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Structure

The college’s governing body is the College Board, currently chaired by Lady Justice Hallett. The executive director of the college is Sheridan Greenland, whose previous post was head of the Office for Judicial Complaints. The

board sets the overall strategy for the college, agrees business plans and oversees the delivery of training within the budget allocated to the college. Its membership is kept deliberately small⁶ in line with the overall college philosophy that underpins all aspects of its governance as follows:

- Judicial office-holders lead and are responsible for judicial training.
- Governance should be efficient, effective and supportive keeping bureaucracy to a minimum and the size of governing bodies as small as possible.
- Governance arrangements should facilitate collaboration and sharing and extending best practice across the college, recognising the needs of different groups of judicial office holders and ensuring proper accountability for the college's use of resources – money, judicial time and staffing.

Committees

The college has also now established five further operational committees with responsibility for specific areas of its work, the Tribunals Committee (incorporating HMCTS tribunal activity in England, Wales and Scotland, and where appropriate Northern Ireland) the Courts Committee, the International Committee and the Wales Training Committee. The first meetings of all these committees have either taken place, or are imminent. The work of the fifth committee, the Diversity and Development Committee, is outlined later in this article.

Who, what and where

The college as yet has no physical premises other than the offices in London, Loughborough, Leeds and Glasgow where its administrative officers are housed, although this may change in the future.⁷ It currently has a head count ceiling of 65 staff. Its annual budget is about

£10 million. All those who design and deliver training to judicial office-holders in HMCTS are *de facto* members of the college. The college is there principally to lead, support and enhance the quality of current training programmes as they develop over time.

In due course the college will also determine how it can offer assistance to jurisdictions currently outside HMCTS, as the College Strategy requires its board to 'consult about and where appropriate develop a training policy for supporting tribunals outside HMCTS across the UK'.

Transition

For the first year of its operation the college has concentrated on ensuring a smooth transition from the old system to the new, and has continued to run training programmes for both tribunals and courts along established lines. Thus the courts programme is delivered primarily from trusted residential locations on a rotating basis and the tribunal programme is delivered on a regional jurisdictional basis.

In the financial year April 2010–11 the total number of tribunals judicial training events held across the UK was 274, and the number of delegates attending tribunals training events over this period was 9,768, which provided tribunals judicial office-holders with 12,705 days of training in total. The training was delivered on both a residential and non-residential basis throughout the UK using both public sector estate (e.g. HMCTS courts and tribunal offices) and external venues, sourced at competitive rates.

Tribunal presidents

One of the key issues that the college has specifically addressed in its work with tribunal judicial office-holders is the importance attached to its working relationship with the main judicial leaders in the tribunals sector – the Chamber and

In due course the college will also determine how it can offer assistance to jurisdictions currently outside HMCTS...

Pillar Presidents. While the Senior President has formal responsibility for training which he could delegate to the Judicial College, it is nevertheless the Chamber and Pillar Presidents who have *de facto* assumed this responsibility as part of their personal stewardship of the quality of justice delivered within their respective jurisdictions. They therefore understandably want some say over what training is delivered.

The college understands this relationship and has made it clear that it intends to work closely with all Presidents in a collaborative and mutually beneficial way in assisting in the delivery of its training programmes. It is intended to be a partnership arrangement.

Variety

The second key issue relates to the need for the college's activity to be sufficiently flexible to ensure that specialist members have access to the same level of training and support as judges. The college recognises that different judicial office-holders require a variety of learning and development methods to meet their professional learning needs.

There are, for example, particular features of tribunals – in particular the preponderance of fee-paid members, the range of specialist niche training requirements, and the large number of tribunals judicial office-holders who are not legally trained – which may require a training approach different from that appropriate for salaried courts judges. This need for a distinctive approach also applies to the training of magistrates, for similar reasons.

Core elements

In seeking to work towards a common approach with common values the college board defines its training for judicial office-holders as containing three elements:

- 1 Substantive law, evidence and procedure and, where appropriate, 'subject expertise'.
- 2 The acquisition and improvement of judicial skills including, where appropriate, leadership and management skills.
- 3 The social context within which judging occurs. 'Social context' includes diversity and equality.

The college has no intention of interfering with the current effective arrangements whereby specialist substantive training is delivered on a largely jurisdictional basis. On the other hand it is clear that there are some areas of knowledge and expertise – assessing credibility, fact-finding, dealing with vulnerable witnesses, giving reasons for decisions – that are common to most judicial office-holders. Accordingly, the college will be

piloting the design and delivery of cross-jurisdictional training at both induction and continuation levels, which can be delivered across the jurisdictions. The college has already delivered four such events that have been attended by a range of judicial officer-holders from different jurisdictions (Craft of Judging, Advanced Judicial Skills,

Putting the User First, Course Design and Delivery) and others are planned for the next financial year.

The college's educational and development advisers (professional educationalists employed specifically for this purpose) are working closely with course directors on a range of further cross-jurisdictional initiatives including developing a benchmark programme for training of trainers, and designing (in consultation) a common process for course evaluation across the college.

e-learning

The Judicial College is developing an e-learning strategy to complement its face-to-face training programmes (known as 'blended learning');

... e-learning seems a highly appropriate method for the delivery of some forms of judicial training.

Administrative contacts

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Other administration is provided by staff within the tribunal concerned.

e-learning seems a highly appropriate method for the delivery of some forms of judicial training. It allows for real-time updating and electronic circulation of training materials; it allows office-holders to complete their training requirements at times that suit their individual needs, thereby removing the high travel costs associated with face-to-face events; it is responsive and rapid.

A number of e-learning pilots are now in various stages of development in the college, and the college will shortly be launching its own learning management system (LMS) capable of delivering a wide range of electronic training programmes using open-source Moodle software.⁸ It will be accessible both from home computers and judicial laptops through the judicial intranet. The LMS is, however, intended to complement rather than to replace existing jurisdictional websites.

Diversity and development

The college's Diversity and Development Committee will play a key role in bringing together the range of college-wide initiatives planned for the coming years. Chaired by the chair of the College Board, this committee will closely scrutinise college training programmes to ensure they are sensitive to the importance of diversity training.

It also has responsibility for the college's cross-jurisdictional functions including where appropriate the development of common induction training, leadership and management training, training the trainer programmes, developing systems to encourage sharing of best

practice, and the promotion of new learning and teaching methods.

Cost savings

As the college is a new organisation, its first task has been to develop a three-year strategic plan. The plan is evolutionary rather than radical, building on the strengths of the existing training systems in courts and tribunals, but ensuring at the same time that the college will deliver value for money during a financial period when its resources will decrease. The likely cost savings the Judicial College will achieve through resource sharing, the excision of randomly organised courses and subject repetition and the achievement of economies of scale in course delivery will provide further benefits.

No cost-cutting option can currently be excluded and the college will need to consider the alternatives to some of its existing practices. This might include reductions in the duration or number of residential training events, driving down venue costs, substituting some elements of face-to-face training with e-learning, developing more regional and less national training to reduce travel and overnight costs, and reducing the quantity of hard-copy materials sent out to delegates in advance of programmes.

As part of this drive to increase the efficiency of our training programmes the college will be seeking to ensure that the increasing numbers of judges who are appointed to jurisdictions in which they have not sat or who are appointed to

Continued on page 19

AN AGENDA FOR RESEARCH

Howard Davis finds a text which is useful in inviting proper scrutiny of the claims made for the benefits of television broadcasting, but which is let down by its style of writing.

THIS IS A TIMELY MOMENT for a book on the televising of judicial proceedings. In September 2011 the Ministry of Justice announced that limited broadcasting, beginning in the Court of Appeal, would be allowed following the necessary statutory repeals. Paul Lambert's point is that the explanation and justification for such changes (e.g. that broadcasting will increase confidence in the judicial process) tend to be based on impression and belief rather than persuasive empirical evidence, and that this needs to be rectified.

Ability to educate

The book is really an essay on empirical methodology. Much of it is a response to a 'research challenge' laid down by the US Supreme Court. The empirical research which has been done on, in particular, the ability of court broadcasting to educate about the judicial process and the effects it has on audiences, is identified and often criticised by Lambert.

He demonstrates failures of method by researchers which tend to undermine the credibility and persuasiveness of their results. Indeed the first half of the book reads like a detailed, critical, literature search and it is no surprise to learn that the author, at the time of publication, was writing his PhD on the effects of court room broadcasting. Lambert has done us a service by bringing together all this empirical research.

Effects of cameras

The heart of the book contains a very detailed identification and some discussion of the many matters that need to be thought about and dealt with when designing empirical research into broadcasting from the courts. The writing

is often in terms of questions, derived from definitions, which empirical research needs to address. The book insists that effective research must be sensitive to all the different types, contexts, roles, environments, purposes, etc which are invoked once a proper examination of televising the courts begins. The difficulty of obtaining convincing evidence about the effects of cameras in the courts, on jurors, counsel, judges, witnesses, parties, defendants, etc is spelled out in detail. 'Eye-tracking' technology can indicate the extent that cameras distract, and it is (repetitively) promoted in the book.

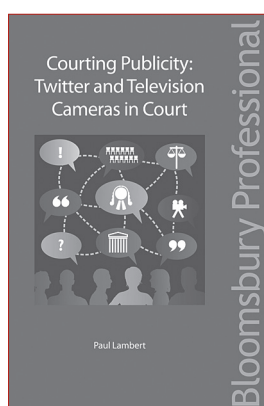
For Lambert empirical research is decisive. He implies that the issue of TV in courts can be resolved solely by consideration of empirically testable matters. Whether or not that is his true position, constitutional principles, such as openness, rights, fairness, hardly figure in the book and the epistemological limits of empirical research are not discussed.

Twitter

The book also considers the use of Twitter to provide immediate comment on proceedings and, unsurprisingly, finds a dearth of research. For reasons that were unclear to this reviewer there is also a rather brief unsatisfactory chapter on 'super-injunctions'.

Research agenda

There is little in the book that relates specifically to tribunals. They are not the focus of the work and the only reference is the confidence-sapping remark that 'there have been various tribunals in Ireland and the UK' with a footnote to a discussion of McCarthyism. Yet, according to the government's consultation paper of



Courting Publicity: Twitter and Television Cameras in Court, by Paul Lambert, 2011, Haywards Heath Bloomsbury Professional

2004 (*Broadcasting Courts* CP 28/04), most administrative tribunals are likely to be outside the statutory bans. Responses to the consultation in 2005 suggest that a significant minority of such tribunals (46%) would allow broadcasting all the time or at least in special circumstances. So there is clearly the opportunity for research and discussion on this matter. Anyone seriously concerned to explore the reasons given for and against TV broadcasting from tribunals, in ways that are properly sensitive to the hugely different contexts in which the First tier operates, will find this book helpful in setting the research agenda and in providing other methodological aids.

Repetition

The book is useful because it invites proper scrutiny of the claims made for the benefits of TV broadcasting. However there is a serious problem with the writing and presentation which, frankly, undermines the pleasure and interest of the book. It is written in a great number of often

short, numbered, paragraphs and this gives a jerky reading experience. Often important matters (including the major US cases) are not properly introduced or put in context. There is a huge amount of repetition (the need for better empirical research is made with wearying frequency). It is, however, the quantity of little errors which is close to unforgivable. For example, John Fiske, a prominent media academic, is referred to in the text as Robert Fiske (sic) and in one place the discussion is interrupted by text on an entirely different issue, copied from earlier in the book, which suddenly appears.

Too much should not be made of occasional errors but here there are so many that the reading experience is undermined. It is hard to recommend this book for purchase until author or publishers do their readers the courtesy of proof-reading the text.

Dr Howard Davis is Reader in Public Law at Bournemouth University.

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a salaried post without any judicial experience are properly and effectively trained for those new roles, thereby increasing cross-jurisdictional career opportunities and broadening the ambit of judicial education. The college is heading for uncharted territories. But enthusiasm and creative problem-solving currently flow in abundant measure in its virtual classrooms, and morale across the college remains high.

Professor Jeremy Cooper is Director of Training for the Tribunals Judiciary at the Judicial College.

¹ The Judicial Appointments Commission. Magistrates are the exception, as they continue to be appointed by the Lord Chancellor's Local Advisory Committees.

² The membership of the board was as follows: John Phillips, Jeremy Cooper, Mark Hinchliffe, Siobhan McGrath, Godfrey Cole, Paul Stockton, Judith Lennard, Winston Thomas, John Gibbons, (Secretary) Simon Carr.

³ The board (known as the Unified Judicial Training Advisory

Board – UJTAB) published its report *Towards a Joint Judicial Training Board: the Case Explored*, in July 2010.

⁴ Gary Hickinbottom had been Deputy Senior President of Tribunals prior to his appointment to the High Court, as well as being Chief Social Security Commissioner and was therefore able to bring a wealth of experience of the tribunal world to this planning process.

⁵ See *Strategy of the Judicial College 2011–14*, para 1.

⁶ In addition to the Chairman, the other board members are the two Training Directors (Judge John Phillips and Judge Jeremy Cooper), Joint Chairs of Courts Committee (Owen J and Thirlwall J), a magistrate with training experience (Ms Liz Harrison), the Chair of Tribunals Committee (Judge Nicholas Warren) and a second tribunal representative (Professor Andrew Grubb), the Chair of the Wales Training Committee (Roderick Evans J), a representative of the Diversity and Development Committee (Davies J) and the Executive Director of the Judicial College (Sheridan Greenland).

⁷ In 2011, the College Board carried out a 'limited market engagement' to ascertain the feasibility of acquiring its own premises or alternatively of entering into a joint arrangement with an existing training organisation, commercial enterprise or academic institution. The responses to this exercise are now the subject of further analysis.

⁸ See <http://moodle.com>.

TIRELESS PRINCE OF REFORM

Penny Letts remembers working with Tony Newton, the former Chair of the Council on Tribunals and later the Administrative Justice and Tribunals Council.

TONY NEWTON sadly died on 25 March 2012 after a long illness. The many tributes that followed – all warm with praise for his integrity, compassion and dedication – concentrated on his career as a Conservative politician and Cabinet Minister, making only brief reference to the enormous contribution he made to the world of tribunals and administrative justice.

I first met Tony in the early 1980s when he was Minister of State for Health and Social Security. I was involved in campaigning on reform of social security and child care law and his detailed knowledge of these complex areas of law impressed us all. But what was truly amazing was that Tony remembered me nearly 20 years later, when I applied for appointment as a member of the Council. That was another of his strengths – his ability to remember the people he met – whether fellow politicians (on all sides of the political divide), civil servants, members of the judiciary, his former constituents or through the many charities and organisations he supported – and to make the best use of his contact with them.

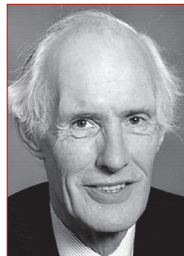
At the Council, Tony worked tirelessly to promote and influence the programme of reform which helped transform tribunals into a central component of the justice system and to achieve recognition for the importance of administrative justice. He was widely respected as a champion of access to justice for ordinary individuals.

Just one example of his focus on users was his insistence on chairing a series of ‘user support workshops’ held in different parts of the country, so that he could be directly involved in meeting users and their representatives and hear their concerns at first hand. Another was his interest and involvement in mental health issues, fuelled by his concern that the mechanisms to safeguard

the rights of mental health service users should be fair and accessible.

Even after retiring, and despite his failing health, Tony kept going, impelled by his strong sense of social justice, seeking amendments to protect vulnerable people affected by the proposed welfare reform, NHS and legal aid changes. And

not least, he led a vigorous campaign seeking to persuade the government not to abolish the AJTC. The attendance at Tony’s funeral reflected his enormous popularity across a wide political spectrum, and the tributes – from family, friends and colleagues (including former Prime Minister Sir John Major) – confirmed that he was held in the highest regard and with great affection by everyone he came into contact with.



TONY NEWTON,
LORD NEWTON
OF BRAINTREE
1937–2012

Lord Carnwath, former Senior President of Tribunals, writes:

Tony Newton rightly prided himself as a ‘critical friend’ to the tribunals and their judges. He developed and perfected this role throughout the years he served the Council. In all areas of work, his immense experience of government and practical politics, and his energy, enthusiasm and humanity made a matchless and invaluable combination. He knew everyone, and never forgot a name or a face, and he always knew where they fitted into the equation. He will be greatly missed personally and professionally by all who knew him.

I am particularly grateful for his support and advice to me in seeing through the enactment and implementation of the Tribunals, Courts and Enforcement Act 2007, which brought about the most significant changes in tribunals for over 50 years. Tribunals are often referred to as the Cinderella of the justice world – if that is the case, then Tony was their Prince Charming.

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AIMS AND SCOPE

- 1 To provide articles to help those who sit on tribunals to maintain high standards of adjudication while remaining sensitive to the needs of those appearing before them.
- 2 To address common concerns and to encourage and promote a sense of cohesion among tribunal members.
- 3 To provide a link between all those who serve on tribunals.
- 4 To provide readers with material in an interesting, lively and informative style.
- 5 To encourage readers to contribute their own thoughts and experiences that may benefit others.

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