

Contents

1

EDITORIAL

HAZEL GENN

2

TEN-YEAR ANNIVERSARY: Spreading the word

STUART VERNON

5

APPRAISAL: Advancement through assessment

MARY HOLMES

8

COUNCIL ON TRIBUNALS: Golden rules

DOUGLAS READINGS

10

TRIBUNALS FOR USERS: Ten to one

DOMINIC SMALES

12

TRAINING VIDEO: The first cut

CHRISTINA BAINBRIDGE

14

CASE NOTES: Reminder on how to avoid bias

NUALA BRICE

17

TRIBUNALS FOR USERS: What users want

MICHAEL ADLER and JACKIE GULLAND

20

JSB: Tribunals advanced skills

GODFREY COLE

EDITORIAL



This, the 20th issue of *Tribunals*, marks 10 years of the publication of the journal.

While there have been certain recurring themes over that time, we have witnessed some important changes in the past decade, many of which reflect the desire for greater cohesion in the way in which tribunals operate. The announcement in November 2003 that there is to be a White Paper in the Spring of 2004 as the precursor to the establishment of a unified Tribunals Service will surely further the debate on how this might best be achieved. An update on the progress of unification is included at page 10.

Both the Council on Tribunals and the JSB also announced the culmination of a series of developments at the Council's Annual Conference in November 2003, all of which will be invaluable in the move towards a more cohesive tribunals world. Douglas Readings describes the birthing pains of the Council's new *Guide to Drafting Tribunal Rules* on page 8.

However, training remains key to the maintenance of

high standards of adjudication, and is of course the principal interest of this journal, so it is fitting that the journal is able to announce the publication of the JSB's *Framework of Training Standards* and *Fundamental Principles and Guidance for Appraisal in Tribunals*, whose genesis is described by Mary Holmes on page 5.

While on the theme of cohesion, I can report that the Council and the JSB are looking at whether we are approaching the time when the two organisations should produce a wider-interest journal with a broader remit. There is a long way to go yet before this journal is replaced and we will of course ensure that the aims and focus of this journal (which have evolved over 20 issues as described by Stuart Vernon on page 2) are not lost, but in the meantime, do please let us know, by post or e-mail, what you would want to see in a new publication.

PROFESSOR HAZEL GENN

JSB, 9th Floor, Millbank Tower, London SW1P 4QU
tribunals@jsb.gsi.gov.uk
November 2003



The JSB has recently published its *Framework of Standards for Training and Development in Tribunals* and its *Fundamental Principles and Guidance for Appraisal in Tribunals*. You can read more about both publications on page 5 of this issue of the journal. In the meantime, further queries about them should be directed to tribunals@jsb.gsi.gov.uk

SPREADING *the* WORD

STUART VERNON *looks back at the subjects that have been tackled by articles published in the Tribunals journal during the past 10 years.*

The *Tribunals* journal was launched 10 years ago. Lord Mackay, the then Lord Chancellor, in a foreword to the first issue, identified the aims of the journal as: ‘to help to train chairmen and members of tribunals; to enhance the quality of tribunals services; to advance fair and efficient systems of justice in tribunals; to inform tribunals; and to provide encouragement to overcome isolation within tribunals.’ How has the journal sought to achieve these important aims?

Editorial Board

Two issues have been published each year under the auspices of the Tribunals Committee of the Judicial Studies Board, initially by the Oxford University Press and latterly by the JSB itself. An editorial board, with representatives from the JSB, the Council on Tribunals, tribunals themselves and including training expertise, oversees the content and preparation of each issue, a task managed by a managing editor. *Tribunals* is currently distributed free of charge to tribunal chairmen and members and to others with an interest in this important sector of administrative justice.

Generic skills

The very first issue recognised that the journal faced a fundamental challenge; it had to recognise and represent the diversity of the tribunals system while promoting a sense of cohesion among those who worked in individual tribunals. Successive issues have tackled this challenge in a number of ways, predominantly by identifying those skills that are generic to tribunal adjudication and by profiling the work of individual tribunal systems.

Almost every issue has contained articles on those skills

that are necessary to high-quality adjudication across the diversity of tribunals. These articles have often appeared under the heading ‘Principles in practice’ and together they represent an important collection that both identifies those adjudication skills that are needed in tribunals and offers assistance to chairmen and members seeking to develop such skills. A look through the back issues of the journal will identify articles dealing with those skills that provide continuing challenges, including:

- The elements of a good adjudication.
- Decision-making.
- Stating reasons.
- Impartiality.
- Equal treatment.
- Dealing with evidence.
- Unrepresented appellants.
- Working with representatives.
- Introductions.
- Adjournments.
- Preparation and reading the papers.
- Communication skills.

Other JSB work

A glance through this list indicates the complexity of tribunal work, the universality of the generic skills necessary to do it well and the perennial challenge presented by these skills. The introductory Training Skills Development course offered by the JSB is designed around these skills and the new Advanced Tribunal Skills course, to be piloted in 2004, revisits many of them. Their importance is also recognised in the publication of the JSB’s *Competence Framework for Chairmen and Members of Tribunals*, a copy of which

was provided with Volume 10 issue 1 of the journal in 2003. The six headline competences identified by the *Competence Framework* are: Law and Procedure, Equal Treatment, Communication, Conduct of the Hearing, Evidence and Decision-Making. Articles in *Tribunals* have championed the development of each of these competences; by doing so it has provided an important forum for the development and maintenance of standards of professionalism in the tribunal system.

Refocusing

It has been possible to detect gradual changes in the tenor of the publication since the beginning of 2000.

When the title started to be produced solely by the JSB, the original contract with Oxford University Press having come to an end, it ceased to be subscription-based and started instead to be distributed, free of charge, to around 6,000 tribunal members. Numbers have continued to grow ever since. The ‘relaunch’ in 2000 was marked by a new design for the journal, including the publication of an ‘Editorial’ in each issue.

More importantly, it was around this time that the editorship of Professor Hazel Genn started to be felt in a number of different ways. The journal started to introduce one or two main themes for each issue, in an attempt to home in on generic skills. Other themes have included IT and equal treatment issues, and the publication of Sir Andrew Leggatt’s Report in 2002 provided the opportunity to devote one entire issue to responses from a range of different people, including a legal adviser from the Citizen’s Advice Bureau, the lead judge of the Administrative Court, two tribunal presidents and an academic.

Further gradual change in the tone of the journal over the past four years has been evident as a result of the increasing need for a more cohesive approach to the work of the proliferating number of tribunals. The work

of the JSB after the publication of its Training Needs Analysis, the Council’s Framework of Standards and, latterly, the work of the Tribunals for Users Programme at the Department for Constitutional Affairs have all been the subject of report in the journal.

Training

Other themes have been represented in the preceding issues. Training has featured prominently, indeed its importance was identified in the original aims. The journal has included articles on training initiatives from individual tribunal systems and training courses from the JSB. Particular articles have highlighted the

training needs of new tribunals such as the Planning Inspectorate; others have dealt with training required by changes to legislation. Though these articles are jurisdiction-specific, they often highlight the commonality of the training challenges faced and the characteristics of good training design, delivery and evaluation. The journal has also featured a number of articles on training generally. These have charted a welcome move from residual scepticism and resistance to training to a recognition of the importance of training across the tribunal system.

Both the JSB’s Training Needs Analysis and the Leggatt Report recognised that training within tribunals is varied and patchy. Some tribunal systems provide high-quality training, in others a lack of a national structure or funding problems provide formidable obstacles to the development of good training. The report emphasises the responsibility of tribunals to enable parties to participate properly in the process of tribunal justice, including the hearing, without being represented. *Tribunals* has recognised this responsibility since it was first published.

Needs of users

In addition to those articles dealing with adjudication skills, the journal has commissioned and published a

The journal started to introduce one or two main themes for each issue, in an attempt to home in on generic skills

number of articles focusing broadly on the needs of tribunal users and on the responsibility of chairmen and members to those appearing before them.

In 1994, the very first issue of the journal reported on Hazel Genn's important research into the experience of unrepresented applicants before Social Security Appeal Tribunals, Industrial Tribunals, Mental Health Review Tribunals and Immigration Adjudicators. Other articles have discussed the work of the Free Representation Unit, the appellant's view of Disability Appeal Tribunals, the work of interpreters, cross-cultural communication, the important skills of listening and asking questions, handling hostility and physical access to tribunals.

Equal treatment

These issues are related to the important theme of diversity and equal treatment. This subject has received significant attention in *Tribunals*; indeed it was a particular theme in Volume 10 issue 1 (2003), with articles on the Council on Tribunals' *Making Tribunals Accessible to Disabled People: Guidance on Applying the Disability Discrimination Act* and the Lord Chancellor's Department's Tribunals and Diversity Project, which was looking at the expectations and experiences of black and minority ethnic groups. Earlier articles considered language and communication and a range of equal treatment and diversity issues.

Human rights

Two other contemporary themes have received wide recognition in the pages of the journal.

Issues concerning tribunals and human rights have been covered both before and after the introduction of the Human Rights Act, and the impact of technology on tribunals has become an increasingly important issue. Two early articles in 1995 considered the possible impact of European law on tribunals.

In 1999, the journal began a series of articles on the importance of the Human Rights Act for tribunals and this was followed in 2001 by the first of a series of human rights case notes.

Technology

The increasing impact and importance of technology in tribunal systems has been reflected in a series of articles in the journal. The first appeared in 1997, when Caroline Sheppard wrote about the establishment of a new paperless tribunal, the Parking Adjudicators. In 2002, an article was published on the modernisation of computer systems in tribunals and technology was a theme for Volume 10 issue 1 in 2003, with articles discussing video-linked hearings in Immigration Appeal Tribunal hearings and the use of voice recognition software for decision-writing.

Classics

A number of the articles published by the journal have now achieved the status of training 'classics' and are reproduced as hand-outs and included as recommended reading for training organised both by the JSB and individual tribunals. Examples of these are Judge Peter Clark's piece on decision-writing, Michael Johnson's guidance on unrepresented parties and Judge Timothy Lawrence's piece on judicial note-taking. The Editorial Board is grateful to these authors, as it is to all who have found themselves inveigled upon to write for the journal.

There is no doubt that the journal has had its finger on the pulse of the tribunals world over the 10 years of its publication and has reflected the diversity and change in tribunals that has characterised the last decade. It is worth revisiting the original aims set out at the beginning of this article. They establish a continuing agenda for the tribunals world as a whole and there is little doubt that the journal has made a significant contribution toward their achievement. Tribunals are now much better equipped to take on the Leggatt model of a professionalised and unified tribunal system than they were in 1994 when the journal was launched and it can take some credit for that.

STUART VERNON is an Adjudicator at the Office of Fair Trading. Readers can obtain copies of any of the articles mentioned from the JSB (publications@jsb.gsi.gov.uk). Recent issues can be found on the JSB website (www.jsboard.co.uk).

ADVANCEMENT through ASSESSMENT

How can tribunals assess the training that its members need and then design suitable training programmes?

MARY HOLMES *describes guidance being produced by the JSB to help tribunals do just that.*

In November 2002, the Judicial Studies Board published its *Competence Framework for Chairmen and Members of Tribunals* (‘the Competence Framework’) implementing the first recommendation of the Training Needs Analysis for Tribunals (TNA) carried out in the late 1990s.

The JSB is now publishing the second recommendation arising from the TNA, with its *Framework of Standards for Training and Development in Tribunals* (‘Training Framework’). This document provides a framework for competence-based training and creates the opportunity for consistency in training across jurisdictions.

The Training Framework proposes a systematic approach to training design and delivery, encouraging tribunals to identify their training needs based on what the tribunal does and the expectations of those it serves. It has some helpful advice for smaller and less frequently constituted tribunals and it provides a useful checklist for those tribunal systems that already have comprehensive training programmes.

The Competence Framework sets out the skills and knowledge required to perform effectively, at threshold level, in a judicial capacity in a tribunal.

The Council on Tribunals’ Framework of Standards for Tribunals (‘the Framework of Standards’), launched in November 2002, set the scene for a common

approach to the way tribunals operate and in particular recommended that:

- Tribunals should provide programmes of induction and refresher training for tribunal chairs, members and administrative staff.
- Induction training should take place before tribunal members begin sitting.
- Regular refresher (continuation) training should be provided to all members including the opportunity to discuss matters of concern with other members.
- The lead member (chairman) of tribunals should be trained in the skills of chairing.
- Guidance should be provided regularly to all members on matters of law and practice.
- Chairs, members and administrators should have participated in training in diversity and equal treatment issues.

The Training Framework proposes a systematic approach to training design and delivery

The aims of the Training Framework, therefore, (and the resources and information which will ultimately support it) are to:

- Provide a guide to tribunal presidents, heads, sponsor departments and trainers on training and development requirements and opportunities for their members and chairmen.
- Provide a tool for tribunals to assist them in developing, delivering and reviewing their training provision.

- Provide guidance for chairmen and members on training that they are required to undertake and development opportunities they can expect.
- Enable the quality, quantity and value for money of training provision to be assessed by jurisdictions.
- Provide guidance on training practice, particularly for new tribunals.
- Promote best practice, enabling jurisdictions to draw on examples of existing good practice in tribunals and other training schemes some of which relate to the judiciary.

Competence-based training is training designed to develop and enhance the potential of tribunals judiciary in the performance of their adjudicative role.

It is the natural corollary to the introduction of formal training based upon the acquisition and maintenance of competences that its efficacy should be tested by appraisal.

Sir Andrew Leggatt recommended in his report *Tribunals for Users* that all tribunal chairmen and members should participate in an annual review of their performance while sitting and that tribunals should aim to recognise a culture of advancement through assessment.

In addition, the Council on Tribunals in its Framework of Standards recommended that ‘all chairs and members should participate in a review of their performance at appropriate intervals to identify areas of good performance and areas for improvement’.

The JSB is, therefore, now also publishing, as the third recommendation of its TNA, its *Fundamental Principles and Guidance for Appraisal in Tribunals* (‘Appraisal Guidance’) and a Model Scheme.

These have been drawn up by the JSB in conjunction with the the Council on Tribunals as a result of consultation with a wide range of presidents of tribunals

and those responsible for training in tribunals, who encouraged the JSB to provide such guidance.

Both publications owe much to those tribunals that have already taken the initiative to introduce appraisal. They address a variety of issues in order that those both within and without a tribunal can be confident that the scheme adopted is appropriate to the jurisdiction, its size and the composition of its membership. They cover:

- Objectives for an appraisal scheme.
- Responsibility for the operation of the scheme.
- Scope of the scheme.
- Frequency of appraisal.
- Training for appraisal.
- Appraisal criteria.
- Outcome standards.
- The appraisal process.
- Administration of the scheme.
- Use of the appraisal information.

The JSB’s Competence Framework provides the appraisal criteria for the Appraisal Guidance and Model Scheme.

The Appraisal Guidance specifies those elements that are considered essential for effective appraisal and includes issues for guidance and further consideration.

Competence-based appraisal enables the effectiveness of that training to be tested and provides opportunities for individuals to identify objectives for self-development.

The Model Scheme provides an example that can be adapted to the needs of a variety of types of tribunals. Although it incorporates elements identified as fundamental, it also provides for variations according

to the constitution of the tribunal, which are marked in square brackets in the Model Scheme. In addition, there are the documents and forms included as annexes to the scheme that are intended to provide examples of good practice in appraisal. The Model Scheme and its annexes will be made available electronically, allowing tribunals to adapt them for their own purposes and enabling the appraisal forms to be distributed electronically for completion during appraisal.

The JSB, in its continuing support of all tribunal jurisdictions, has already run a workshop for those whose responsibility it is to set up an appraisal scheme to enable them to prepare one suitable for their jurisdiction. It is also providing appraisal training for individuals nominated by their jurisdictions, to assist them understand the purpose of appraisal, the challenges presented, the key tasks and responsibilities and the skills needed by the effective appraiser when appraising against their tribunal's competences.

Some tribunal members sit in two, three or even four jurisdictions and may expect to be appraised in each of them. The Appraisal Guidance and Model Scheme do not provide for cross- or inter-jurisdictional appraisal, but do create the opportunity for consistency of practice, procedure, standards, documentation and vocabulary in order to maintain standards across jurisdictions and provide some commonality.

Mentoring provides new members of a tribunal with opportunities for confidential advice and guidance from an experienced member in becoming familiar with the Competence Framework, their new adjudicative role and how the tribunal works.

The mentors will assist them in becoming familiar with the Competence Framework, provide them with practical and professional support in managing the adjudicative role and enable them to understand the lines of communication and structure of the tribunal

In addition to appraisal, Leggatt proposed that effective adjudication required the provision of advice, guidance and information irrespective of assessment.

In this context, it is important to distinguish between appraisal – the assessment of performance and potential – and mentoring – advice and guidance from an experienced member of an organisation entrusted with the support of less experienced members.

Neither the Appraisal Guidance nor the Training Framework include a mentoring scheme; this is the subject of the next recommendation of the TNA, the JSB's Mentoring Scheme.

That scheme is also being developed through consultation with tribunal presidents.

It will provide a framework for enabling new appointees to a tribunal to receive individual and confidential advice, support and guidance from more experienced colleagues.

The mentors will assist them in becoming familiar with the Competence Framework, provide them with practical and professional support in managing the adjudicative role and enable them to understand the lines of communication and structure of the tribunal.

Those interested in further advice on training, appraisal training or mentoring are welcome to contact the JSB at tribunals@jsb.gsi.gov.uk.

MARY HOLMES is Senior Training Advisor (Tribunals) at the Judicial Studies Board. For a fuller discussion of the issues relating to the introduction of an appraisal scheme and examples of current practice, see the JSB paper *Appraisal in Tribunals* (3 April 2003, www.jsboard.co.uk).

GOLDEN RULES



Writing and updating a tribunal's rules of procedure is now more straightforward with the publication of the Council on Tribunals' new model rules. DOUGLAS READINGS describes their genesis.

At its meeting in July 2003, the Council on Tribunals approved for publication in November 2003 a new edition of its *Model Rules of Procedure for Tribunals*, first published in 1991, under the new name *A Guide to Drafting Tribunal Rules*.

The need for change

During the 1990s, the Council on Tribunals became aware of complaints from many tribunals about the inadequate case-management powers which they were given by their procedural rules. On the other hand, users complained that the rules in some tribunals were too legalistic and not user-friendly. Some tribunals were uncertain whether the rules permitted them to use modern information technology. There were similar concerns in the civil courts, which led to Lord Woolf's Review of Civil Justice in 1998. It was agreed that the Model Rules needed to be revised, but the Council's resources did not permit the exercise to be undertaken until December 2001. An interim revised edition of the Model Rules was published in 2000, in which changes were made to take account of the Human Rights Act 1998, which had just come into effect.

'Woolf-izing'

The Legal Committee of the Council on Tribunals began the revision process with the modest aim of modernising the language of the existing Model Rules, and adding some additional new case-management rules. They asked the legal draftsman, Robin Bellis, to take the Model Rules and to 'Woolf-ize' them, that is to copy the major changes that had been introduced in the civil courts with the Civil Procedure Rules 1998. The Committee expected this to change the language, with 'discovery' becoming 'disclosure' and 'determination' becoming 'decision'. But, to everybody's surprise, the process of 'Woolf-izing' seemed unavoidably to produce a draft

that was even more complicated and legalistic than the original. The first draft of an overriding objective would have challenged the House of Lords to interpret it.

Re-drafting the rules

The Committee then decided that radical surgery was required, and that they might as well take the opportunity to make some desirable changes. Their priority was to enable tribunals to manage cases better, but also to be as informal and user-friendly as possible. They decided to adopt gender-neutral language, which involved the re-drafting of nearly every single rule, and to cut out technical expressions, such as 'service' of documents. It was decided that there was too much repetition and that they should be re-arranged in chronological order. In order to improve access to justice for unrepresented parties, the insistence on a standard form being used for appeals in all cases was abandoned. New rules on Alternative Dispute Resolution were drafted. The rules concerning expert evidence were re-written to accommodate modern practice, such as meetings between experts, and the joint instruction of a single expert. A whole new section on the grouping of cases was introduced to avoid the problem of numerous similar cases having to be dealt with individually. For the first time, provision was made for tribunals to use e-mails, telephones, fax machines and video-links and to keep their records on computer. A new rule on signatures, for example, says:

'Where any of these Rules requires a document to be signed, that requirement shall be satisfied if the signature is written (including being produced by a computer or other mechanical means), and, in any case, the name of the signatory appears beneath the signature in such a way that he or she may be identified.'

There followed a series of meetings, drafts, re-drafts and

re-re-drafts. There was hectic e-mail correspondence. Gradually, the rules acquired shape, but then the notes to the rules had to be revised. This was when the Committee discovered how many of the references to case decisions and statutes were out of date. The decision of the Court of Appeal in *R (on the application of Katie Lester) v London Rent Assessment Committee* [2003] 1 WLR 1445, for example, (about time limits and the delivery of documents) affected several notes. The Secretary of the Legal Committee, Alexander Hermon, from his long experience, was able to identify many of the legal changes that had occurred. The Committee and the draftsman inserted more modern references and examples of practice, drawing on their own records, including reports of visits to tribunals by members of the Council on Tribunals. In re-drafting the notes, the Committee decided to give each rule a 'purpose note', explaining in a few words why the rule might be useful.

Consultation

A draft was sent out for consultation in January 2003, and received a generally good reception. In particular, the idea of introducing an overriding objective was warmly received. The consultation exercise revealed that the needs of certain users had not been dealt with adequately, particularly Welsh speakers, and the relevant rules were re-drafted as a result. A covering letter asked several specific questions, including whether the notes to the rules were needed, since they were difficult, and expensive, to keep up to date. The unanimous answer was that the notes should be kept. The Council hopes in future to be able to publish updates on its website. Comments on the practical working of the rules from judiciary, administrators, parties and their representatives, will be gratefully received.

Some of the responses to consultation from tribunal judiciary and administrators said that one or two of the draft Model Rules would not fit the jurisdiction of their own tribunal, and therefore they would not be able to adopt the Model Rules. The Model Rules had always been intended to provide a collection of precedents from which tribunals and government departments could

choose, when drafting or revising a tribunal's procedural rules or regulations. But it was plain that there remained some misunderstanding. This response caused the Council on Tribunals to make two further changes. In order to make it clear that the new publication is not a code of rules to be adopted in its entirety, the Council renamed it *A Guide to Drafting Tribunal Rules*. Secondly, all the individual 'model rules' were renamed 'draft rules'.

Pick and mix

The Council hopes that the new publication will be recognised as a 'pick and mix' collection, rather than a 'one size fits all' code of rules. However, readers of this journal may ask: Why not produce one single code of rules for all tribunals? The answer is that the Council on Tribunals does not believe it is possible to produce a satisfactory single code. The idea of a single code is attractive and persistent, having originally been considered, and deemed inappropriate, in 1957 by the Franks Committee on Tribunals and Enquiries.

The number and variety of tribunals have increased since 1957, and it is probably more difficult now than it was then to contemplate a set of rules where one size fits all. Nevertheless Sir Andrew Leggatt's Report of the Review of Tribunals in March 2001 recommended that, for citizen and state tribunals:

'The basis of the practice should be the Council on Tribunals's Model Rules. The aims should be to achieve the greatest possible coherence across the System, whilst recognising the needs of different Divisions (and perhaps of classes of case within Divisions) at least for different time limits. Divisions will also need their own Practice Directions.'

The Council presents its *Guide to Drafting Tribunal Rules* as a contribution to the future of tribunals.

DOUGLAS READINGS was a member of the Council on Tribunals between 1997 and 2003. He practises as a barrister in Birmingham. The new guide is available on the Council's website at www.council-on-tribunals.gov.uk

TEN *to* ONE

DOMINIC SMALES *describes the work that is taking place to bring the first 10 tribunals under the umbrella of a new executive agency in the Department for Constitutional Affairs.*

Much has happened in the 12 months since our last article for *Tribunals* journal. In March 2003, the Government announced the biggest change to the tribunal system in over 40 years. In response to Sir Andrew Leggatt's Review, the Government announced its intention to create, over time, a unified Tribunals Service that would bring together within a single organisation the 10 largest non-devolved tribunals in central Government.

The Tribunals Service will initially comprise all of those tribunals already administered by the DCA and, transferring from their sponsoring Departments, the Appeals Service, the Employment Tribunals Service, the Special Educational Needs and Disability Tribunal, the Criminal Injuries Compensation Appeals Panel and the Mental Health Review Tribunal. Other smaller tribunals administered by Central Government will join the Service at a later stage.

Since the March announcement, the former Lord Chancellor's Department has acquired a new name, a new ministerial team, a new set of responsibilities and a new focus, positioning itself as a mainstream public service delivery department, with a much greater focus on meeting the needs of its customers.

In the same way, our programme of tribunal reform will put at its heart the needs of customers. And our customers are all of those who make use of the whole administrative justice system. But we must also create a Tribunals Service that works in an effective partnership with original decision-makers and with the other elements of the wider administrative justice system to ensure customers get the access to justice they need through a service designed to meet their needs, not one that is shaped only by the needs of institutions within the system. The new Tribunals Service will aim to do this through:

- Improving the information available to users and potential users of the tribunal system, directing them towards the most appropriate means of dispute resolution.
- Encouraging more systematic use of review by original decision-makers to ensure that only those cases that need to come before a tribunal do so.
- Developing effective feedback loops between tribunals and decision-makers to improve further the quality of original decisions.
- Encouraging use of other means of alternative dispute resolution including early arbitration and conciliation.

For those cases that do reach a tribunal, the new Service will focus on improving the user experience. The Service will aim to deliver the following benefits:

- Enhanced user confidence in the manifest impartiality of tribunals, by making tribunals independent of decision-making bodies.
- Hearings which are less daunting and less legalistic.
- Reduced or more appropriate waiting times.
- Better and more accessible hearing centres (bringing together the largest tribunals within a single organisation will for the first time create a properly national network of hearing centres).

How will we deliver the new Tribunals Service? We have determined that a phased approach to implementation is the only one likely to be successful. Tribunals have developed their different approaches to delivering justice over a long (some would say too long) period of time. We will improve services and find efficiencies by greater integration of buildings, staff and systems. But we must not do so at the expense of maintaining the necessary

specialisms of individual tribunal jurisdictions and in particular the differences between ‘party vs. party’ and ‘citizen vs. state’ tribunals.

Our approach is to transfer the major tribunals across to DCA and to bring them together in a new executive agency. With that as the platform we will be better placed to deliver greater integration and modernisation in an efficient and practicable way that delivers improvements and benefits for all users.

We are also looking at ways in which users can be helped to represent themselves at tribunals. We want to research the existing provision of specialist advice and training to those organisations already helping tribunal users, and look at ways of improving it. We also want to encourage users to seek advice at an early stage in the life of their case. Within the overall Tribunals for Users Programme, our Customer Support Project will be undertaking further work and making recommendations regarding the way forward next year.

We will continue to develop proposals to improve the appointment and deployment of tribunal chairmen and legally qualified panel members. Our aim is to help to raise the profile of tribunal panel members as a single body within the judicial system and to recognise the very good work that they already do. However, a new and more unified structure of tribunal judiciary will also help to ensure that best practice and training can be delivered more widely and more effectively.

Alongside these proposals we want to create a genuinely coherent structure for the administrative justice system so that onward rights of appeal from tribunal decisions and the relationship of the tribunal systems to the administrative courts are dealt with in a broadly consistent way, rather than the piecemeal approach that has developed over a long period of time.

What is the timetable for implementation? Recent changes to the Department, including new work arising from the commitments to create a Judicial Appointments

Commission and a Supreme Court, have meant we have had to consider all of our commitments and the resources available to deliver them. The tribunal reform programme has also been a part of this audit of priorities.

While we still aim to have created a Tribunals Service and transferred to it the 10 largest non-devolved tribunals by 2008, we will now pursue a more phased approach to delivering our wider programme of tribunal reform, with the first tribunals not transferring over until 2006. Ahead of that we intend to appoint a Chief Executive-designate and a Senior President (though legislation will ultimately be required to create this appointment). These two will work in partnership to champion the reform programme in the Department and with judicial colleagues.

DCA has appointed a new Programme Director and Programme Manager to take forward the Tribunals for Users Programme. Planning the detail of the transfers to the Tribunals Service can now begin in earnest with our colleagues in the transferring Tribunals and their parent Departments. We will publish further details of our proposals in a White Paper in Spring 2004.

What we have set out here is a long-term programme that will involve complex and cultural change over a period of time. But, as we have said, the transfer programme is only a part of the reforms we want to deliver. We will not lose sight of the opportunities for early improvements in services whenever they present themselves. Working in close collaboration with tribunal administrators, panel members and other stakeholders including the Judicial Studies Board and the Council on Tribunals, our objective is to continuously seek ways of improving the services and support given to all those who are seeking access to a modern and efficient system of administrative justice.

*... a genuinely
coherent
structure
for the
administrative
justice system*

DOMINIC SMALES is a member of the Tribunals for Users Programme at the Department for Constitutional Affairs (www.dca.gov.uk).



THE FIRST CUT



CHRISTINA BAINBRIDGE and HENRY RUSSELL *describe how they set about producing a training video for tribunal members for less than £5,000.*

General Commissioners of Income Tax can trace their history for some 600 years, both as tax collectors and then as an appeal tribunal. They are a locally organised tribunal, with each division headed by a chairman. All are lay people who hear appeals against Inland Revenue decisions on income tax matters. There are some 2,200 Commissioners banded together in 421 divisions in England, Wales, Scotland and Northern Ireland, each of which is serviced by a clerk who provides legal advice.

Until 2002, training was mainly organised locally.

The National Association of General Commissioners also organised an annual basic training day for newly appointed General Commissioners and advised the regions on training matters, which led to a more co-ordinated approach to training.

Until 2002, the budget for General Commissioner training had been small. Last year, for the first time, the DCA, the National Association and the JSB joined forces to deliver a programme of 20 one-day seminars to which all Commissioners across the UK were invited. That programme was a great success and we wanted to maintain the momentum achieved in our 2003 training programme.

Planning

The evaluation questionnaires completed by General Commissioners who had attended the 2002 seminars were an invaluable aid in planning the 2003 programme. A significant number of Commissioners suggested some form of mock tribunal hearing. The training team agreed this was a good idea, but designing an effective training session to travel to more than 20 venues across the country presented a challenge.

Having quickly eliminated the notion of having a team travelling round the country, performing at each event, our thoughts turned to producing a video that could be shown at each event. This would allow us to achieve continuity and quality within a small budget, and without calling too much on the actors' time.

Before we approached production companies for costs, we decided what the sessions should achieve in terms of learning outcomes, the content of the video, how long it would last and who the potential 'actors' were. We prepared two different scenarios depicting a mixture of

good and bad practice (mostly the latter) designed to bring out as many as possible of the situations that a Commissioner could face.

The nature of the actual appeals themselves were kept simple (fixed penalty and tax amendment) so as to concentrate on areas of procedure and judicial skills.

There was no script, just a précis on each scenario, written by Susan Balchin, a clerk to General Commissioners, and a list of

points for actors to bring out. These formed the basis for the subsequent syndicate discussion.

The video featured three General Commissioners, a Clerk, two Inland Revenue Inspectors and two taxpayers. A General Commissioner also played the part of a local press reporter in one of the scenarios to remind Commissioners of the new and important issue of tax appeals now being heard in public. Sue Balchin recruited Commissioners and Inland Revenue officers from her area.

The most competitive quote for the work was from AC Video, and a budget of £5,000 was agreed for the project.

*... to achieve
continuity
and quality
within
a small
budget*

Filming

The location had to be big enough to fit both a film crew in and 'a set' – and it had to be free. After an initial rehearsal at the JSB's Conference Centre in Millbank Tower, which allowed us to pick up on unwanted hand movements and mumbles that interfere with lapel microphones, the actual filming took place at a conference room at the Inland Revenue's Euston offices.

The shoot itself went very smoothly with considerable help from a director, producer, soundman and two cameramen from AC Video. Both scenarios were shot straight through twice. With no script, the discussion flowed continually and naturally.

Post-production

It was pleasing that there were no obvious problems in the 'first cut' that was sent by the production company. The only issue was that, without a script, two people were occasionally talking at the same time. This was effectively addressed by some sharp editing.

Using the video

The video session takes place after lunch at each of the events and although this is the most difficult session of the day to fill, a lively two-minute introduction prepares the viewers.

We did not want to make learning points too obvious and the introduction explains that the video shows 'variations in procedure'. It also explains that, although no appeal hearing would exhibit all of the malpractices at one time, the video includes as many points as possible for the maximum effect.

Commissioners are asked to make notes from the video which they can refer to in the syndicate groups following the video. After watching the video, Commissioners divide into syndicate groups to discuss a series of topics devised by the training team. These include procedural and judgecraft issues, as well as substantive law.

Providing trained facilitators is difficult at so many locations. Over the full programme there will be some 100 or so syndicate groups to service. Facilitators for the groups are usually selected by the regional chair before the event. A small number of experienced facilitators from the National Association attend each event and circulate among the groups.

Facilitators have prior sight of the discussion topics and guidance, which is given as a composite handout to participants after the discussion session.

The viewer's verdict

Although the video was completed in less than four weeks at a cost of £4,192.99, it has been very well received. One comment from a Commissioner, describing the video as 'both amusing and educational', sums up what we were trying to achieve. Another Commissioner felt that such obvious mistakes would never happen in his division. In his division, he explained, the Inland Revenue would never leave the hearing room between cases to come back in with the next appellant. In fact, that scene in the video demonstrated good practice and his fellow syndicate members enthusiastically explained why!

Although it required a significant degree of advance planning and expense, the video is proving an excellent learning aid. From

the training point of view, it also provides variety in the means of delivery, and contrasts with the traditional lectures and discussion groups. It ensures consistency and high standards in training because it is prepared in advance, and is not subject to what might happen on the day.

CHRISTINA BAINBRIDGE is the Training Coordinator for GCIT at the Department for Constitutional Affairs.

HENRY RUSSELL is the Deputy President of the National Association of GCIT.

One comment from a Commissioner, describing the video as 'both amusing and educational', sums up what we were trying to achieve

REMINDER *on* HOW to AVOID BIAS

To what degree may a tribunal express its views during a hearing? How should part-time chairmen approach their role as an advocate before their own tribunal? NUALA BRICE describes recent case law.

Two very recent decisions of the higher courts about judicial bias in tribunals remind us all of the very great care which we need to take to make sure not only that we do justice but also that we are seen to be doing justice.

Giving preliminary views and encouraging a settlement

In *London Borough of Southwark v Jiminez* [2003] EWCA 502, the Court of Appeal considered whether an employment tribunal had displayed apparent bias against the employer where the tribunal had expressed preliminary views in favour of the appellant, and encouraged a settlement, before all the evidence for the employer had been heard and before the employer had made any submissions.

Before the employment tribunal the issues were whether the London Borough of Southwark ('Southwark') had unlawfully discriminated against its employee, Mr Jiminez, on the grounds of disability and whether Mr Jiminez had been unfairly dismissed by constructive dismissal. The tribunal hearing lasted 13 days between November 1998 and May 1999. By the end of the tenth day (11 March 1999), the tribunal had heard the evidence of the appellant and his four witnesses and also seven witnesses for Southwark. There were possibly two more witnesses still to give evidence for Southwark. The chairman of the tribunal suggested that the next day there should be discussions with counsel to give the tribunal's

preliminary thoughts and the matters the tribunal wanted to be addressed in the submissions from counsel.

On the eleventh day (12 March 1999), the chairman said that he was expressing some preliminary views but went on to say that the tribunal was of the view that the way in which Southwark had treated Mr Jiminez was 'appalling'. Other statements were also made including a statement that a number of matters were 'a serious breach of the unfair dismissal provisions'. The tribunal then encouraged the parties to enter into discussions with a view to settling the matter.

... the tribunal was of the view that the way in which Southwark had treated Mr Jiminez was 'appalling'

The hearing resumed on the twelfth day, when one more witness for Southwark gave evidence, and on the thirteenth day both counsel made their submissions. The written decision of the tribunal was that Mr Jiminez was treated less favourably for reasons relating to his disability and that Southwark's conduct was a fundamental breach of contract which entitled him to resign.

Southwark appealed to the Employment Appeal Tribunal on seven grounds, one of which was that the employment tribunal

had acted oppressively and unreasonably towards Southwark. There was no specific reference to the events of 12 March 1999. At that stage, the chairman of the tribunal was invited to comment and he refuted the allegations and expressed amazement at them. The Employment Appeal Tribunal based its decision on the events of 11 and 12 March and held that the encouragement to settle the proceedings, taken with

what had gone before, was a clear attempt to put heavy pressure on Southwark to compensate Mr Jiminez. Also, the statements made on 12 March 1999 were injudicious and untimely. They were made before Southwark's final submissions had been heard and would be reasonably understood by an impartial, informed onlooker as meaning that the tribunal had formed a concluded view hostile to Southwark.

A fair-minded and informed observer would conclude that there was a real possibility, or a real danger, that the tribunal was biased against Southwark. The Employment Appeal Tribunal therefore allowed Southwark's appeal.

Mr Jiminez then appealed to the Court of Appeal who restored the decision of the employment tribunal and set aside the judgment of the Employment Appeal Tribunal. Peter Gibson LJ reviewed the authorities and held that it was helpful to the parties to be given some indication of preliminary views, so long as such views did not indicate a closed mind, and that there was no impropriety in a tribunal encouraging the settlement of proceedings. However, he concluded with a word of caution for tribunals that choose to indicate their thinking before the hearing is concluded, pointing out that it is easy for a tribunal to be misunderstood, particularly if views are expressed trenchantly. 'It is always good practice to leave the parties in no doubt that such expressions of view are only provisional and that the tribunal remains open to persuasion.'

The Court of Appeal also held that the Employment Appeal Tribunal had erred in not obtaining the comments of the chairman of the employment tribunal on the events of 11 March. This was a clear breach of a Practice Direction that provided for a chairman to receive relevant evidence in support of a complaint about the conduct of the tribunal so that he had the opportunity to comment.

The position of a part-time chairman who is also an advocate

In *Lawal v Northern Spirit Limited* [2003] UKHL 35 (where the judgment of the House of Lords was given on 19 June 2003) the issue was whether, in the view of a fair-minded and informed observer, there was a real possibility of subconscious bias on the part of a lay member of a tribunal in a case where one of the advocates had previously sat as a part-time judge in the same tribunal with the same lay member.

(The Lord Chancellor's Department was allowed to intervene in the appeal and to put forward the case for maintaining the present position.)

The facts were that Mr Lawal originally appealed to the employment tribunal claiming racial discrimination. The employment tribunal dismissed his appeal. He then appealed to the Employment Appeal Tribunal. One of the advocates was a Queen's Counsel and Recorder who had previously sat as chairman of the Employment Appeal Tribunal with one of the lay members then sitting. Mr Lawal objected (this objection later became known as 'the Recorder objection') and the appeal was heard by a differently constituted tribunal of the Employment Appeal Tribunal. That differently

constituted tribunal also heard the 'Recorder objection' and decided that there was no real possibility that a tribunal would be biased where the only objection was that one or both of the lay members had previously sat with a Recorder who was appearing as counsel in the appeal.

Mr Lawal appealed to the Court of Appeal who also dismissed the 'Recorder objection'. They expressed the view that a lay member could reach a decision uninfluenced by the fact that he had previously sat in a judicial capacity with the advocate for one of the parties. However, Pill LJ dissented because he thought that a

'It is always good practice to leave the parties in no doubt that such expressions of view are only provisional and that the tribunal remains open to persuasion'

judge who later appeared as an advocate was 'likely to be treated by lay members with an additional degree of authority' having regard to the degree of trust that lay members repose in the presiding judge.

The appeal then went to the House of Lords who re-stated the test for bias, which is whether, in all the circumstances of the case, a fair-minded and informed observer would conclude that there was a real possibility, or a real danger, that the tribunal was biased.

The House of Lords held that a fair-minded and informed observer would adopt a balanced approach and that a reasonable member of the public was neither complacent nor unduly sensitive or suspicious. The House of Lords held at paragraph 21:

'The [fair-minded and informed] observer is likely to approach the matter on the basis that the lay members look to the judge for guidance on the law and can be expected to develop a fairly close relationship of trust and confidence.'

They also held that the fair-minded and informed observer would also know that a Recorder who has sat in a case with jurors may not subsequently appear as counsel in a case in which one or more of those jurors serve. Such an observer would also know that part-time judges in the employment tribunal could not appear as counsel before a tribunal which included lay members with whom they had previously sat and he (or she) was likely to take the view that the same principle should apply to the Employment Appeal Tribunal.

The conclusion of the House of Lords was that the present practice in the Employment Appeal Tribunal undermined public confidence in the system and should be discontinued. There should be a restriction on part-time judges appearing as counsel before a panel of the

Employment Appeal Tribunal consisting of one or two lay members with whom they had previously sat.

Conclusions

Although both of these cases concerned the employment tribunal and the Employment Appeal Tribunal, they illustrate the type of challenge that we could all experience. We can now be re-assured that we can continue to express views during the course of a hearing, and also encourage a settlement, but only if we do that in such a way as to leave the parties in no doubt that any views expressed before the proceedings are complete are only provisional and that the tribunal remains open to persuasion.

Those of us who sit as part-time chairmen will also have to make sure that we do not appear as an advocate before a tribunal that consists of one or more lay members with whom we have previously sat.

Jiminez also emphasises that, in appeals to the Employment Appeal Tribunal, where a complaint is made about the conduct of the employment tribunal, the chairman of the tribunal should receive the evidence in support of the complaint and be given an opportunity to comment on it.

This is an eminently fair provision that should be extended to all other appeals from decisions of tribunals where there is a complaint about the procedure of the tribunal or possible bias. It is not

invariably adopted and the danger must be that the appellate court or tribunal reaches a decision based solely on the allegations of the interested party without the comments of the person against whom the allegations are made.

DR NUALA BRICE is a full-time chair at the VAT and Duties Tribunal.

The House of Lords held that a fair-minded and informed observer would adopt a balanced approach and that a reasonable member of the public was neither complacent nor unduly sensitive or suspicious



WHAT



USERS WANT

MICHAEL ADLER and JACKIE GULLAND *highlight some general conclusions from research which has been carried out on the experiences, perceptions and expectations of tribunal users.*

The aim of this article is to summarise the research evidence relating to the experiences, perceptions and expectations of actual and potential tribunal users. In the first part of the article, we briefly describe format of the review and the sources on which it is based. In the second part, we present our main findings.

PART I: BACKGROUND

1 The Policy Context

The thinking which informed the Leggatt Report (*Tribunals for Users*) was shaped by a plurality of values, one of which was the belief that the structure and organisation of tribunals should reflect the experiences, perceptions and expectations of those members of the public who use, or are entitled to use, tribunals as a means of dispute resolution. However, there are very few explicit references to this research in the Report, which makes it difficult to evaluate Leggatt's diagnosis of the tribunal system's shortcomings or the policies Leggatt puts forward for dealing with them. To facilitate an assessment of the Report and to inform the process of deciding how the government should respond to it, we were asked by the Lord Chancellor's Department to review the research evidence on users' experiences, perceptions and expectations of experiences of a wide range of tribunals. Our review was commissioned in September 2001 and completed in January 2002.

2 Format of the Literature Review

Our review was structured around four main headings.

1 Practical barriers that prevent potential users from accessing tribunals.

2 What users want from the tribunal process.

3 The proportion of users who have appealed to the same or a different tribunal before.

4 Users' views on their independence and impartiality.

Under each of these headings reference was frequently made to specific tribunals, or types of tribunal. This is because most research findings refer to specific tribunals and do not necessarily apply to other tribunals.

3 Sources

We attempted to review all the socio-legal research on users' experiences of tribunals that has been carried out in the UK over the last 20 years and is still relevant today. We were able to identify 34 primary sources – of which 31 were based on studies of a single tribunal – in which the findings of empirical research on users' experiences, perceptions and/or expectations were presented. Inevitably, the research varied in scope and quality.

Our review was based on published research, which covered some of the largest and most important tribunals listed in the Leggatt Report. However, it is clear that there are some important gaps in the research that has been carried out. This is because, although there has been a considerable amount of published research on some tribunals, e.g. those dealing with social security, employment and mental health, there has been very little (and sometimes none at all) on others, e.g. on those dealing with taxation, valuation and criminal injuries. Where there was little published material, we approached pressure groups and voluntary organisations with a specialist interest in the policy area in question in

the hope that they might be able to draw our attention to unpublished studies of tribunal users' experience but the amount of additional material we were able to collect in this way was rather meagre.

At the end of our literature review we attempted to set out some general findings. However, because most of the research on users' experiences, perceptions and expectations referred to specific tribunals and because there are so many differences between individual tribunals, these general findings should be treated with some caution. They almost certainly do not apply to each and every tribunal.

PART 2: FINDINGS

I Practical barriers

Most of the research on users' experiences looks at appellants rather than those who do not appeal. This means that most research is based on those who were not deterred by barriers that can prevent users from accessing the tribunal system. This makes it difficult to gauge the full extent of these potential barriers.

1.1 Ignorance of rights or procedures

There are two types of ignorance which can prevent an appellant from making an appeal – ignorance of the fact that there may be grounds for appealing against the original decision and ignorance of the procedures which need to be followed. The general conclusion, supported by much of the research evidence, is that ignorance of the possible grounds of appeal is often more important than ignorance of procedures. Most appellants appear to have little understanding of the appeals procedure or the powers of tribunals but this does not, in itself, appear to be a barrier to appealing, since the procedure for appealing to most tribunals is fairly straightforward, although some potential appellants may not realise that they have a right of a appeal at all. Many researchers found that people appeal out of a sense of injustice in the original decision, without necessarily understanding the legal basis for the decision or what their chances of success would be. There is, however, some variation between different tribunals.

1.2 Cost

There are five types of cost which can act as a deterrent for users: tribunal fees, the cost of advice and/or representation, the cost of obtaining independent assessments, the cost of attending a hearing and the risk of having costs awarded against them if they lose. Although cost is currently not an issue in most tribunals, a number of recent developments involving fees and awards of costs suggest that it may become more of an issue in future. There is little evidence from the research on whether the cost of representation acts as a barrier to potential appellants since most research focuses on those who did appeal rather than those who did not.

1.3 The complexity of the appeal process and absence of appropriate help

Research indicates that many appellants are confused by the appeal process and have little idea of what will happen at a tribunal hearing. In some cases, they do not even realise that there will be a hearing and they are often confused by the paperwork they are sent. There are frequent references to the difficulties people experience in obtaining advice about their appeals – this is especially acute in areas like child support and special educational needs where there is a shortage of specialist agencies that are able to provide representation. In addition, there is evidence that people often experience difficulties in accessing free sources of advice (such as Citizens Advice Bureaux) due to limited opening hours which necessitate taking time off work, waiting times for appointments, and difficulties in making telephone contact to arrange appointments. These are likely to disadvantage members of the public with 'low levels of competence in terms of education, income, confidence, verbal skills, literacy skills and emotional fortitude'.¹

1.4 Physical barriers

A number of studies refer to the difficulties faced by physically disabled appellants in accessing tribunal venues. Much of this research refers to the Appeals Service, but this is because several studies have looked at appeals relating to disability benefits that inevitably involved a high proportion of disabled appellants. On

the other hand, there were favourable references to the use by the SENT of local hotels as venues since they can provide easy access for people with disabilities. Most other research on appeals does not look specifically at appellants with disabilities.

1.5 The impact of electronic access

There are very few references in any of the research to the impact of electronic access. One reason is that, in most cases, the research predates the likelihood of electronic access being available. However, users of the Parking Appeals Service thought that IT had enhanced the fairness of the system because they were able to see on a screen all the documents available to the adjudicator.

1.6 The impact of amalgamation

Although some cognate tribunals have been brought together into a single organisation, there has not been any research which has attempted to investigate what difference this has made and whether it has made it easier to appeal. The Leggatt Report was very impressed by developments in Australia, and in particular by the establishment in 1975 of the generic Administrative Appeal Tribunal (AAT) but, since this tribunal was established more than 20 years ago and proposals to unify existing tribunals are currently stalled in the Australian Senate, little can be learned from their experiences.

2 What users want

2.1 The balance between speed, quality and cost

There are many references in the literature to long delays before hearings are held and to the problems they cause, especially in social security appeals where people may have had their benefit stopped or reduced, in educational appeals where a delay can constitute a significant proportion of a child's education and in mental health reviews where civil liberties are at stake. Even where appellants may appear to benefit from a delay, for example, in social security overpayments and asylum appeals, they may suffer because of the stress involved in waiting for a the tribunal hearing. There does not appear to have been any research that has examined users' views about the optimum balance between speed, quality and cost.

2.2 Informality of hearings

There are many references to the fact that users find tribunals more formal than they had expected and to the problems that this sometimes causes. However, there are clearly substantial variations in formality, not only between different types of tribunal but also between different sittings of the same tribunal. Some appellants confuse the formality of tribunal hearings with the fact that tribunals are required to apply the law and may be unable to respond to their plight.

2.3 The value placed on representation

Most of the research concludes that appellants find it difficult to represent themselves. When people have the opportunity to be represented (because legal aid is available, they are able to afford legal representation or free lay representation is available) they tend to make use of it. Although some appellants choose to represent themselves, they often find that the process is more complex and legalistic than they had imagined and regret their decision afterwards. Thus, there is little research-based support for one of the central tenets of the Leggatt Report, namely that 'a combination of good quality information and advice, effective procedures and well-conducted hearings, and competent and well-trained tribunal members' would make it possible for 'the vast majority of appellants to put their cases properly themselves', i.e. without representation.²

3 The proportion of users who have appealed before

What little evidence there is suggests that the great majority of appellants have not appealed before.

4 Users' views on the independence and impartiality of tribunals

There is little research evidence to suggest that users question the independence or impartiality of tribunal proceedings. However, there are some exceptions to this general finding. Although the existence of strong 'outcome effects' confuses the issue, research indicates that some appellants feel that Employment Tribunals are biased in favour of employers, that Rent Assessment

Panels are biased in favour of landlords, that Exclusion Appeal Panels pre-judge cases and that Mental Health Review Tribunals are too dependent on the evidence of the RMO. Research also indicates that some appellants confuse the 'independence and impartiality' of tribunals with their duty to apply the law.

Readers of this journal will be aware that the government has accepted the main recommendations outlined in the Leggatt Report and that it proposes to bring together the largest tribunals for which central government departments are responsible in a single Tribunal Service. From the research that has been carried out on the experiences, perceptions and expectations of actual and potential tribunal users, it is clear that the government faces a number of important challenges which will

need to be overcome if Leggatt's vision of a fair, independent and user-friendly Tribunal Service is to become a reality.

MICHAEL ADLER is Professor of Socio-Legal Studies and JACKIE GULLAND a PhD student in the School of Social and Political Studies, University of Edinburgh. The literature review, of which this article is a summary, has now been updated to include more recent research. Copies of the updated review can be downloaded from www.council-on-tribunals.gov.uk or are available in hard copy from the Librarian, Council on Tribunals, 81 Chancery Lane, London WC2A 1BQ.

¹ Genn, H. (1999) *Paths to Justice*, Oxford: Hart Publishing.

² For a fuller discussion, see Adler, M. (2001) 'Self-Help is no Substitute', *Tribunals*, 8 (2), 2001, pp. 18–20.

REFRESHING CHANGES

Even experienced chairmen can find some aspects of conducting a hearing, and in particular assessing evidence, difficult. Here, GODFREY COLE describes a new refresher course being piloted by the JSB in March 2004.

For some 10 years the JSB has run a twice-yearly course in Tribunal Skills Development. Aimed primarily at chairmen, it has attracted lawyers and non-lawyers who chair tribunals, disciplinary bodies and regulatory panels and has had some tribunal members attend as participants as well. It affords an opportunity for delegates to acquire and practice new skills in a neutral environment and continues to be popular, with between 25 and 30 delegates attending on each occasion.

Despite all endeavours though, delegates do still arrive who are not inexperienced. Maybe they slipped through the net, perhaps they have persuaded their presidents that they need a refresher, possibly even their presidents have been persuaded that these chairmen need a refresher, or they might arrive new to the sending jurisdiction but with many years' experience in another

appointment. The new Tribunals Advanced Skills course (TASK) is the response. It will run for the first time as a pilot and so with smaller numbers than are eventually planned, at the end of March 2004. It will last one day spread over two and will concentrate on those competences within the JSB's *Competence Framework* known still to cause concern to experienced chairmen: decision-writing, evidence and conducting the hearing.

Other competences, notably equal treatment, must and will also be considered, but as part of the other discussions, in an attempt to reflect the way in which the subject is raised in tribunals every day of the week.

There will be time to exchange and then analyse good practice and an opportunity to leave with a framework for improvement. Most of the time will be spent in small groups with just an initial plenary to set the scene and a final discussion to pull together the themes brought out by the groups during the discussions.

Enquiries about the new course should be aimed in the first instance to tribunals@jsb.gsi.gov.uk

Editorial Board

PROFESSOR HAZEL GENN CBE

University College London

GRAHAM POWELL

Department of Constitutional Affairs

DR NUALA BRICE

VAT and Duties Tribunal

PENNY LETTS

Council on Tribunals

GODFREY COLE

Appeals Service

JUDGE MICHAEL HARRIS

President of the Appeals Service

STUART VERNON

Adjudicator, Office of Fair Trading

ANDREA DOWSETT

Judicial Studies Board

JOHN GIBBONS

Judicial Studies Board

MARY HOLMES

Judicial Studies Board

Aims and scope

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

Tribunals is published twice a year by the Tribunals Committee of the Judicial Studies Board, although the views expressed are not necessarily those of the Board.

Any queries concerning the journal should be addressed to:

Andrea Dowsett

Judicial Studies Board

9th Floor

Millbank Tower

London

SW1P 4QU

Tel: 020 7217 4767

Fax: 020 7217 4779

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

Website: www.jsboard.co.uk