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EDITORIAL



In this Spring 2004 issue of *Tribunals* journal, we have included a number of articles that continue to consider different ways of improving the quality of tribunal decision-making.

An effective appraisal scheme is, of course, an important part of any tribunal's efforts to develop the skills of its judicial office-holders, by pinpointing the training needs of individuals and the jurisdiction as a whole. In our continuing series of articles on the theme of appraisal, Mary Holmes describes the training and support currently being offered by the Judicial Studies Board on developing an appraisal scheme for a tribunal and also the training we provide those about to take on the role of an appraiser. On page 8, she describes the ways in which the JSB has developed and piloted this programme.

Distance learning is often billed as a panacea for all training difficulties (most notably the time and money involved in gathering a group of people for a residential course) and is suggested more and more frequently as one way in which a widely dispersed group of participants can be trained successfully. Tribunal members are, of course, not only widely dispersed geographically, but also have a diffuse range of training needs. In their article on page 10, Pam O'Connor and Beth Gaze describe how they created a syllabus of generic skills and knowledge for tribunal members in Australia and then created a distance learning package, based on problem-based learning, in which way the training programme was given practical relevance to the different jurisdictions.

We continue the international theme with another article from Douglas Readings (following his article on the Council on Tribunal's Model Rules in the last issue) on the work taking place in Canada to develop relationships between administrative justice systems around the world. Some of you may be attending the Annual Conference of the Council of Canadian Administrative Tribunals (CCAT) in Toronto in June 2004. For those unable to go, there will be more on the conference in the next edition.

Finally, on page 2 of this issue, you will find an article entitled 'Assessing credibility', an attempt on my own part to suggest why it is so hard to tell whether someone is telling the truth, and in which I have tried to describe ways of improving the ability of those sitting on tribunals to detect when a person is telling the truth and when they are lying. While I don't pretend that there are any magic formulae, evidence suggests that there are ways to increase the odds of being right.

P R O F E S S O R H A Z E L G E N N

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ASSESSING CREDIBILITY

People only correctly judge whether someone is lying 50 per cent of the time. Why is it so hard to tell if someone is telling the truth? And how can tribunals improve their rate of detecting deceit? HAZEL GENN explains.

The assessment of credibility is an essential and difficult aspect of fact-finding in judicial decision-making. Deep within our legal culture, with its emphasis on orality, is the presumption that the seeing and hearing of witnesses is not merely useful but crucial to accurate and fair judicial decisions. Despite the importance and difficulty of this aspect of the judicial role, we spend little time in judicial training discussing how assessments of credibility are and should be made. Why is this so? Perhaps it is because we feel that assessing credibility is something instinctive and personal to the individual judge – not amenable to the kind of guidance given for decisions on points of law and procedure. But precisely because the subject is hard, and because on appeal such assessments are difficult to reconsider or dislodge, it is important to discuss how credibility is evaluated and what are helpful, legitimate and appropriate factors to weigh in reaching those assessments.

What is ‘credibility’?

At its most basic, credibility involves the issue of whether the witness appears to be telling the truth as he now believes it to be¹. Involved in that assessment may be judgments about whether the witness can generally be considered to be a truthful or untruthful person and whether, although generally truthful, he may be telling less than the truth on this occasion. In order to make these assessments, Eggleston² suggests a number of tests including:

- Consistency of the witness’s evidence with what is agreed or clearly shown by other evidence to have occurred.
- The internal consistency of the witness’s evidence.

- Consistency with what the witness has said or deposed on other occasions.
- The credit of the witness in relation to matters not germane to the litigation.
- The demeanour of the witness.

In many tribunals, and some other proceedings, the judicial decision-maker often has little more to go on than a party’s oral evidence about his or her situation and the circumstances leading to the claim being decided. There may be scant supporting documentary evidence and an absence of other witnesses to corroborate the story being told. In these situations, decisions about credibility or truth-telling may be crucial to the outcome of the case and the demeanour of the appellant or witness may be central in reaching a judgment about credibility.

Why is it that we think demeanour helps us in assessments of credibility? It is because, as social beings as well as professionals concerned with truth-telling, we believe that liars give themselves away not simply in the words they use but through their non-spoken behaviour. Lord Bingham describes demeanour as the sum of a witness’s ‘conduct, manner, bearing, behaviour, delivery, inflexion’. In short, ‘anything which characterises his mode of giving evidence but does not appear in a transcript of what he actually said’.³ So demeanour is about the language of the body rather than words – emotion about lying that is translated into visible or audible signs. Although Lord Bingham and some other distinguished judges have cautioned against too great a dependence on demeanour in reaching assessments of credibility, most judicial decision-makers accept that it is an important element in the finding of facts and,

of course, part of the point of having witnesses giving evidence orally.

However, assessing credibility on the basis of demeanour presents two potential types of error:

- 1 Mistakenly believing someone who is lying.
- 2 Mistakenly disbelieving someone who is telling the truth.

The complexities of detecting lies

In seeking to improve our ability to assess credibility, we must search for insights within the literature of social psychology rather than law⁴. Social psychologists recognise that lying is a central characteristic of life and that understanding the phenomenon is relevant to almost all human affairs – not simply to the tribunal or court context.

For the purposes of better understanding the process of lying, psychologists distinguish two types of lying and several types of emotion about lying that serve to complicate matters for those charged with the job of detecting lies.

Two types of lying

There are two primary ways to lie:

- 1 To conceal – withholding information without actually saying anything that is untrue.
- 2 To falsify – presenting false information as if it were true.

Often it is necessary to combine concealing information with falsifying information, but sometimes it is possible simply to conceal information. When there is a choice about how to lie, psychological research suggests that liars generally prefer to conceal information than to falsify information, principally because concealing is generally easier than falsifying information. If you don't have to make anything up you don't have to remember your story. It is also possible

that witnesses consider concealing information to be less reprehensible than falsifying information and are therefore less likely to reveal signs of discomfort about concealment and less fear of detection.

Emotions about lying

A key problem in assessing credibility from the *demeanour* of the witness is the possibility of confusing two types of emotion that might be expressed by a person giving evidence or being questioned:

- 1 The innocent witness's fear of being disbelieved.
- 2 The guilty witness's apprehension about being detected.

Many of the signs that people commonly use as indicators of untruthfulness are simply the physical signs of raised emotion that can occur for many different reasons. Hearts beat faster, faces may redden and bodies sweat whenever emotion is aroused, so that these signs in themselves cannot reliably be taken as a guide for deceit.

Moreover, experiments show marked individual differences within the population in our ability to conceal emotions. Some people are naturally vulnerable to detection apprehension while others successfully lie with ease. The ability to perpetrate a lie apparently cuts across the type of lie being told, so that a good liar will be good at all lies – no matter how big or small. Indeed, there may actually be genes for lying.

*To the judge,
resolution of
factual issues
is (I think)
frequently more
difficult and
more exacting
than the deciding
of pure points
of law... He is
dependent, for
better or worse, on
his own unaided
judgment*

Lord Bingham
'The Business of
Judging'

Natural liars know about their ability to deceive and will have been getting away with things throughout their lives. They feel no detection apprehension because they are confident in their ability to deceive. This quality is useful among certain professions, for example actors, salesmen, negotiators and spies.⁵

On the other hand, some people are unusually vulnerable

to a fear of being disbelieved. This may occur when people have a deep sense of guilt about some unresolved issue in their life, and their feelings of guilt are aroused whenever they realise that they are suspected of wrongdoing. They may appear uncomfortable or even distressed while giving evidence, but this relates to anxiety about being disbelieved, rather than evidence of lying.

So it seems that although the causes will be different, both the liar and the truthful person may display signs of emotion prompted by the suspicions or questions of the tribunal probing their evidence.

Emotions around lying and truthfulness are therefore difficult to read, but liars may sometimes give themselves away by two further emotions described as ‘deception guilt’ and ‘duping delight’. A successful liar may eventually send out an emotional signal because he misjudges the guilt or shame he will feel at having lied. Alternatively, a successful liar may become excited at the prospect of success and fail to conceal that emotion.

The absence of a sign of deceit is not evidence of truth

The mistakes we make in judging who is lying

Experimental research by psychologists has established that few people do better than chance in judging whether someone is lying or truthful. The research also consistently shows that most people *think* they are making accurate judgments when they are not.

Studies suggest that people are about 45 to 60 per cent accurate in spotting lies – in fact, very close to chance, which would be 50 per cent. One study comparing the ability of different professional groups to detect lies found that the police were no better than ordinary people in identifying who was lying, although they were confident that their judgments were better. In another US study involving secret service agents, psychiatrists, judges, robbery investigators, FBI polygraphers and college students, the only group to score significantly above chance in detecting lies were the secret service agents. In all groups, the subjects’ self-assessment of their skill at lie detection bore no relation to their actual score.

This all suggests that although we are not very good at detecting deceit, we *think* that we are.

There are two types of error made in assessing the truthfulness or untruthfulness of a witness: *disbelieving the truth* and *believing a lie*. Our failure to take into account how people differ in their expressive behaviour leads to both types of mistake in detecting deceit. We may believe a lie because the person telling their story gives no clue that they are deceiving us. She may be a natural liar or someone who has simply come to believe her own lies. The absence of a sign of deceit is not evidence of truth.

But on the other hand, if we detect what we believe to be a sign of deceit we may misbelieve the truth. Many

people have odd behavioural quirks.

Some may be naturally hesitant and speak with pauses between words and this is a particular problem when the judgment is being made relatively quickly and on the evidence of a first meeting. On a first meeting what is the basis for comparison?

Are the quirks part of normal behaviour or is the person behaving differently on this occasion?

Many people may show signs of fear, anger or distress that are unrelated to lying but to the situation in which they are being questioned. Disbelieving the truth may occur when the decision-maker fails to appreciate that a truthful person who is under stress may appear to be lying. For most people, presence in a tribunal or court is a unique experience and one that is likely to arouse strong emotions. There is a danger here that a truthful person under stress may appear to be lying.

Poor guides to whether or not someone is lying are signs such as breathing, blinking or sweating. These are all physical manifestations of emotion but they are non-specific. Similarly, blushing may be a reflection of embarrassment, of shame, of anger or of guilt, and blanching may reflect either fear or anger.

In trying to assess whether someone is lying, we often pay attention to words and to facial expressions, which

research suggests are relatively unreliable sources of information. Liars will be very careful about their choice of words and are also generally careful about controlling their facial expressions. On the other hand, they may be somewhat less conscious of their body and voice and therefore less able to control 'leakage' of emotion through movement and voice inflexion and pitch.

Ekman argues that it is hardest to detect a lie in the following circumstances:

- *When the liar and the recipient have never met before.* It is harder for the recipient to avoid making mistakes about individual quirks of behaviour.
- *When the liar can anticipate when he has to lie.* In these situations the lies can be prepared and rehearsed so that the liar presents a seamless and internally consistent story. Repeated preparation of evidence increases confidence and decreases fear of being detected.
- *When the lie only involves concealment.* This is generally harder to detect than falsification because nothing has to be said and emotion about concealment may be less.
- *When the liar and the recipient come from different cultures or backgrounds.* The recipient will make more errors in judging clues to deceit.
- *When the recipient is impersonal or anonymous.* This decreases the deception guilt felt by the liar who will therefore display fewer signs of emotion around the lie.
- *When the liar and recipient do not share the same values.* The liar will feel less guilt about lying and therefore reduced emotion surrounding the lie.
- *When there is no severe punishment for being caught lying.* Apprehension detection will be low, although there is the possibility of carelessness.

How to improve our detection ability

Success in distinguishing between when a person is telling the truth or is lying is likely to be highest when:

- The lie is being told for the first time.
- The liar cannot exactly anticipate the questions that are going to be asked and when she is going to have to lie.
- There is a threat of severe punishment for lying.

- The questioner is truly open-minded and does not jump to conclusions quickly.
- The questioner knows how to encourage the witness to tell his story.
 - Experiments suggest that the more words spoken the better the chance of distinguishing lies from truthfulness.
 - Training in interview techniques can improve the ability of questioners to detect deceit.
- The questioner and witness come from the same cultural background and speak the same language.
- The questioner is aware of the difficulties of identifying the truthful, innocent person who is under suspicion.
 - A courteous and humane approach in tribunal proceedings is good practice and will reduce the truthful appellant's fear of being misbelieved and may increase the guilt felt by the liar.

Paradoxically, it seems that the tribunal is a relatively poor environment in which to make judgments about deceit from demeanour. Punishment for lying is rare, time may be limited for sensitive and protracted interrogation and, with an increasingly diverse population, the tribunal and appellant frequently come from different backgrounds, cultures and languages. Bearing in mind the difficulty of detecting deceit, tribunals should guard against too much weight being placed on demeanour as a guide to truth as compared with other forms of evidence. On the other hand, refining tribunals' interviewing techniques and exploring how, when and why truthfulness might be judged from demeanour may help to increase the accuracy of assessments of credibility.

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¹ *Onassis v Vergottis* [1968] 2 Lloyd's Reports, referred to by Lord Bingham at p 5.

² Eggleston *Evidence Proof and Probability* (1978) 155.

³ Op cit p 8.

⁴ See Professor Paul Ekman, *Telling Lies* (2001), and Daniel McNeill, *The Face* (1998).

⁵ Ekman, op cit, p 57.

PUTTING *it* RIGHT

GEOFFREY FILKIN, *Minister at the Department for Constitutional Affairs with responsibility for tribunal reform, describes the Administrative Justice White Paper and its focus on resolving disputes.*

Sir Andrew Leggatt, in *Tribunals for Users*, made a powerful case for reform. The Government sees the force of Sir Andrew's arguments and we are committed to reform. But our programme of reform is set in a wider context than the remit that we gave to Sir Andrew. We see tribunal reform as an important part of a programme to strengthen trust and confidence in public services and our system of justice.

The Government is committed to freeing up public services, ensuring safe and secure communities, improving the quality of life and creating a fair and equal society for all. This requires trust and confidence in government and the public services. We believe that good-quality public services are a foundation of a civilised society. Good quality means that public services have to be fair and to be seen to be fair in their dealings with the individual. That means in turn that there are quick and effective methods of providing redress when things may have gone wrong. And to provide assurance to the community and the individual those methods have to be independent.

Our programme is about reform of administrative justice as a whole – not just tribunals but the ways in which the State relates to the individual and puts things right. Administrative justice is an integral part of public sector reform. How citizens feel when they have not got what they felt was right from the State matters enormously. An essential component of public sector reform is to ensure that there are effective ways for the citizen to seek to get what they feel is fair treatment.

Tribunals are a large part of the system for providing redress but not the only part. So they not only have an important role in providing redress, they are important to the citizen's experience of and confidence in the justice system. Tribunals hear more cases each year than the courts do. For many people, taking a case

before a tribunal will be their only direct experience as a participant in the system of justice. How they feel they were treated will make a profound difference to their confidence in the ability of the United Kingdom to provide justice for all and the confidence of their friends and family. This is particularly important when the case arises from a dispute between the individual and the State.

What do people want?

They want to achieve something – a solution to some problem they have which, as the system now stands, only a tribunal can provide. If they can get resolution of their dispute or disagreement easily and early, without going to a tribunal, they would much prefer this. The Administrative Justice White Paper, which we are now preparing, will take as its focus how we can deliver administrative justice in this sense.

Therefore we will be as much concerned with how the system can resolve disputes at source rather than in tribunals. Early and proportionate dispute resolution is the goal of our policy. We want people to be able to get their disputes resolved in that way because many who are dissatisfied will not risk the time and effort of going to a tribunal. They will lose out on something to which they are entitled and they will be disappointed and disillusioned with our institutions.

We are reviewing the whole landscape of the administrative justice system, from improving original decisions, to review by departments, to independent systems for handling complaints, to ombudsman schemes with their greater procedural flexibility. We are seeking to bring coherence to what can seem to many users to be a chaotic scene. We are trying to do this from the perspective of the public, to see if the options make sense to them and are accessible and effective. The task in tribunal reform is fundamentally the same.

The experience of users

A MORI survey conducted for DCA in 2001 found that a third of tribunal users consulted were dissatisfied with the service they received. Waiting times can be too long, with the average time for the major tribunals around six months. People are dissatisfied with delay and they also find the process complex. Many lack confidence in the independence of the tribunals hearing their cases – this issue provoked the largest number of responses to our consultation exercise in 2001.

A tribunal's independence matters to its users. This is one of the reasons for creating a Tribunals Service separate from the departments that made the original decision. This real and manifest independence must also be coupled with accessibility.

A second key reason for creating a new, single Tribunals Service is to eliminate the inefficiency that comes from the piecemeal proliferation of tribunals. Tribunals have much more in common with each other and with the courts than with the departments to which many of them are still attached. We will be announcing a programme for bringing the major central government tribunals together into a service that is unified, but is also structured to recognise the differences in service provision required for the very diverse groups of users. The needs of an applicant to an employment tribunal are different to those of an appellant to a pensions appeal tribunal. But our intention is to create a new and modern infrastructure with flexibility in deploying staff and judiciary, effective information and communications technology and a sensible distribution of hearing locations.

Tribunals have been built on an ethos of enabling unrepresented individuals to participate fully. We all want participants to leave the tribunal with a sense that they have been treated justly and fairly, and have had every opportunity to put their case. I have visited a number of tribunals and met many people who work in the tribunal system and throughout I have been greatly impressed by the determination of all concerned to assist the individual. But despite all these efforts, going to a tribunal can still be at best a worrying and unfamiliar

process and at worse so daunting that people give up before they start. A tribunal may be inquisitorial in principle but to the user it may still seem alarmingly adversarial. The current process leaves no other choice.

We need to change this. A real focus on the legitimate needs of the user (and, even more so, the would-be user) means fundamental redesign of the way the dispute resolution system works. I am particularly interested in the way in which ombudsmen (and there are many ombudsman schemes nowadays, dealing with tens of thousands of cases every year) and independent complaints handlers can effectively resolve disputes using informal processes. I want to see a new system with an explicit remit to resolve disputes, not just process cases, and to use flexible and imaginative methods to do this, not a system tied to inflexible procedures.

This new approach will mean changes to ways of working. Tribunal judiciary and staff will need to work more closely together to try to resolve cases, using innovative and less formal methods. It means a new relationship between the tribunal system and the advice sector. It means the tribunal system providing feedback to decision-making departments so that they learn where they need to improve their standard of decision-making and how they explain those decisions, so that the number of disputes is minimised.

The new, unified tribunal system recommended by Sir Andrew Leggatt and accepted in outline by the Government gives us, as a community, an institution that can deliver these changes. So our commitment to reform of the tribunal system is reform for a purpose and our focus is on the individual and the community. I hope that everyone reading this article and all your colleagues in the tribunals world will find this an exciting vision and challenge and feel able to support and contribute to what we are trying to achieve.

LORD FILKIN CBE has been Parliamentary Under-Secretary at the Department for Constitutional Affairs since June 2003. His remit includes tribunals policy and the creation of the Tribunals Service.

CRITICAL FEEDBACK

The JSB recently ran two seminars, for those preparing an appraisal scheme for a tribunal and for those about to be appraisers. MARY HOLMES describes some of the concerns that participants were keen to discuss.

In November 2003, the JSB held a workshop for those planning to develop an appraisal scheme for their tribunal. It was attended by 23 tribunal representatives, each of whom had responsibility for devising and developing appraisal within their jurisdiction. The purpose of the workshop was to help those responsible to exchange ideas with others and to become more confident in preparing such schemes.

To assist in achieving that confidence, the workshop strove to enable the participants to identify barriers to appraisal, develop possible solutions to overcome them and to formulate a strategy for taking forward an appraisal scheme in their own jurisdictions.

The workshop had also been designed to meet the concerns of tribunal presidents, expressed during the formulation of the JSB's Appraisal Guidance. Presidents believed that those tribunals intending to introduce appraisal would appreciate the opportunity to exchange ideas with others in the same position.

It was clear from the beginning, as participants introduced themselves, that their experience was varied. Some had no experience of appraisal in any form, professional or jurisdictional, others had experience of appraisal in other professional contexts. Some were already operating established appraisal schemes, such as the Residential Property Tribunal Service, Valuation Tribunals and Asylum Support Adjudicators, while others, such as those from the CICAP, had piloted a scheme for their tribunal that was about to be implemented nationally. Some had already begun to use the JSB's Model Scheme as a basis for drafting their own, while others who had not been party to the original

consultations were unfamiliar with the JSB's Appraisal Guidance and Model Scheme.

Initially, some time was spent reviewing the key elements of the JSB's Appraisal Guidance and Model Scheme.

The importance of appraisal, undertaken by trained appraisers, being evidence-based against a competence framework was highlighted, as were the objectives of

providing support for tribunal members in the development of their judicial skills and identification of both personal and jurisdictional training needs. Participants, working in small groups, then identified their own objectives for appraisal. These necessarily reflected the particular interests and needs of the jurisdictions of those in the small groups. When fed back to the main group, they provided a basis for discussion that highlighted some of the important considerations for implementation of an effective appraisal scheme.

Further discussion focused on the possible barriers to appraisal. Resources figured prominently, in particular the need to engage the sponsoring department, the problem of additional fees for part-timers

in those jurisdictions where there are few full-time members to undertake appraisal and the 'back-fill' problems where full-time members were appraising and therefore not sitting. Two concerns shared by participants were that members would be reluctant to embrace the scheme and that appraisal could be seen to interfere with judicial independence. The experiences of those who had either already implemented a scheme or who had piloted a scheme were that, although they had also anticipated these problems, they had not proved a hindrance to the

Two concerns shared by participants were that members would be reluctant to embrace the scheme and that appraisal could be seen to interfere with judicial independence

scheme in practice. Most members, it appears, were keen to receive the feedback that appraisal gave them the opportunity to hear and to learn how to improve their performance. All agreed that such feedback had to be given either on the same day as the appraisal observation or the next, although returning on a subsequent occasion had additional resource implications.

It was considered critical that those being appraised knew that the appraisers were trained and that this would assist in achieving a level of consistency between appraisers. It was also felt that acceptance of a scheme was more likely where appraisers had themselves been appraised and that there was appraisal from the top down, although it was clear that this would not always be feasible. Advantages to the jurisdiction were perceived to include more highly targeted training and improved productivity. One participant suggested that to save one judicial review a year would be sufficient saving in resources to justify the implementation of an appraisal scheme.

There were concerns that one appraisal visit was merely a snapshot and as such did not provide the 'whole picture'. It was generally felt, however, that self-appraisal and (depending upon the way in which the jurisdiction operated) other evidence could assist in providing sufficient material for there to be constructive feedback. A self-development plan could be completed to identify scope for improvement, irrespective of outcome achieved. The final session, in small syndicates, focused on the steps that individuals would take after the workshop to implement an appraisal scheme. The feedback from the groups suggested that the diversity of the tribunal jurisdictions helped to tease out the critical issues for the individual jurisdictions and that the anticipated benefit of sharing experiences had been fulfilled.

This workshop was then followed over the next three months by a series of training seminars aimed at those

who either had schemes in operation or were just about to introduce one. The aim of these seminars was: 'To prepare participants to be appraisers within their tribunal's appraisal scheme.' As with the workshop, the invitations were extended to a diverse range of jurisdictions.

The seminars used a variety of techniques to encourage participants to understand the purposes of appraisal, identify the challenges faced by appraisers, feel confident to work within an evidence-based framework against competences and to recognise the key tasks

and responsibilities of an appraiser. The final session then provided a practical opportunity for participants to identify and demonstrate the skills they needed to use as appraisers when giving feedback. The evaluation indicated that this practical aspect was considered most valuable, although the short scenarios used for providing appraisal feedback were inevitably set in contexts that were not necessarily similar to all the participants' jurisdictions.

It had also been clear from the evaluation of the appraisal training seminars that the experiences and needs of the participants did differ. It is difficult to satisfy the particular needs of all the jurisdictions in one training programme. Some participants

sit in tribunals where most of the hearings are on paper with few oral hearings; others sit on their own and some sit with other members. As with all JSB training, we take evaluation of the event seriously and have reviewed the training with the intention of providing future training on a bespoke basis or at least to jurisdictions with similar characteristics.

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For further information about the courses held by the JSB on appraisal for tribunals, telephone the JSB on 020 7217 4738 or e-mail tribunals@jsb.gsi.gov.uk

One participant suggested that to save one judicial review a year would be sufficient saving in resources to justify the implementation of an appraisal scheme



ON COURSE

with the EXPERTS



PAMELA O'CONNOR *and* **BETH GAZE** *describe how they went about designing and creating a distance learning module on decision-making for Australian tribunal members.*

In Australia, the term 'administrative tribunal' encompasses the numerous tribunals that make decisions, or to hear appeals from government decisions, in areas as diverse as planning, migration and guardianship as well as disciplinary tribunals that regulate particular professions or occupations.

While there are no general entry-level qualifications required for appointment to administrative tribunals, a great deal is asked of the members. Effectiveness as a tribunal adjudicator requires the ability to identify the issues, elicit information, evaluate evidence, interpret and apply legislation, precedents and policy, and to communicate reasons for decision. Many of these required skills, values and knowledge will need to be learned or improved after appointment.

Despite widespread agreement that members of administrative tribunals should be trained for their role, no clear model for providing the training has emerged in Australia and the existing system under which individual tribunals arrange their own in-house training programmes is ad hoc and costly. In future, some of the responsibility for training tribunal members may be shouldered by bodies such as the Council of Australasian Tribunals, the National Judicial College and the Judicial College of Victoria. University law schools can also assist in the delivery of generic training for tribunal members.

This article reflects upon the experience of Monash University in developing a new graduate law course for members of administrative tribunals, called 'Decision-Making for Tribunal Members'. The course gives a broad introduction to the role of tribunal members, the framework of legal regulation in which they

operate, and the legal and ethical requirements for administrative adjudication. The learning activities for the course are designed to develop core skills of statutory interpretation, use of precedents, identification of issues, analysis of problems and writing reasons for decisions. The intended student group is people currently serving as tribunal adjudicators, including those who have legal qualifications.

Overcoming obstacles to common training

In Australia, there are two major obstacles to greater cooperation by tribunals in the delivery of training: the geographic dispersion of tribunal members and the specialist nature of tribunal practice.

Geographic dispersion of learners

From our perspective as educators, these obstacles were by no means insuperable. Geographic dispersion of the learner group could be addressed by delivering training via distance education, provided that the mode of delivery was suited to the educational objectives. Although some of the core skills identified by the ARC might require some face-to-face teaching (e.g., interpersonal communication), many of the areas of learning relating to the process of adjudication could be studied at a distance.

We saw a number of benefits for tribunal members in developing the course for delivery by distance education. Members, whether studying locally or at a distance, would appreciate the convenience of being able to study at home or at work, at times that suited themselves. Through computer conferencing and group activities undertaken via the Internet, they could enjoy collegial interaction with members of their own and other tribunals.

Diversity of learning contexts

As to the diverse and specialised nature of tribunal practice, the problem was how to teach generic skills and knowledge in a way that would satisfy the learners' need to see the practical application to their own tribunal context. Our proposed solution was to design learning activities that require students to formulate their own problem and then to solve it by applying their newly learned skills and knowledge. The students are the experts at identifying the current issues and problems facing their tribunal. Requiring them to devise a problem would ensure that students were working on problems that they had themselves identified as significant and relevant. For example, a problem-based activity designed to promote learning of skills and principles of statutory interpretation would instruct the students to begin as follows:

- 1 Take a statute under which you have a decision-making function.
- 2 Identify a provision which, when applied to a set of facts invented by you, is ambiguous, unclear, or which appears to produce an unjust or unreasonable result.

We expected that requiring students to formulate and answer problems of their own devising would promote the transfer of skills from one problem to another.

Planning the course

We decided that the proposed course should focus on teaching generic skills and knowledge that learners would apply to actual or simulated problems arising from their own tribunal context, that their answers would be shared, and that the course would be delivered by distance education. We were confident that with these design features, we could largely overcome the obstacles of geographic dispersion of learners and the diverse and specialised nature of tribunal practice.

The decision to deliver our course by distance education required no compromise in quality. In fact, the World Wide Web offers the potential to improve student learning in various ways: it supports interaction (teacher to student and student to student), enables students to

work collaboratively, provides free access to a vast array of primary and secondary materials, and allows flexible sequencing of teaching materials by means of hypertext and links.

To make effective use of this potential, we:

- Selected content and objectives (i.e. set the educational design).
- Implemented the design.
- Designed the Web-based learning environment.
- Established a method of evaluating the course.

I The educational design

Selecting content and objectives

The first step in developing the course was to determine what the curriculum was to be, and for that we started with an analysis of learners' needs. In the absence of any published evidence of what tribunal members in general in Australia perceive their learning needs to be, we turned to Canada, whose Canadian Council of Administrative Tribunals (CCAT) had in a 1998 survey identified conduct of a hearing, fairness and natural justice, decision-making, administrative law, evidence, ethics, conflict of interest and statutory interpretation as areas of high importance and computer skills, mock hearings, gender/cultural sensitivity and structure and function of government as areas of medium importance.

We also studied a list of skills and abilities in the Administrative Review Council's 1995 *Better Decisions* report that had been suggested as 'necessary or desirable' for members of administrative tribunals and reflected on the nature of the activities that tribunal members are required to undertake in order to perform their adjudicative role effectively. This was informed by our own experience as tribunal members and of teaching administrative law to undergraduate law students.

We decided to proceed in an experimental way, designing a course and offering it on a pilot basis. We would then modify our curriculum and objectives after obtaining evaluative feedback from a selected group of tribunal

members enrolled in a pilot offering of the course, other persons with responsibilities for tribunal training, and an external academic assessor.

We started by formulating the course aims and objectives and broke them down into more specific and concrete objectives for each topic unit. This exercise helped us to identify what was common or generic, to discriminate between core and peripheral material, to make explicit the links between topics, and to re-assemble the topics as a coherent whole.

2 Implementing the design

Problem-based learning

We selected a variety of learning approaches to serve different objectives or aspects of the course, including keeping a professional journal, analysis of a case, reflective writing exercises, online investigation and reporting, asynchronous computer conferencing and problem-based learning.

Problem-based learning was our principal method for teaching the core skills of analytic reasoning, statutory interpretation, problem-solving and writing reasons for decision. In this approach the focus of student learning is on the problems they are likely to encounter in professional life, rather than on the assimilation of academic knowledge abstracted from context.

We envisaged that the students would attain the course objectives by completing the learning activities, which required students to demonstrate competence in core skills and knowledge, and on which they would be assessed.

The text was designed as a resource that would enable students to undertake the problem-based activities. Additional resources were provided via online links, and students could search the library catalogue on the Web. Requests for books and photocopied articles could also be submitted by e-mail to the University's Flexible Library Service for external students.

In addition, most students would have access to some resources at their tribunal workplaces.

Opportunities for interaction

Opportunities for interaction with teachers and fellow students are highly desirable features of an integrated learning environment. We decided against including a compulsory face-to-face component, as this would impose substantial costs on interstate students. Instead we incorporated interactive features into the course by use of the Internet. We designed learning activities that would encourage or require students to interact with each other and the teacher by e-mail, by sharing their answers to activities and by participating in online conferencing. A different topic unit was scheduled for each week of the semester, with a related series of open-ended questions for online discussion. The questions for discussion were posed by the teacher, by the students and by 'visiting experts'. Among the visiting experts were tribunal members, academic commentators and others who could inject fresh perspectives on the weekly topic.

One-to-one interaction among students can be promoted by setting learning activities for them to complete in pairs. Paired activities break down the isolation of students and also provide opportunities for formative self-assessment and peer assessment. As well as promoting collaborative study, paired activities model cooperative work practices.

We provided one paired activity at an early stage in the programme. Students were asked to obtain their study partner's feedback on a draft answer to a problem-based activity and to report on the revisions that they had made to the draft in response to the feedback.

Encouraging reflective practice

We provided activities to prompt students to reflect upon their professional role and what they had learned from particular experiences in their tribunal practice. Over a period of four consecutive weeks, students made entries in a professional journal, recording each step in the process of reaching a decision in an actual case from their tribunal practice. Reflective practice was also encouraged by in-text activities and questions inserted into the print materials and by the questions posed by the teacher and visiting expert for online discussion.

3 Designing the Web-based learning environment

To support the online delivery of the course, we used Interlearn, a programme developed by Monash University's Centre for Higher Education specifically to support online delivery of professional education courses. We decided against putting all the instructional materials online. The course is text-intensive, and we anticipated that students would prefer to read it in print. It was acknowledged that this would restrict the potential use of hypertext links in material. However, print media can also provide self-navigational aids, such as tables of contents and cross-referencing.

The resources page provides links to a rich variety of online primary and secondary sources, including statutes, cases, articles, conference papers, *Halsbury's Laws of Australia* and tribunal websites. Direct hypertext links to selected resources are also provided from the online instructions for learning activities in the student's worksite.

4 Evaluation

The course was delivered during 2001 as a pilot offering to a group of 19 students, drawn from seven different state and Commonwealth tribunals across four states. They were of diverse professional and disciplinary backgrounds and included six students with legal training.

The course was evaluated by both external and internal methods. External sources of evaluation included comments from the heads (or nominees) of four major tribunals who reviewed the printed materials and evaluative feedback from an external academic assessor who had access to the online worksites and discussion forum as well as the printed materials. Internal feedback mechanisms included reviews of the students' work and the comments of the students themselves.

Overall, the use of online delivery enabled this course to be delivered to an important target group for whom this sort of specialised education would not otherwise be accessible. For most students, the key element that enabled them to take the course was its flexible delivery.

Some aspects of flexible delivery, however, were not seen as advantages. Students would have preferred to include some interactive discussion, whether face to face, by telephone link-up, or by some other method. They found the online discussion forum not completely satisfactory for class discussion, as contributions could not be edited or deleted by the contributor, and its asynchronous nature made ongoing discussion disjointed.

The very flexibility of being able to do the course at their own pace meant that meaningful class discussion was hard to achieve.

Conclusion

This course provides a coherent, academically rigorous, high-quality education and qualification for members of tribunals. This contributes to the aim of improving the quality of tribunal decision-making. Australian law schools are well placed to contribute to the professional education of tribunal members.

The provision of university-based programmes will promote consistency in professional standards and prepare members for a broader role within the tribunals sector.

The authors are members of Faculty of Law at Monash University in Melbourne. The development of the course described in this article was funded by a Special Innovation Fund Grant from Monash University and the Law Faculty. Dr Peter Jamieson, Associate Professor Len Webster, Associate Professor David Murphy and Joanne Becker provided valuable advice on the educational design of the course and how to use the features of the Interlearn programme.

This article is an abridged version of an article by DR PAMELA O'CONNOR and Associate Professor BETH GAZE, 'Training for Better Decisions: Designing a Computer-mediated Distance Education Subject for Tribunal Members' (2002) 13:1 *Legal Education Review* 21–44.

For website details on the Monash courses, see www.law.monash.edu.au/postgraduate/tribunals.html or contact Dr O'Connor at Pam.Oconnor@law.monash.edu.au

A BIGGER PICTURE



DOUGLAS READINGS *describes the workings of Canada's wide variety of administrative bodies.*

In Canada, there is an even greater variety of tribunals than in the UK, with less distinction between those that hear complaints in the private and public sectors. That, along with its system of short-term contracts, gives it its own set of concerns as, like the UK, it looks towards standardisation.

The Council of Canadian Administrative Tribunals (CCAT) describes itself as 'a national organisation dedicated to supporting the work of administrative tribunals and promoting excellence in administrative justice'. In June 2003, as a member of our own Council on Tribunals, I attended CCAT's annual conference in Ottawa.

There is no input into tribunals training from any Canadian equivalent of our Judicial Studies Board. CCAT therefore provides its members with training in relevant skills, a useful service for small tribunals that cannot organise their own in-house training. In the larger provinces there are also regional organisations such as the Society of Adjudicators and Regulators (SOAR) in Ontario and the British Columbia Council of Administrative Tribunals (BCCAT).

CCAT also provides a useful place for discussion and exchange of information between members, and it has an international perspective. In June 2004, there will be a CCAT International Conference in Toronto. Even at the regular annual conference that I attended there were about 350 delegates, including some from the USA, Algeria, Mexico, Brazil, Israel, and one from England. The 2004 International Conference on the theme 'Bringing Administrative Justice to the People of the World' is expected to attract 600 delegates from 50 countries.

Tribunals in Canada

Canada contains a much wider variety of tribunals than the United Kingdom. It has been estimated that there are more than 700 major adjudicative and regulatory bodies at either the provincial or the federal level. There are enormous tribunal systems, organised nationally, and smaller systems peculiar to one province. Some jurisdictions are familiar to the

British, such as the Immigration and Refugee Board, the Criminal Injuries Review Board, Veterans' Review and Appeal Board, and Rental Housing Tribunals. Some are very unfamiliar, such as the Nunavut Labour Standards Board, Indian Claims Commission and Canadian Forces Grievance Board. There are Human Rights Tribunals in several parts of Canada, dealing with various kinds of discrimination or other wrongful treatment.

There are complaints procedures and adjudicative and appeal functions in practically all the regulatory authorities, and the boundaries are not clear between tribunals, ombudsmen, professional disciplinary bodies, and complaints handlers in the public or private sector.

A feature of many tribunals in Canada is that they operate without legally qualified members, but with advice provided by an in-house lawyer

Counsel to the tribunal

A feature of many tribunals in Canada is that they operate without legally qualified members, but with advice provided by an in-house lawyer. Questions inevitably arise from time to time about the strength of the 'Chinese walls' between this lawyer, who is 'counsel to the tribunal', and the rest of the investigatory or enforcement team. The lawyers who serve in this capacity, however, take professional pride in giving independent, but practical, advice. The way in which

a resident legal expertise is established and maintained, while allowing lay members to deal with cases locally and informally, can be seen as improving the service to users.

Alternative dispute resolution

Canada has embraced ADR with enthusiasm, and many disputes and complaints have to go through compulsory conciliation or mediation before they reach a tribunal.

Sometimes counsel to the tribunal may participate.

There can be some debate about whether a public body can properly reach a settlement with an individual if the result, for example a planning consent or a liquor licence, would affect the public. However, a solution often adopted is that any proposed settlement is submitted for the approval of the tribunal.

Tribunal reform

Tribunals can be observed in Canada at every stage of development. At one extreme some tribunal members are appointed on short-term contracts, or even without any security of tenure. They may fear that an unpopular decision will lead to non-renewal of their appointment, and a change of local government may result in the dismissal of all the existing office-holders. At the opposite extreme, the government of Quebec has decided that appointments shall continue indefinitely, except in case of incompetence or misbehaviour. They are actively consolidating and standardising tribunals in a way similar to Sir Andrew Leggatt's recommendations in *Tribunals for Users*. In Quebec, there is a Charter of Human rights and a supervising Conseil de la Justice Administrative.

Training, as in the UK, is generally the responsibility of the judicial head of each tribunal system, but in a country of huge distances it may be particularly difficult to organise. The newest Canadian territory, Nunavut,

is approximately two million square kilometres in size. It has less than 100 kilometres of paved roads. Its total population is 26,000, living in 26 scattered communities.

Short-term appointments can add to the problems, because in some jurisdictions it may take six months to train a new member who has only been appointed for two years. If it is not certain whether the appointment will be renewed, it may be impossible to ask that member

to sit in a tribunal for the last six months of the term, because a tribunal would become inquorate if a case was continuing when the term of appointment expired.

Ontario has introduced standard frameworks for competency-based recruitment, regular training and appraisal. Although not compulsory, they have been widely adopted by tribunal systems operating in Ontario, and copies of the draft schemes were last year supplied to the Council on Tribunals and the Judicial Studies Board. Appraisal is generally accepted, and welcomed, in the systems where it has been introduced.

What we can learn from Canada

It is perhaps not surprising that in such an enormous country, with both English and French traditions, administrative justice should develop in such variety. Nevertheless,

our colleagues in Canada are discussing accessibility, consolidation, independence, recruitment, training and appraisal, just as we are in the United Kingdom.

Looking at the Canadian experience may help us all, laymen and lawyers, members and administrators, to see where our work fits into a bigger scheme of administrative justice.

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Kingdom*

DOUGLAS READINGS was a member of the Council on Tribunals between 1997 and 2003. He practises as a barrister in Birmingham. The website for the CCAT is www.ccat-ctac.org

NO JOKES PLEASE

GODFREY COLE *has just finished reading a book that exhorts the judicial officeholder to 'write like a human being'. Here, he explains how.*

Let's start with two, almost certainly incontrovertible, statements. First, it takes many skills to run judicial proceedings effectively, and second, decision-writing causes more worry to more chairmen than any other task that they have to perform.

Training in decision-writing for the beginner almost invariably takes the form of a mantra: identify the issues, make findings of fact, set out the reasons for the decision to include suitable reference to the relevant law, and make a clear decision. The same mantra, presented in a more sophisticated way, frequently continues as the basis of continuation training offered to experienced tribunal chairmen. There can be little doubt that the four-point scheme offers advantages to the novice and to the experienced chairmen; it contains checks and balances and its repetition reinforces consistency.

Decisions, Decisions offers something different: that the emphasis should instead be on style and format. The authors comment at an early stage that the art of judging is made up of many ingredients. If the metaphor is developed, then presumably the style and format of decision-writing is the skill of preparing and then cooking the ingredients. Comments on style are reserved to what might be described as specialist sections: a review of different styles of judgment in different national jurisdictions, approaches to consider when giving oral judgements, advice on when to make jokes (never) and when to lapse into rhyme (as if we would, but don't anyway).

Format is fundamental to the authors because decision-writing is a craft that improves as an individual's techniques develop. To assist the reader, the authors have prepared

what they regard as basic formatting rules. They are:

- Use simple language.
- Avoid old-fashioned expressions and legalese.
- Use a variety of short and long sentences.
- Use connectives, i.e. single words or phrases that foreshadow the thought or idea that is to follow.
- Explain initials and acronyms.

To help the chairman, they have prepared two

appendices. One sets out what they suggest are 'low-fat substitutes' for some of the more weighty prose and phrases that we are all prone to include to give weight or conviction to our decision; the other illustrates useful and suitable connectives.

The authors urge writers to revise. Honing can only lead to improvement, notably in making decisions as concise as possible. They are forceful opponents of prolixity. 'The adoption of a concise style remains a primary objective of judgement-writing – the fewest words possible, as simply as possible.' The authors offer guidelines on how that too can be achieved.

The authors urge writers to revise. Honing can only lead to improvement, notably in making decisions as concise as possible

They suggest that the decision-writer should:

- Avoid reproducing pleadings and extracts from the testimony of witnesses.
- Have the courage to select only the essential facts and discuss solely the real issues.
- Reduce citations.
- Shorten quotations.

Of course those who love their dictating machines, who

do not use voice-activated software and who will not use computers even to make their own corrections and revisions will not be popular with typists when they revise enthusiastically in accordance with the authors' exhortations. This writer, who types all his own decisions and who has been a confirmed revisionist for some while, has no such concerns. The authors acknowledge the problem, in part at any rate: '... a judgment is not a novel, and judges don't have the luxury to put a draft aside for two months or so. Imperatives of justice require a certain speed. However, it is often possible to place the first draft of a judgment in a drawer for 48 hours before revising it. Letting it lie fallow gives enough distancing to make the necessary corrections.'

Is the book an alternative to the mantra? On an introductory level, almost certainly not. For the experienced, though, the answer is probably yes. 'This is a book for judges who are not afraid to write like human beings, for judges who have enough confidence in their knowledge of the law to express it on paper in the same plain language they would use in talking to a neighbour who happens to ask a legal question across the fence on a Saturday afternoon. Not all judges have this degree of confidence; this book is for those who do.'

Decision, Decisions, by LOUISE MAILHOT and JAMES CARNWATH, is published by Editions Yvon Blais (www.editionsyvonblais.com) ISBN 2-89451-237-6

How NOT to STULTIFY RESEARCH

To what degree is a tribunal obliged to give a party the chance to address an authority cited in its judgment?

In *Sheridan v Stanley Cole (Wainfleet) Ltd* [2003] 4 All ER 1181, the Court of Appeal considered the scope of the test to be applied to determine whether failure by a court or tribunal to alert advocates to a material, significant and relevant authority is such that an appeal on that ground should succeed.

Background

An employment tribunal upheld Mrs Sheridan's claim for constructive dismissal. At a subsequent remedy hearing, the tribunal awarded her £3,500. The company was not legally represented at either hearing.

For the remedy hearing, Mrs Sheridan prepared a schedule of loss which disclosed that she had been in work shortly after her dismissal. This prompted the company to look again at the original 80-page bundle. They found, on page 70, a letter asking for a reference and, on page 71, the reference given by the company. Originally, the company had not considered these pages important.

The company applied for a review hearing of the tribunal's decision under rule 13 of its rules of procedure.

The company claimed that the 'new' evidence was relevant to central issues of the case. It submitted that it was not reasonable to expect a non-legally represented litigant to act as a forensic expert and that, even if the tribunal took a restrictive approach to the issue of new evidence, it was not in the interests of justice to deprive the company of opportunity to argue the merits of the review.

That tribunal heard submissions as to whether or not they should allow the review to be considered on its merits and dismissed the application. The company was not legally represented; neither party referred to any authorities and the tribunal did not refer them to any. When giving the tribunal's decision, however, the chairman had copies of two authorities in front of him, from which he quoted, but he did not provide them to the parties.

On its appeal from that decision not to allow the review to the Employment Appeal Tribunal (EAT), the company relied on the tribunal's failure to draw the authorities to the attention of the parties. The EAT

dismissed the appeal, holding that, even if the parties had been alerted to the authorities, there was no reasonable prospect that a tribunal, properly directed, would have taken a different view.

Court of Appeal

The company appealed to the Court of Appeal, contending that the authorities referred to by the tribunal were relevant, significant and material to its decision; that the hearing had been rendered unfair by the tribunal's failure to ensure that the parties had an opportunity to consider and make representations on the authorities; that there was no need to show that there had been a material injustice; and that in the circumstances there had been a breach of the right to a fair hearing under Article 6 of the ECHR.

In dismissing the appeal, the court considered the approach to be adopted. Although failure to give a party the chance to address an authority may, not must, amount to a breach of natural justice (*Albion Hotel (Freshwater) Ltd v Maia E Silva* [2002] IRLR 200), it also had to be shown that substantial unfairness had occurred (*Nelson v Carillion Services Ltd* [2002] All ER (D) 216).

There would not be a serious irregularity simply because a tribunal cited cases that had not been referred to during the hearing. Judicial research would be stultified if that were so and if the parties had to be given the opportunity to address each and every case eventually set out in the judgment.



Appraiser: 'And how do you feel about your level of absenteeism?'

The real question was whether what happened was seriously irregular and unfair, and the court was not persuaded that if the company had been armed with either of the cases cited by the tribunal it would have made any difference to the outcome. In addition, the interests of justice did not demand that any shortcomings in a litigant in person's presentation of the case should be overcome by giving the litigant a chance to do better second time round.

Conclusion

Tribunals might usefully bear in mind Buxton LJ's words, in his judgment dismissing the appeal: 'It would of course have been a lot better had the chairman told the advocates of the authorities that he intended to cite, if for no other reason than to avoid the subsequent extensive use of court time over a dispute in which some £3,000 is in issue.'

A SIGNIFICANT LIAISON

Change is in the air for the Mental Health Review Tribunal with the creation of an important new post.

Judge Phillip Sycamore, the new liaison judge for the Mental Health Review Tribunal, describes 'the most significant change of approach' to the work of the tribunal as the recent appointment of Professor Jeremy Cooper and John Wright as its two new full-time Regional Chairmen. These appointments are a natural extension of the amalgamation of the tribunal into two regions in 2003 and, according to the judge, have given the tribunal 'the recognition it needed'.

Some may say, however, that the appointment of Phillip Sycamore himself has been a development of equal importance, giving a new kind of judicial lead to the tribunal. With a dedicated responsibility for training, Judge Sycamore was appointed to the newly created role at the end of 2002, his appointment as a circuit judge having only taken place the previous year.

When we spoke to him, he had just come from the first of a series of new-style induction courses that had been one of his first major projects. The judge had only had time for a brief look at the seminar's evaluation questionnaires, but was pleased that the vast majority of the participants had felt that the course had fully or substantially met their expectations.

Built around a central mock tribunal hearing, and with an emphasis on discussion in small syndicate groups chaired by experienced circuit judges, Judge Sycamore explained that the importance of the giving of reasons was one of the central elements of the course. He was delighted that Mr Justice Stanley Burton had opened the seminar with a talk on recent case law, and believed that his very accessibility was a sign of the tribunal's increasingly high profile.

Not one for complacency, however, the judge was already thinking of improvements. The participants on the first course had consisted of the 40 newly appointed part-time legal chairmen, but the judge saw no reason why at future courses newly appointed members representing

the three disciplines within the tribunal (lay, medical and legal) could not be trained together. Rather, he felt that there was a great deal of benefit in the different members learning how to work together from the start.

He also spoke of the possibility of weaving syndicate discussions into a longer mock hearing, with the small groups centring their discussion first on the procedural points that had been raised and later working to produce the written decision for the case. His mind was also beginning to work on ways in which specialist sessions for the legal and medical members could be brought into a general induction course.

And the judge's ideas do not end there. He is also keen to start to putting together an appraisal and mentoring scheme for the tribunal during 2004, starting with the same group of part-time legal members as his 'guinea pigs'. That project is still at its early stages, however, and the judge was insistent the scheme should be one with which the members felt comfortable.

Of course, change can also come from outside. During the course of 2004, the tribunal will be keeping a keen eye on developments on the proposed Mental Health Bill, which is likely to seek to establish a new national Mental Health Tribunal with its own dedicated appellate tribunal. The tribunal is also one of the five due to be moving under the umbrella of the new Tribunals Service, by 2008.

The importance of the work of the MHRT is difficult to overestimate. In reaching their decisions, the members of the tribunal have to balance the personal liberty of an individual with the protection of the public, and their decisions, further, must reassure the public that their safety is being protected. The consequences of a wrong decision are enormous. The establishment of the new post of liaison judge, and the appointment of Judge Sycamore to fill it, are important steps in ensuring that continued reassurance.

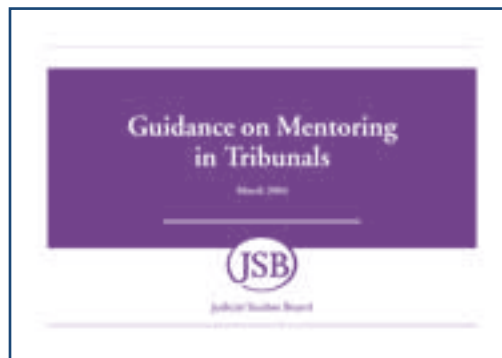
HELP *is at* HAND

Would newly appointed members of your tribunal benefit from having someone to talk to in confidence about their new role? The JSB has published new guidance on setting up mentoring schemes within tribunals.

On taking up new employment it is quite usual for an appointee to be offered a mentor to enable them to become familiar with their new working environment and their role and responsibilities within it. In his report, *Tribunals for Users*, Sir Andrew Leggatt recommended that 'support should be offered by mentoring, advice and guidance from experienced members to newly appointed tribunal members.

In April 2004, the JSB published its *Guidance on Mentoring in Tribunals*, the fourth in its series of guidance documents for tribunals, a series that also includes:

- A Competence Framework for Chairmen and Members of Tribunals.
- A Framework of Standards for Training and Development in Tribunals.
- Fundamental Principles and Guidance for Appraisal in Tribunals and the Model Scheme.



It identifies the fundamental principles of mentoring alongside matters that will need to be addressed according to the size and resources of the jurisdiction.

The guidance envisages the mentor assisting the new member in becoming familiar with the JSB's Competence Framework as

introducing a mentoring scheme, including:

- The objectives for mentoring in a tribunal.
- Who will have a mentor.
- Who will be a mentor.
- How the mentor/new member will be matched
- The role of the mentor.
- Frequency of contact.
- Duration of relationship.

The new guidance addresses the issues that need to be considered when introducing a mentoring scheme.

well as providing support in managing the adjudicative role and becoming familiar with the tribunal structure and personnel.

Presented as a series of questions, the guidance suggests that a tribunal's mentoring scheme should be constructed along fundamental principles and provides some additional guidance on the good practice that tribunals may wish to adopt in implementing a successful mentoring scheme.

If you would like copies of the JSB's *Guidance on Mentoring in Tribunals*, or of any of the other three leaflets listed above, or if you need further advice on how a mentoring scheme might be implemented in a particular tribunal or jurisdiction, please contact the JSB at tribunals@jsb.gsi.gov.uk

What is mentoring?

Mentoring is a process whereby an experienced member of an organisation acts as a confidential adviser to one or more recently appointed members in order to help them understand the workings of the organisation and their role within it. A mentor provides support, advice and guidance. In the context of a tribunal jurisdiction, a mentor would normally be someone who has been in the same position as the new appointee and is willing to help the individual in adjusting to their new role in the tribunal.

The JSB's *Guidance on Mentoring* identifies a number of issues that a jurisdiction should consider when

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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 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.

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