

## ‘Accessible, fair and efficient...’

Over 500,000 people now use the various administrative justice tribunals and this number will rise with the impact of the recession. Tribunals play an important part in providing access to justice for many people faced with civil justice problems. Most of the tribunals now come under the jurisdiction of the Administrative Justice and Tribunals Council (AJTC), which last month held its second full conference since it was established under the Tribunals, Courts and Enforcement Act 2007. Unifying over 50 tribunals as diverse as the Agricultural Land Tribunal and the Mental Health Review Tribunal in one administrative body seems like an exercise in herding cats, but it has brought benefits.

Administrative law tribunals have grown in number over the past 60 years mainly to provide effective redress for people who want to challenge decisions made directly by the state or one of its local manifestations. They are also a reflection of the rights-based culture that developed in the same period. Employment tribunals (ETs) are of course the big exception in the system as they deal mainly with disputes between private employers and employees. Immigration tribunals are also an exception. They remain outside the AJTC, but after initial scepticism the government appears convinced that they should be moved to join the other tribunals and this should happen in February 2010.

The main justification for reorganising the tribunals was to guarantee their independence from the decision-making state departments that also sponsored many tribunal services. Now, all tribunal judges take the judicial oath and are fully-fledged members of the judiciary. The administrative benefits are that different tribunals can be accommodated in the same building and judges as well as wing members can become qualified to sit in different tribunals, leading to a greater pool of qualified people on which to draw.

Greater efficiency is needed particularly at a time when the tribunal system is under strain because of the recession. LAG has heard from many advisers and lawyers that waiting times for ET hearings and First-tier Tribunal (Social Security and Child Support) appeals especially are increasing. As readers will appreciate justice delayed is justice denied and resources need to be put into the tribunal system to ensure that people facing problems caused by the recession get timely redress.

Old hands in tribunal law will recall the variations in procedure even between the same tribunal sitting in different regions, so another benefit of the unified administration of tribunals is consistency around rules of procedure: well-drafted rules and standardised directions lead to quicker and consistent decision-making. Other benefits of the centralised system are the increased opportunities for training and appraisal of the judiciary and tribunal members as well as the pooling of back-office administrative functions such as finance and personnel.

The focus of government departments and bodies that fall under the jurisdiction of tribunals should be on getting their decisions right first time. In addition, collating information on decisions which chart systemic failure by decision-makers should be a priority for the AJTC. In other words, when government makes wrong decisions constantly, the AJTC should tell it so. LAG suspects that all too often there is administrative inertia in government departments which means it is only when a tribunal claim is brought that sufficient effort is put into examining an individual case.

A study published in 1989, *The effectiveness of representation at tribunals* by Hazel and Yvette Genn, found that representation substantially increased chances of success for people before tribunals. Research by Professor Michael Adler, *Tribunals ain't what they used to be*, details of which were published in the AJTC's *Adjust* newsletter in March 2009, seems to indicate that for some tribunals, provided the client has received good advice before the hearing, the advantage gained from having representation is less marked. Professor Adler attributes this to the 'active, interventionist and enabling ways' in which many tribunals now deal with cases. LAG believes that the AJTC has an important role in promoting this approach to enable unrepresented tribunal users to get better outcomes.

Some words of caution though before policy-makers rush to assume that representation is not needed in tribunals. Citizens Advice's study of the Asylum Support Tribunal, *Supporting justice: the case for publicly-funded legal representation before the Asylum Support Tribunal*, published in June 2009, found that without representation only 38.6 per cent of applicants were successful, while those with representation had a 71.3 per cent success rate. This shocking statistic makes it clear that any reduction in the advantage of representation is tribunal specific. Also, the more active and interventionist approach that is now adopted by some tribunals depends on them being well resourced with suitably-qualified and experienced judiciary and members, as well as administrative back-up. A squeeze in the budget for tribunals could see the loss of any gains that have been made by better outcomes for their users.

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