Getting there at last!

The new world

1. Welcome to the new world! The first ever conference of the Administrative Justice and Tribunals Council, and the first ever address by a statutory Senior President of Tribunals. It is a proud moment. I acknowledge the contribution of the many people who have helped to pave the way. I acknowledge in particular the work of Lord Newton and the former Council on Tribunals. They have been an ever-reliable source of advice, expertise and enthusiasm. I must also thank all the tribunal judges and members, particularly the tribunal presidents, for their consistent and good-humoured support and friendship at every stage.

2. Another source of great strength for me has been the close working relationship I have enjoyed with Peter Handcock and his administrative teams, both before and after the setting up of the new Tribunals Service. Recent reforms to the legal system have not always see ministers and judges at one. However, this project has been exemplary from the start as a joint venture between judges and administrators.

3. Tribunal judges (inspirationally led by Brooke LJ) were closely involved in the consultations post- Leggatt and pre- White Paper. I was appointed as shadow Senior President on the day the White Paper was issued. My first task was to assist the appointment of the new Chief Executive. Judicial groups have been involved in every aspect of the reform programme, including the preparation of the legislation. Peter and I share a common belief that successful tribunal reform and the delivery of tribunal justice depend on a

genuine partnership between judges and administrators. There can be no "them and us"; we are all in it together.

4. I have been particularly struck by the degree of consensus as to both the need for reform and the objectives of reform. This again contrasts with some recent government projects. At the heart of the Leggatt thinking was a simple idea. Tribunals are a vital but distinct part of the independent civil justice system. Their members - commissioners, adjudicators, panellists or whatever – are in truth full members of the independent judiciary, no less than court judges. Only through a unified structure can these special attributes be recognised and developed. While people may differ as to the detail of the programme, I know of no-one who challenges the underlying aims.

The last three years

5. While preparing this speech, I looked back at my previous speeches to CoT conferences – starting in November 2004 with one entitled "Tribunal justice – building on strength." At that time, the White Paper was relatively new; Peter Handcock had just been appointed; Tribunal Reform had been mentioned in the Queen's Speech; and we were hoping for legislation in 2006. The timing may have slipped, but most of the themes of that speech remain equally valid today. I spoke of the central role of tribunals in the civil justice system, handling more than half a million cases a year, ranging from small social security claims of a few tens of pounds cases, to tax cases involving hundreds of millions of pounds, and raising issues as complex a anything in the High Court. I spoke of the hallmarks of the tribunal system: the expertise and experience of its members (lawyers and non-lawyers), combined with the

flexibility to develop and vary its procedures to suit the particular needs of its users, from single individuals to sophisticated city institutions. I spoke of the basic tenet of the Leggatt report, that of service to the user: that “tribunals exist for users, and not the other way round”. I ended with a call for a “quiet revolution”, building on the strengths of what we have.

6. A year later, the tribunal reform programme had been not only delayed, but overtaken by the upheavals of constitutional reform. My speech expressed some frustration at my prolonged shadow status. But I concentrated on the radical changes enacted in the Constitutional Reform Act 2005, due to be implemented in April 2006. Gone was historic role of the Lord Chancellor as head of the judiciary. Instead the courts were offered a new constitutional settlement: a guarantee of judicial independence; the Lord Chief Justice as head of the judiciary of England and Wales, and his leadership role defined; a new statutory framework for judicial appointments (through the JAC) and judicial discipline (the OJC). The CRA dealt only partially with tribunals. As I said at the time, for them constitutional reform was “unfinished business”. Fundamental questions were left answered. “Are tribunal judges real judges… or are they some form of hybrid – judges for the purpose of appointment and discipline, but for nothing else? And where in the new scheme, stands the Senior President of Tribunals?”

7. The process of setting up the new governance arrangements for the court judiciary under the CRA have been complex and time-consuming. I, and other tribunal judges, have participated where necessary, particularly in relation to judicial appointments under the JAC and the new disciplinary systems under

the OJC. I am very grateful for all those who have contributed to this work. Tribunal judges are also represented on the Judges' Council, the representative body set up by the Lord Chief Justice for all branches of the judiciary in England and Wales.

8. In the meantime the new Tribunals Service has been successfully established, and, more recently, we have coped with the transition to the new Ministry of Justice. As a relative newcomer to the world of Government, previously informed largely by Yes Minister, I have been fascinated to watch the process at first hand. I have become all too aware of the complexity of the task of bringing together within one coherent organisation a range of disparate administrative systems, and securing a favourable financial settlement for the reform programme for the next four years. It has been done, I believe, without significant disturbance to the day-to-day operation of tribunals, or inconvenience to users. A measure of the achievement is that the changes have been little noticed by users or judges, still less the world outside. The passing of the Tribunals Act gives us the legislative machinery to start the next phase.

9. At this stage, I would like to acknowledge the invaluable support I have had from the Tribunal Presidents Group and particularly the smaller Tribunal Judges' Executive Board. I hope the others will forgive me if I mention only one individual. Michael Harris has been in effect my Deputy throughout this process, combining it with his duties as President of the Appeal Tribunals. He has graciously continued the role following his retirement (retaining the slightly less arduous office of President of the Gender Recognition Panel). Not unreasonably he is looking to reduce his commitment. I know he will continue

to play an important part, as long as he feels able. Fortunately for me, the timing of his reduced role will coincide with the return of Judge Gary Hickinbottom at the end of this year to full-time office with the tribunals, as President of the Social Security Commissioners. Now that I too have a statutory office, I have felt able to ask him to take on the role of Deputy Senior President. I am delighted that he has agreed.

Where next?

10. The fundamental questions left open by the CRA are now answered by the new Act. Section 1 is appropriately headed "Independence of tribunal judiciary". It confirms unequivocally that tribunal judges and members[1] are entitled to the same guarantee of judicial independence as their court colleagues under the CRA. The rest of the Act establishes a framework for the unified tribunal system which is closely modelled on the court system

11. Now of course, the real work begins. The programme for implementation of the Act has been under discussion with judges for some months. The hope is to implement the principal parts of the Act in stages with the two new tribunals being extablished for at least some functions by October 2008.

12. *The Senior President's role* Let me start with my own role. Section 2 of the TCEA establishes the new office of Senior President. It sets the scene by spelling out four key underlying considerations for the exercise of his functions. They can be seen perhaps as defining characteristics of tribunals at their best. They are in short: accessibility; fairness, speed and efficiency; specialist expertise; and innovation. To find out what are the functions of the

[1] That is, the offices listed in CRA Sch 14.

office requires rather more searching through the schedules. A useful, but not complete, list is to be found in the Explanatory Notes (para 40), which summarises fourteen different responsibilities. They include, for example, concurrence with the Lord Chancellor in creation of the new chambers structure, the power to assign judges to chambers, and the power to make practice directions.

13. Particularly important, though hidden in the schedules, are two responsibilities which are modelled directly on those of the Lord Chief Justice for the court judiciary. The first is the power to make written representations to Parliament on matters of importance relating to tribunals, and generally to represent the views of tribunal members to Parliament, and to Ministers.[2] The second is the duty to make arrangements for "training, welfare and guidance" for tribunal judges and members, a duty to be exercised in co-operation with the three chief justices.[3]

14. The Senior President therefore is acting as a statutory President in his own right, not simply as a delegate of the chief justices. On the other hand, I have made it clear, as part of the terms on which I took the office, that I see myself not only as a leader of the tribunal judiciary, but also as a direct link with the chief justices as leaders of the judicial family as a whole. I know that the Lord Chief Justice shares that view, as do the Lord President in Scotland and the Lord Chief Justice in Northern Ireland. For my part, I am grateful for the support all three have given me, reflected in their concurrence in my

[2] TCEA Sch 1 para 13-14. (cf CRA ss 5(1), 7(2)(a)).
[3] Sch 2 para 8; sch 3 para 9; s 47. (cf CRA s 7(2)(b)).

appointment. I will continue to work closely with them, and look to them for guidance and support on all matters of mutual concern.

15. *The new structure* The TCEA creates two new, generic tribunals, the *First-tier Tribunal* and the *Upper Tribunal*, and provides the machinery for transferring to them existing tribunal jurisdictions and judicial offices. They will be divided into "chambers" at each level, headed by "chamber presidents". Present thinking (subject to consultation following the Autumn document) is that there will be five chambers at the lower, and three at the upper, levels.[4] The existing Asylum and Immigration Tribunal, and the Employment tribunals and Employment Appeals Tribunal, would continue as separate "pillars" of the new system, largely unchanged but under the general leadership of the Senior President. Implementation is likely to be in stages: starting with the principal administrative chambers at both levels in Autumn 2008.

16. Some aspects will take a little longer. For example, decisions on the final form of the first tier lands chamber need to take account of the Law Commission's work on housing dispute resolution, and the role and involvement of the Residential Property Tribunals. Reform of the tax system is particularly radical, involving the replacement of the historic role of the General Commissioners of Tax, and the reshaping of the present routes of appeal through the High Court. I take this opportunity to thank the Commissioners and their Clerks for their continuing dedication to their work in spite of these uncertainties.

[4] *First tier chambers*: Social entitlement; General regulatory; Health, education, and social care; Taxation; Land, property and housing. *Upper tribunal chambers*: Administrative appeals; Finance and Tax; Lands.

17. I see the new Chambers, and the Chamber Presidents, as central to the realisation of the objectives of the Act. There is no perfect model for the arrangement of chambers. But I think that the 5-chamber structure, which has been provisionally agreed for the first tier, is an effective compromise between the competing demands of consolidation and specialisation. The chamber presidents will play a key role. Judicial leadership in each chamber must be sensitive to the particular mix of jurisdictions, and to the needs of the individual specialisations. Working relationships and common practices need to evolve by agreement rather than prescription from above. I expect the chamber presidents to become the main agency for fulfilment of many of the duties of the Senior President..

18. The Upper Tribunal will be an entirely new creation. Currently there is no single mechanism for appealing against a tribunal decision. Appeal rights differ from tribunal to tribunal. In some cases there is a right of appeal to another tribunal. In other cases there is a right of appeal to the High Court. In some cases there is no right of appeal at all, but the High Court may exercise its residual judicial review jurisdiction. The TCEA provides the opportunity to build a new coherent appellate structure. It will be a superior court of record, presided over by the Senior President. Its powers in relation to tribunal decisions will be as wide as those of the Administrative Court, including judicial review powers under arrangements to be agreed with the Lord Chief Justice. I hope that the Lord Chief Justice will also agree to High Court judges being available to sit on appropriate cases in the Upper Tribunal, as they do now in the EAT. I see no reason why the Upper Tribunal should not acquire a

status and authority in tribunal matters equivalent to that of the Administrative Court in relation to public law generally.

19. We envisage three chambers. At the heart will be the Administrative Appeals Chamber, to which there will be a right of appeal only on points of law, with permission. The core of its work will be the current work of the Social Security and Child Support Commissioners, to which will be added appeals on points of law from other administrative jurisdictions. Tax and finance, and Lands, will constitute separate chambers. In that way they will be able to build on the strong foundations laid by the existing tribunals, and provide continuity of service for their members and users.

20. I will not go into further detail in this speech, as I do not want to pre-empt the Government Consultation Paper due to be published later this month (hitherto known as "the Autumn document"). That will provide a further opportunity for discussion of the shape of the new system, including the division into chambers. Nor shall I comment on the very important consultations now in progress on terms and conditions, and on remuneration. I recognise the importance and sensitivity of some of these issues. I do not underestimate the difficulties of achieving consistency. But we must grapple with them now. That is an essential part of the process of moving to an integrated and harmonised tribunal system.

Three themes

21. In the remainder of my speech I want to talk about three themes which I believe should underlie our approach to tribunal reform. They are: evolution,

partnership, and communication. Let me explain what I mean and offer a few illustrations.

22. *Evolution* I have spoken elsewhere of a “quiet revolution” but I think the right word should be “evolution”. The Act is not prescriptive. It does not demand a big-bang approach. It provides a flexible framework within which the new system can develop naturally. For example, the new Social Entitlement Chamber (if that is what emerges) would incorporate the Social Security Appeal jurisdictions, along with Criminal injuries compensation, Pensions, and Asylum support. In numbers, obviously, the social security work will be dominant. But it must not be allowed to swamp the other jurisdictions, which will need to retain their separate identities and specialisations. The process of appointing the new chamber presidents, through the JAC, will inevitably take some time. However, I hope that, even before that, those interested will begin exploring opportunities for sharing experience, working together on training and other matters, and in due course moving across the different jurisdictions. I am not going to dictate any solutions at this stage Nor do I expect the same approaches to apply to the different chambers. I would much prefer them to evolve by discussion and agreement.

23. *Partnership* Partnership is fundamental – at a number of different levels. I have already spoken of the importance I attach to a close relationship between judges and administrators. We have deliberately avoided the formal separation that exists in the courts between the Judicial Office and the Court Service. It is accepted that there needs to be a judicial office, whose loyalty lies unequivocally to me as leader of the judiciary, rather than to the

administration. We also need to ensure that the tribunal judiciary are properly represented in the decision-making machinery of the organisation. But I believe, and Peter Handcock agrees, that this can all be achieved within a single organisation. However, he also has made clear to me that he is willing, in the light of experience, to consider other solutions, including greater separation. We also need to take account of the discussions currently in train between the Lord Chancellor and the Lord Chief Justice, following the controversy over the creation of the Ministry of Justice. I have not found it necessary to involve myself in those discussions, but I have made clear to the Lord Chancellor, as part of my acceptance of the post, that I expect any arrangements agreed for the courts to be matched for tribunals.

24. We have other very important partners in the project. I have already mentioned the AJTC. I have no doubt that it will be a powerful ally in the reform programme, and an independent guardian of the objectives of the service. It will also help to ensure that we are kept closely in touch with the needs of our users and other interest groups.

25. We have a longstanding relationship with the JSB, and its tribunal committee. I acknowledge in particular the work of Jeremy Sullivan and Godfrey Cole, and look forward to an equally strong relationship with their successors, The evaluation of existing training arrangements, carried out by the JSB at my request, has provided us with a very clear picture of the strengths and (much fewer) weakness of the existing arrangements. We have been exploring with the JSB different options for future collaboration. However, here again I think

the guiding principles for the time-being will be evolution and partnership, building on what we have, rather than radical change.

26. Thirdly, I should mention the JAC. Our relationship with them is equally important, but has had much less time to develop. We have had to tackle together a number of anomalies thrown up by their statutory scheme. Most of the initial problems have been overcome. The procedures for tribunal appointments are now well-developed and understood. I am happy to acknowledge the very good working relations we have enjoyed with them at all levels, and to pay tribute to the principled determination with which they have tackled their difficult and novel task.

27. *Communication* Finally, it is vital that we let people know what is going on, and listen to what they say. That applies both internally and externally. I am conscious that there is a lot more to be done. We are in the process of developing a comprehensive communications strategy. We have been lucky to be able to build on the experience of the Judicial Communications Office, another key partner. The monthly judicial bulletin is now I hope getting wide circulation. In due course the Judicial Portal, which has been a long time coming, should provide a much more sophisticated system for general communications. I am particularly grateful for the energy and optimism of Andrew Bano, in driving that project forward. I shall be asking Gary Hickinbottom to chair a Communications Committee to help co-ordinate all these communication initiatives.

Conclusion

28. I will finish as I did in 2004. The White Paper, I said, offered us a unique opportunity to shape the delivery and development of the new system as we think it should be. In that process, we could over the next few years do more for the cause of practical justice in this country than all the other reforms which the Government were then proposing. Now we have the tools to do the job. I am delighted to be the first to take up the challenge, and to have you as my colleagues.

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