

Justice in a cold climate

(Senior President's speech to AJTC 17.11.10)

This year we thought that for a title in the after-lunch slot we needed something more catchy than my normal "Tribunals – the way ahead" or the like. And it reflects the fact that we are now living in very different times. We have a new Government with new ideas and new budgetary constraints.

We were not trying to link this speech with 'Love in a cold climate' - Nancy Mitford's novel about upper class life in the cold climate of England as opposed to the hot climate of India. Nancy Mitford's title is in fact a direct quotation from 'Keep the Aspidistra Flying' by George Orwell. That book is perhaps more in keeping with the current economic situation. The full quote was 'It is not easy making love in a cold climate when you have no money'.

So let's talk about how we can make justice in a cold climate when we have not much money.

Sticking with your friends

In cold times, we need the support of our friends. The Council on Tribunals now the AJTC, has always been a close, but critical, friend of the tribunal system and its judges and members, going back to the foundation of the Council more than 50 years ago. They played a particularly important part in the tribunal reform programme, under Lord Newton's inspiring leadership. That has continued under Richard Thomas, their present chairman. The

Scottish and Welsh committees are leading the debate on the future of tribunals in those two countries.

I regret the decision to consign them to the history as though they were just any old surplus quango.

I am very glad that the mood at their recent meetings and at this conference has no element of defeatism. There is plenty for them to do in the remaining months of their existence, to ensure that the interests of users are protected in the face of any reforms or cutbacks - and also to ensure that their legacy is preserved.

“Huddling together for warmth”

That may not be the right metaphor to describe the future relationship of the court and tribunal judiciary, but there is an element of truth in it. Faced with a government intent on cutting expenditure, wherever it can do so without major political repercussions, we as judges need to present a strong and united front to defend the things that really matter to justice and our users.

The announcements of first the merger of the courts and tribunals services, and then of integration of the two groups of judges, may seem to have come out of the blue – and perhaps without much sign of detailed planning. But it is a tribute to the Leggatt vision, and how far we have come since then, that the tribunal system is seen as a major player in this process, with (as Leggatt put it) a “collective standing” to match that of the court.

As Senior President I have been consulted at each stage by government. There has been no suggestion that this is a take-over of the tribunals by the courts. Both I and the Senior Presiding Judge, John Goldring, are active members of the Courts and Tribunals Integration Board (as is the AJTC Chairman, Richard Thomas). We and our teams have been working together on the preparation of the new Framework Document which will provide the model for the governance of the combined service and its supervisory Board. The Framework fully recognises the distinctive qualities of tribunals, and the Board will have a specific duty to support the Senior President in protecting those qualities.

I am also delighted that the Chief Executive (Designate) of the combined service (Peter Handcock) is someone who needs no persuasion of the strengths of the tribunal model, and with whom I have worked harmoniously for some six years.

MOJ Ministers and senior officials are beginning to get used to my constant refrain to “think tribunals” whenever court or justice reform is on the agenda. If anything perhaps the danger is they may be too ready to see tribunals as a cheap and cheerful answer for all the problems of access to justice in cold times. That would be a fundamental mistake. Courts and tribunals are distinctive, complementary and essential parts of an effective justice system. I strongly welcome the fact that, even without new legislation, the Lord Chief Justice has accepted the tribunal judiciary within his sphere of responsibility.

That is reflected in my own full membership of his Judicial Executive Board, and the strong representation of tribunals on the reconstituted Judges' Council. That means that we are now fully involved in discussions about important issues affecting the judiciary, such as training, welfare and more mundane issues like pensions and pay.

Equally important, my excellent support team – led by Paul Stockton, Leueen Fox, and Anne Gaffney – will now be formally attached to the Lord Chief's office, although still responsible to me as Senior President. They are already playing an active part in the development of policies for the combined service, notably welfare arrangements for the judiciary, in respect of which the Lord Chief and I have parallel responsibilities. They are already showing how much tribunals have to offer to the rest of the system.

Less of a surprise to you, I imagine, was the recent announcement of proposal to work to a unified system of judicial training, in line with the recommendations of the group chaired by Lord Justice Sullivan. This provides an exciting opportunity to bring together the experience and resources of the Judicial Studies Board and the Tribunals Service, so we can build on the best, in a joint approach which delivers effective training, enables cross-fertilisation and represents good value for money. The project has the enthusiastic support of my colleague Lady Justice Hallett, the new chair of the JSB. We are both delighted that Mr Justice Garry Hickinbottom, who has very practical experience in both judicial worlds, has agreed to be chairman of the

project board. They are aiming to have in place a single budget and training administration by 1 April 2011.

The new organisation will sit within the Lord Chief Justice's Judicial Office, which provides support across the judiciary of England and Wales. It will deliver training for judges in courts and tribunals, non-legal members of tribunals, legal advisers and magistrates. It will also continue to work with tribunals outside the Tribunals Service and with others who carry out judicial functions, such as Coroners. The Project Board is aware of the need to take account of the current arrangements whereby cross border training is provided for some tribunals operating in Northern Ireland and Scotland and to ensure that the quality and extent of future training provided within such tribunals is not adversely affected by the new arrangements.

Lastly under this heading, a word about my own role. Some who saw the announcement in September of plans for a single leader of the judiciary assumed this meant the end of the Senior President. I was grateful for their messages of condolences. But I hope they will have been reassured by the announcement of my reappointment for another 4 years. That of course required the concurrence of the Lord Chancellor and of the three chief justices. I am very encouraged by their renewed support. I take that as a strong vote of confidence (not so much in me personally) but in what we have achieved together over the last three years. The Senior President will continue as a separate autonomous office, unless and until there is legislation to bring it more formally within the Lord Chief's responsibility under the Constitutional Reform Act. I would be surprised if that were to happen before 2012 at earliest. So we should have plenty of time to prepare.

Even in a reformed system, I regard it as important that the leader of the tribunal judiciary to retain an equivalent status and equal responsibilities to those of the Senior President, but as a Head of Division, equivalent to the President of the Family Division.

Scotland and Northern Ireland

They have colder climates and consequently much to teach us about keeping warm. I welcome the lively debate on the future of tribunals in Scotland, stimulated by the Scottish AJTC Committee, whose advice to the government I await with great interest. In the meantime I welcome the setting up of the Scottish Tribunals Service, and congratulate Norman Egan (another much respected colleague in the world of tribunal reform) on his appointment as first Chief Executive.

There are signs that beginnings of a similar debate in Northern Ireland. In a devolved justice system (as we now have in Scotland and Northern Ireland) it makes sense for all the judges and members based within that system, whether in courts or tribunals, to look to their chief justice for leadership and support. At the same time, we are all judges of the United Kingdom, in which we share the same legal values and many of the same laws, and have a common interest in our role within Europe.

That is particularly relevant to those tribunals which are overseeing the actions and decisions of the Westminster government across the whole UK (as in tax and immigration), but also in the many other tribunals which have developed as cross-border institutions and have benefited enormously from

the contributions of all their judges and members, whichever part of the UK they come from.

I am pleased that the benefits of cross-border working were recognised by Government in the September announcement.

I shall be looking for the support of the Lord Chancellor and the chief justices to ensure that, whatever direction devolution may take, those benefits are preserved and enhanced

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Legal aid

It is difficult to find much warmth in the Government's consultation paper on legal aid, published this week. The consultation paper covers many aspects of tribunal work and preserves legal aid for asylum and mental health case (where liberty and human rights are at stake). But for other tribunal areas it proposes an end to all legal aid, apparently relying on the user-friendliness of tribunals to fill the gap.

I am very concerned as to the consequences of turning off the majority of civil legal aid, including particularly legal help, without plans for development of in alternatives. For example, Citizens Advice Bureaux play an essential role in explaining welfare benefit decisions, helping appellants decide whether to appeal, and helping them to prepare. Without those actions the work of the tribunals may increase rather than decrease – both in terms of the numbers of cases and the length of hearings. It is too early to work out the full impact of

these proposals. But there is no doubt that they present a real challenge to us all.

Right first time

In that connection, and on a happier note, I am pleased to note that, in respect of social security, which is our largest jurisdiction and is rapidly expanding, there are signs of real progress towards the objective of getting decisions “right first time”.

It is timely to remind us and others of what the 2004 White Paper said:

‘We are all entitled to receive correct decisions on our personal circumstances; where a mistake occurs we are entitled to complain and to have the mistake put right with the minimum of difficulty; where there is uncertainty we are entitled to expect a quick resolution of the issue; and we are entitled to expect that where things have gone wrong the system will learn from the problem and will do better in the future.’

A joint task-force, set up with the support of Robert Martin and Kevin Sadler, is looking at ways of improving decision-making within DWP and so reducing appeals, and also tackling the backlog. At present DWP is running reconsideration pilots – re-examining cases which have been passed to the Tribunals Service for hearing and are awaiting their turn to be listed. Already a pilot running for Employment Support Allowance cases is achieving results, with a significant number of cases being overturned on review.

I was also pleased to learn of a DWP initiative to take a more proactive approach to customer information – to telephone claimants at key points in the decision making process, to talk through with them the decisions that they propose to make, and to check that they have all the information they need to make properly considered decisions.

Innovation

A good way of staying warm is to keep running. Part of my statutory responsibilities is about “innovation”. In this context I am very pleased to be sharing to today’s programme with Professor Dame Hazel Genn. As you know, she has been for many years at the forefront of the study and promotion of access to justice. We have already worked with her on a number of important research projects, including one currently underway in the Social Entitlement chamber - a “path-breaking” study of decision-making by tribunal panels funded by the Nuffield Foundation.

Last night some of us attended the launch of the new UCL Judicial Institute, which she will be leading with Professor Cheryl Thomas (Details on their website www.ucl.ac.uk/laws/judicial-institute) We had a stimulating preview (led by Richard Susskind) of how the delivery of justice may look in the future – 2020 or 2050. I am honoured that she has asked me to represent tribunals on her advisory board.

Her presence here today confirms that she shares my vision that tribunals should lead the way in developing new and better ways of delivering justice for users in a modern world.

Old and new faces

Finally, I must say a word about changes in the chambers leadership. In the next few months three First-tier Chamber Presidents will be standing-down: Stephen Oliver, Libby Arfon-Jones, and John Angel. I record my great appreciation and thanks for their enormous contributions to the work of the tribunals and particularly the reform programme. I wish them all well for the future. I welcome their successors: Colin Bishopp, Michael Clements, and Nick Warren – all very well known. I look forward to working with them and to the new ideas they will all bring.

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