

THE TRIBUNAL INTRODUCTION

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Of fundamental importance to tribunals is the need to conduct fair hearings under procedures which are informal by comparison with more traditional judicial proceedings. In many tribunals, there are few explicit rules of procedure. Instead the tribunal is responsible for regulating its own procedure in accordance with the requirements of natural justice or fairness so that the parties have a proper opportunity to present their cases.

In most traditional styles of court proceedings the parties are expected to have legally qualified representatives who are familiar with the procedure of the court and are able to present their clients' cases in accordance with the court's requirements and expectations. The clients themselves are generally told when to come in, where to sit and, most importantly, when to speak. By contrast, in tribunals the parties are frequently unrepresented, or represented by people who, however skilled, have not been educated in the niceties of court procedure and etiquette. For a person appearing before a tribunal, to the stress of the proceedings themselves is added the further anxiety of not knowing how the proceedings will be organised and what form they will take.

Tribunals must therefore be able to explain to parties appearing before them the nature and form of the proceedings in which they are participating. Such an explanation may be, and in my experience usually is, provided by the clerk or usher before the party enters the hearing room. There is nevertheless considerable value in the tribunal Chairman giving a further explanation after the party has entered the hearing room.

The value of explanation

There are a number of reasons why such an explanation is valuable, all of them associated with the concepts of fairness. It is crucial that a party who is unrepresented, or whose representative is inexperienced or not legally qualified,

should have a clear understanding of the procedure which the tribunal will follow. Only if a party has this awareness will he or she be able to make the best use of the opportunities for putting his or her evidence or argument across. While an explanation may have already been given by the clerk, given the likely nervousness of the party the information will need to be reinforced with an introduction from the tribunal. A person who is anxious about the outcome or preoccupied with the subject matter of the case is unlikely to retain much of what is said until he or she has had the chance to settle down and adjust to the surroundings.

The Chairman's introduction does not only impart information. A good introduction should help to put a person at ease. Even if the person is barely able to concentrate on the content of the introduction, he or she will be making an assessment of the members of the tribunal. This assessment will be based, of course, not only what is said but on visual impressions and non-verbal forms of communication. The more a person feels at ease, the more fully he or she is likely to be able to present the case. In turn, this helps the tribunal by providing it with more information on which to base a decision.

Of course, someone who is nervous and is shown into a room of powerful strangers will not be receptive to all the information the Chairman attempts to impart by way of an introduction. For example, the Chairman may say in the introduction how the tribunal's decision may be delivered. No one on the tribunal should be surprised if the party inquires later on: 'How will I get my decision?' Patience is an important quality for all tribunal members, albeit with an eye on completing the list! Of crucial significance is not only that information has been made available but that the tribunal has taken the trouble of recognising and addressing the party as an individual at the commencement of proceedings.

What makes a good introduction?

What, then, should a good introduction contain? The content will vary from one tribunal to another according to the type of tribunal and the degree of formality. In most relatively informal tribunals a good starting point is to introduce the members of the tribunal and other participants by name and explain briefly their function at the hearing.

Generally, the more informal a tribunal, the greater will be the need for a fuller introduction. If a party walks into a hearing room which is recognisable as a court because of its layout and furnishings, that will immediately invoke a set of expectations about the nature of the proceedings and the degree of formality (although some of these expectations may need to be dispelled). There will be a judge on the bench and, in more formal tribunals, the parties are more likely to be represented.

The procedure will then be summarised, drawing attention to the opportunities for putting forward the party's evidence or point of view. Some mention should be made of when and how questions will be asked of witnesses. It should be made clear how the decision will be delivered. A check should be made of whether all the documentary evidence is available.

If evidence is being given through an interpreter an explanation should be given of the procedure to be followed and an effort should be made to ensure that the interpreter and the witness are able to understand one another. Equally, if a person has a disability which restricts the ability to participate in proceedings – for example, someone whose sight or hearing is impaired – arrangements for facilitating participation through a reader or sign language interpreter will need to be confirmed. Particular care should, of course, be taken in making personal introductions to a blind person and explaining the layout of the room.

Anyone with experience of certain tribunals has heard the question: 'Well, if you're independent, why do you have to apply the government's rules?' It is difficult to respond to such a question by way of a detailed explanation of the nature of delegated legislation. It may be enough to say that the rules in question are part of the law of the land and to emphasise that the tribunal must apply the law.

One golden rule

This may all sound time consuming but it need not take more than a few minutes. In deciding what should be said, the golden rule is for the Chairman to consider what he or she would want to know if standing in the shoes of the appellant. An effort should be made to avoid too much reliance on a standard formula. An introduction may be modified according to the appellant's emotional state or receptiveness. The fundamental requirement is for personal introductions and explanations which attempt to put the party at ease while informing the party of the opportunities to be given for putting their case forward. The more fully a party is enabled to present his or her case the fairer the proceedings are likely to be and the more complete the decision.

About the author

Mungo Deans is Regional Adjudicator for the Immigration Appellate Authority in Glasgow. He is a solicitor, a part-time ITS chairman and a former academic at the Law Department: University of Dundee.