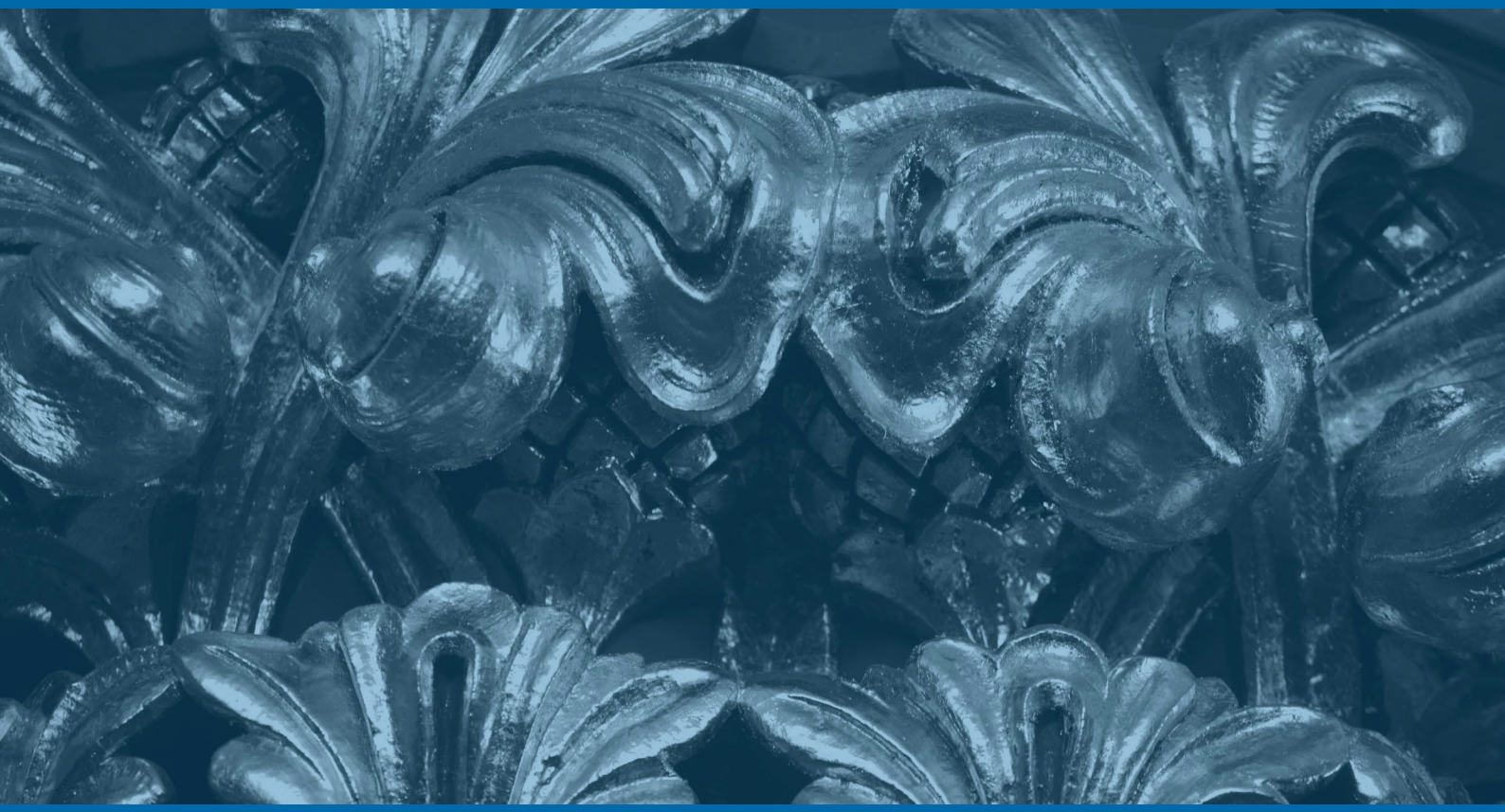
SENIOR PRESIDENT OF TRIBUNALS

Senior President of Tribunals' Annual Report



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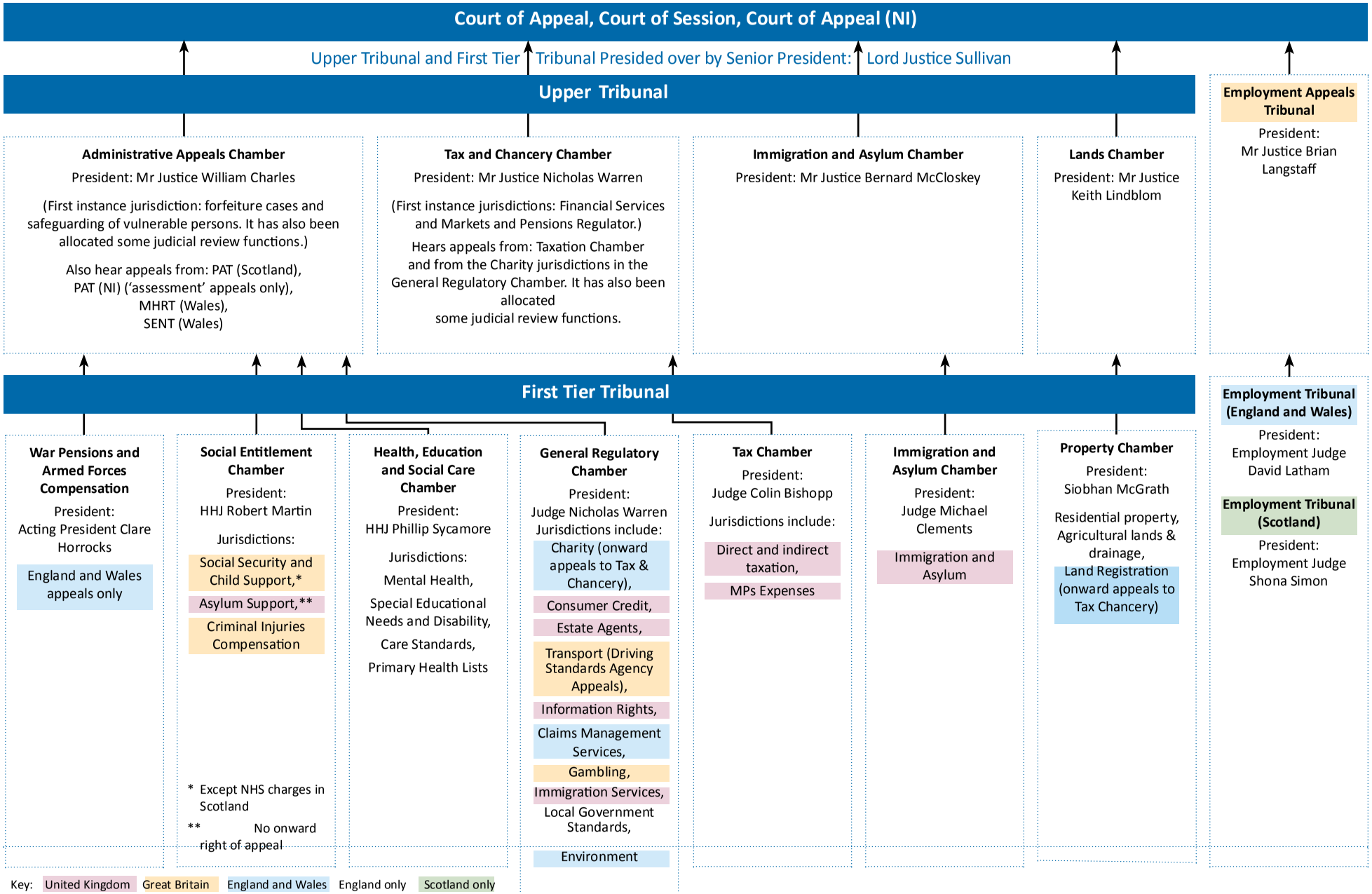

Senior President of Tribunals - Annual Report 2013

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Introduction

By the Senior President of Tribunals, Sir Jeremy Sullivan

In the Introduction to my first report last year, I referred to the need to find innovative and more effective ways of doing justice in a period of austerity. It looks as though the period of austerity is likely to continue for some time, so there continues to be a pressing need for innovation and increased efficiency on the part of the judiciary and administrators. In the contributions from the Chamber Presidents that make up this report you will be able to see how they are responding to this challenge whilst ensuring that we remain true to the Leggatt ideal that tribunals are there for the users, and not the other way around.

Judicial leadership is a particular strength of the tribunals system, but I have always been of the view that judging is a vital part of a judicial leadership role. An effective partnership with administrators is essential if we are to have time to judge. We should consider whether some judges in leadership positions have sufficient administrative support. Judges are an expensive resource, and it is vital that we make the best use of their judicial expertise. Are we making best use of administrators and legally qualified registrars to undertake those aspects of case management that do not require high level judicial expertise?

Getting that right balance may not be easy but a number of jurisdictions are tackling this issue. Last year I commented on the introduction of legally qualified Registrars in the Health, Education & Social Care Chamber. I am pleased to report that 75% of all case management decisions in the mental health jurisdiction of this Chamber are now being taken by its five Registrars, allowing more valuable judicial time to be spent in the hearing room. Undoubtedly, the use of Registrars can help to speed up case management and reduce the risk of ineffective hearings. I am greatly encouraged by the fact that other chambers are exploring the use, or increased use, of Registrars.

The benefits of videolink and the savings that can be made in terms of time and convenience have long been recognised. They are proving to be particularly valuable for users in the more remote parts of Scotland. For example, following a pilot scheme last year, videolink equipment is now used at the Aberdeen office shared by the Employment Tribunal and Social Entitlement Chamber.

You may have read in previous reports of hearings taking place in the evening particularly in the Employment Tribunal (Scotland) where they have been used for shorter and more

straightforward cases. This initiative is popular with users in ET, whilst the Social Security and Child Support jurisdiction now have weekend hearings. That initiative together with the recruitment of more judges and members and more flexible deployment of judiciary through assignment, has resulted in an increased capacity in Social Security sufficient to dispose of over 50,000 appeals a month – a record. It is particularly pleasing to see how this Chamber has risen to the challenge of significant increases in its workload in which the number of appeals received each year doubled in the five year period from 2008 to 2013.

During the period of this report, the Immigration & Asylum Chamber of the First-tier Tribunal undertook a fundamental review to examine all aspects of its operation. At the time the review began workloads were falling and that trend was expected to continue. Although the position on workloads has since changed, the original aims of the review - to maximise throughput of cases and efficiency, whilst maintaining a fair system - remain. I am grateful to all members of the review group, both judicial and administrative, for their diligence and hard work during the course of the review. I look forward to seeing various operational improvements tested out in a pilot planned for Spring 2014.

The Judicial College is now well established and you will read more detail of its achievements this year in training tribunals judiciary elsewhere in this report. The jurisdiction-specific training has always been a strength of the tribunals training programme. In recent years training in 'judgecraft' has developed with a focus on skills common to both courts and tribunals judiciary. The College is developing a programme of leadership and management training. Chamber Presidents as well as Regional Judges were involved in the development of this programme and I was pleased to attend a pilot of the course that the College expects to introduce in March.

Tribunals training has long had a focus on hearings with unrepresented parties. One of the distinctive differences between proceedings in the courts and tribunals is that a far greater number of users in tribunals are unrepresented. If tribunals are to be genuinely accessible hearings must generally be relatively informal with straightforward procedures enabling users to represent themselves. With changes to legal aid the number of unrepresented users, or 'Litigants in Person', in the courts is increasing and the Litigants in Person Working Group, led by Mr Justice Hickinbottom, was asked to report on this issue and to make recommendations on the ways that unrepresented litigants could be helped and have access to the information they need. I am grateful to Robert Martin, President of the Social Entitlement Chamber and to Employment Judge Carol Taylor for providing the tribunal judicial perspective to the working group.

Generally where litigants are not represented, the judge must necessarily assume a more inquisitorial or investigative role. This has long been the norm is many of our jurisdictions

where the majority of hearings take place without the appellants, and in many cases the respondent, being represented. As a result, there is much that the courts can learn from tribunals as the number of unrepresented parties increases.

The Crime and Courts Act 2013 came into force during the period of this report and with it the provisions which will allow tribunal judges to be deployed into the equivalent level of the courts system. Implementing these provisions fairly and with a firm focus on the business needs of courts and tribunals is no small task, but the provisions do offer considerable opportunities both for the flexible use of judicial resources and for the career development of judges. This work is now beginning within the Judicial Office. The provisions of the Act also make Upper Tribunal Judges eligible to sit as Deputies in the High Court in the same way as Circuit Judges and Recorders. This is a timely recognition of the importance and standing of the Upper Tribunal and its judges and the fact that the Upper Tribunal now has a very substantial judicial review jurisdiction.

It is now recognised that the tribunals system with its large number of fee-paid posts represents an opportunity to begin a judicial career whilst continuing in practice and balancing caring responsibilities. In addition the tribunals' structure allows new judges to begin their judicial career within the comfort zone of a specialist jurisdiction. Having honed their judgcraft skills they can then transfer them to other jurisdictions. These factors, in my view, have undoubtedly attracted a wide range of people to the tribunals and led to our diverse workforce.

The Property Chamber finally came into being on 1st July 2013 and brought together the various property and land jurisdictions into the First-tier Tribunal. After a period as Chamber President designate, Siobhan McGrath became the first Chamber President supported by Edward Cousins who continued to lead the land registration jurisdiction and Nigel Thomas in agricultural lands. Onward appeals from the Chamber to the Upper Tribunal will generally go to the Lands Chamber or, in land registration cases to the Tax and Chancery Chamber.

Mr Justice Nicholas Blake came to the end of his Presidency of the Upper Tribunal (Immigration & Asylum Chamber) at the end of September and returned to the High Court bench full time. Nicholas has been an outstanding first President of this Chamber. It would be hard to over-estimate his achievements during his term of office and he leaves behind a well run and efficient Chamber with well motivated and well trained judges ready to take on the additional challenge of a greatly expanded immigration judicial review jurisdiction. My sincere thanks go to Nicholas for the leadership he has shown to the Chamber. In October, demonstrating the UK wide jurisdiction of the Chamber, I

welcomed Mr Justice (Bernard) McCloskey from the High Court in Northern Ireland as his successor and look forward to working with him.

This past year has confirmed my initial view that the present tribunals structure is robust. The Chambers and the employment jurisdictions have adapted to changes in legislation, the introduction of fees regimes and new procedure rules, whilst all the time maintaining and often improving the service to their users against a background of changing demands and continuing financial constraints. Anyone reading the contents of this report could not fail to be impressed by the dedication and commitment shown by the judiciary and administrators throughout the tribunals system.

Finally, it is with the deepest sadness that I report the death after a short illness of Hugh Stubbs, the President of the War Pensions and Armed Forces Compensation Chamber. Hugh was highly respected, admired and liked by all the judiciary and staff and whilst he had been President only since July 2012, his service dates back much further than that to 2001 when he was first appointed to the Pensions Appeal Tribunal. He brought into his role as President enthusiasm and huge dedication. He has made his mark both personally and professionally within the chamber and through my own Executive Board. Hugh's quiet wisdom and good humour will be much missed.

Chapter 1
Upper Tribunal Chamber Reports

Administrative Appeals Chamber
President: Mr Justice (William) Charles

The jurisdictional landscape

The UT (AAC) has a UK-wide jurisdiction covering some 25 appellate and first instance jurisdictions. Its main work, in excess of 90% of its caseload, in terms of numbers of appeals (but not time) is deciding appeals on points of law from decisions of the First-tier Tribunal (SEC) relating to the Social Security and Child Support jurisdiction.

The Social Entitlement work with which the judges are concerned comprises some 20 non-means tested benefits and 6 means tested benefits. A significant slice of national expenditure is laid out on social security matters, which have a high political profile and often involve sensitive matters on which strongly held and contrasting opinions are expressed in the media and elsewhere.

The remainder of the work relates to appeals on points of law from decisions of the Health, Education and Social Care Chamber, the War Pensions and Armed Forces Compensation Chamber and the General Regulatory Chamber of the First-tier Tribunal and from decisions of the Pensions Appeal Tribunals for Scotland and (in relation only to assessment cases) Northern Ireland, the Mental Health Review Tribunal for Wales and the Special Educational Needs Tribunal for Wales. In addition the Chamber hears appeals from the Disclosure and Barring Service and from Traffic Commissioners. It also has a judicial review jurisdiction and determines references under section 4 of the Forfeiture Act 1982.

Approximately 20 new rights of appeal to the Chamber are projected for 2013/14. But they are not expected to give rise to a significant number of appeals.

Examples of cases heard in the Chamber during the year are set out in the table at the end of this section.

There are two salaried judges of the UT(AAC) who sit mainly in Scotland. They and the Edinburgh based Deputy Judges do not have jurisdiction over those areas covered by

the Health Education and Social Care Chamber (HESC) of the First-tier Tribunal as HESC deals exclusively with cases in England and Wales. The cases covered by that Chamber are devolved and appeals at present either go to the Sheriff Court or the Court of Session. The UT in Scotland does not have a Judicial Review jurisdiction. Cases go to the Court of Session. The devolved administration in Scotland has introduced a Bill to the Scottish Parliament for the reform of tribunal justice in Scotland. It will introduce an appeal on a point of law to an Upper Tribunal whose constitution will be ad hoc and consist principally of Court of Session Judges and Sheriffs. There is however a clause in the Bill which would enable Members of the Administrative Appeals Chamber to sit in the Upper Tribunal created by the Bill if invited to do so and on the agreement of the Senior President.

The salaried Upper Tribunal judges sitting in Scotland have presented written evidence to the Justice Committee of the Scottish Parliament and Judge Gamble, at their invitation, gave oral evidence to them on 10 September 2013. The evidence included support for the opportunity for members of the Chamber to sit in devolved cases covered by the Bill.

Negotiations have taken place between the devolved administration and the Ministry of Justice regarding the transfer of the remaining Scottish jurisdictions of the Transport Tribunal to the Upper Tribunal (AAC). This now only awaits a suitable opportunity for legislation.

The Senior President visited George House, Edinburgh in November 2013 and met a number of UT (AAC) judges. Pictured from the left: Deputy Tribunal Judge Ralph Smith QC, Upper Tribunal Judge Alan Gamble, Sir Jeremy Sullivan SPT, Deputy Tribunal Judge James Lunney and Deputy Tribunal Judge Andrew Bano

The UT (AAC) currently has jurisdiction in Northern Ireland to deal with appeals from the First-tier Tribunal in relation to information rights, certain environmental matters, certain transport matters, the regulation of estate agents, consumer credit providers and immigration service providers, and appeals in Vaccine Damage cases. It also hears appeals from the Pensions Appeal Tribunal for Northern Ireland in assessment cases. There is also a small but significant on-going caseload in freedom of information and data protection and war pension assessment cases.

Two salaried judges sit in Northern Ireland. They combine their UT (AAC) functions with their roles as Chief Commissioner and Commissioner respectively.

The Single Use Carrier Bags Act (Northern Ireland) 2011 received the Royal Assent on 4 May 2011. The Single Use Carrier Bags Charge Regulations (Northern Ireland) 2013 (S.R. 2013 No.4) create rights of appeal against certain decision of the Department of the Environment for Northern Ireland to the General Regulatory Chamber of the First-tier Tribunal. Onward appeals will lie to the UT(AAC). The Regulations – and hence the scheme overall – came into force on 8 April 2013. This is a discrete NI scheme although there is a separate but parallel scheme in Wales. The jurisdiction can involve appeals against decisions which impose significant civil sanctions against retail sellers for breach of the relevant Regulations. Early indications are that between 25-30 appeals to the First-tier Tribunal might be expected in the first year. The volume of onward appeals to the UT (AAC) is difficult to predict.

Judicial Training

The Chamber's judicial studies programme has included a range of events dealing with legal developments in the various jurisdictions described above, as well as putting the Chamber's appellate work into its wider social context. Seminars in the past year have included a workshop on applications for permission to appeal, examining both the problematic fact/law distinction and the criteria for giving permission to appeal. A conference of judges and specialist members working in the field of appeals against decisions by the Disclosure and Barring Service (formerly the Independent Safeguarding Authority) had the benefit of presentations from His Honour Judge Simon Oliver on the treatment of sex offenders in the criminal courts and from Judge Alison McKenna on strategies for dealing with vulnerable witnesses in tribunal hearings. A further one-day conference explored the scope of the new benefit personal independence payment (PIP), in readiness for the expected influx of these appeals. UT(AAC) judges also met with colleagues from UT(IAC) for an after-court seminar to explore different approaches to common procedural problems, focussing on two case-studies. Throughout the year UT

(AAC) Judges also attended a number of one-day and residential training conferences organised by different Chambers of the First-tier Tribunal.

People and places

I am pleased to have made visits to the UT offices in Edinburgh and Northern Ireland since I took up post. In Edinburgh I have combined visits with sitting on some 3 Judge panels. I visited Cardiff last year and met the Presidents of the Mental Health Review Tribunal for Wales and Special Educational Needs and Disability for Wales. I also met the Head of the Administrative Justice and Tribunals Unit of the Department of the Head of the Welsh Government Service. My most recent visit was to Bedford House in Belfast on 23 and 24 April 2013 following an earlier attempt which was cancelled due to one of the many blizzards we all experienced last winter. I had meetings with the Upper Tribunal judiciary, administrative support staff, the Chief Executive of the Northern Ireland Courts & Tribunals Service, the Lord Chief Justice of Northern Ireland and Lord Justice Coghlin. The 'For the Record' recording and playback facilities in the Upper Tribunal Hearing room were also demonstrated to me.

There have been several retirements from the Chamber's complement of London-based salaried judges this year. Judge Patrick Powell retired in March. Patrick became a full time Social Security Commissioner in 1996 and an Upper Tribunal Judge in 2008. Judge Stephen Pacey retired in July. Stephen became a full time Social Security and Child Support Commissioner in June 1996 and an Upper Tribunal Judge in 2008. Both will be greatly missed by their colleagues.

In April this year, Judge John Mesher retired from salaried office and most recently, Judge Andrew Bano retired from salaried office on 30 September. Both John and Andrew have been appointed as fee-paid Deputy Upper Tribunal Judges and will continue to sit in the Chamber. We are all very pleased to have retained their skills and knowledge for a bit longer.

The Chamber has a body of twenty-two fee-paid Deputy Judges who sit regularly, seventeen in England, four in Scotland and one who sits regularly in both countries. Deputy Judges deal mostly with appeals from the Social Entitlement Chamber and the War Pensions and Armed Forces Compensation Chamber.

The Chamber also has a number of fee-paid specialist Judges and Members who sit on appeals from Traffic Commissioners, Information Rights cases transferred on a discretionary basis from the F-tT to the UT and specialist members who sit on Disclosure and Barring

Service cases. We benefit from and are grateful for the specialist knowledge they bring to the Chamber and their contribution to its work.

The Chamber's judges' work has continued to be supported by a team of 9 specialist Registrars and 2 Legal Information Officers led by Jill Walker and Jennifer Fowler in London, Christopher Smith in Edinburgh and Niall McSperrin in Belfast. The London office were joined by a new Registrar in May this year, Viet Ly who was previously a Legal Adviser in Magistrates' Courts.

In November, after nearly 30 years working as a legal officer with the Commissioners (as was) and from 2008 as Senior Registrar in the UT(AAC), Jill Walker retired. Her contribution to the work of the Chamber is inestimable and she will be greatly missed.

Following a re-shuffle of London Tribunals Operational and Delivery Managers this summer, we were pleased to welcome Heather Woodfield and Paul Farren to those roles respectively in the London office. Both Heather and Paul have previous experience of the Chamber's core business and continue to carry on the good work of Clare Farren and Emma Ranaweera who moved to new positions. Mrs Terry Stewart and Gillian McClearn continue in their respective roles as operational managers in Edinburgh and Belfast.

The UT(AAC) does not have a fixed judicial complement but since 2007 there have been approximately sixteen full and part-time salaried judges in England and Scotland. However, as noted above, this has been a year of significant change to the core salaried judges based in London and our current complement stands at eleven judges, one of whom sits part time.

Fortunately my predecessor had submitted a bid for a Judicial Appointments Commission competition for both salaried and fee paid Judges to be run this year. The competition was launched on 19 September for 6 salaried Judges in London and 1 in Scotland and 4 Deputy Judges in London and 2 in Scotland. Appointments will hopefully be made in early 2014 and if all of the advertised posts are filled this will give us a small increase to what has been our judicial resource.

I have also made a bid for another competition next year.

The workload has been increasing. Also, it is recognised by the judges and the administration at the UT(AAC) that the changes in the benefits system, and in particular the introduction of Universal Credit and Personal Independence Payments will increase the work of the First-tier Tribunal (SEC) and, in turn, that of the UT(AAC). Understandably,

the increases in appeals forecast by the First-tier Tribunal (SEC) have fluctuated but the forecasts have been consistently high and there is a clear prospect that these changes in the law could have a significant impact on the workload of both Chambers. It is difficult to give accurate forecasts of the size and periods of the increases in that workload that these changes will cause and the recent introduction of a compulsory review before an appeal can be made and the closure of advice services add to the difficulties of forecasting. But, in my view the prospect that these changes in the law will result in significant further increases in the workload of the UT(AAC) is a very real one.

File no	Name	Description	Issue
CAF/842/2011 [2012] UKUT 479 (AAC)	JN v Secretary of State for Defence (AFCS)	Armed Forces Compensation Scheme	The issue raised was whether the claimant was entitled to benefit under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 (now article 9 in the 2011 Order) because of an injury made worse by service within the armed forces on or after 6 April 2005 and where he had been in service before 6 April 2005.
CH/224/225/ CH/464/2011 [2012] UKUT 489 (AAC)	Secretary of State for Work and Pensions and Warwick DC v OB and JS and JS (HB & CTB) [2012] UKUT 489 (AAC)	Housing Benefit	The case involved alleged discrimination. All three claimants suffered from serious mental illness and were no longer entitled to receive housing benefit having been hospital in-patients for over 52 weeks. Each appealed against that decision on the basis that their rights, under the European Convention on Human Rights, had been violated. The Upper Tribunal dismissed the appeal because, among other reasons, it held that the 52 weeks rule was an exception; that the State was entitled to introduce such a rule and that any discrimination was not "manifestly unreasonable". The Court of Appeal upheld the Upper Tribunal's decision.

GIA/25/2012 2013] UKUT 236 (AAC)	Browning v Information Commissioner and the Department for Business, Innovation and Skills (DBIS)	Freedom of Information	A three-judge panel of the Upper Tribunal considered Mr Browning's appeal against the First-tier Tribunal's (F-tT) decision. The F-tT considered "closed" material and part of the hearing was also "closed" (Mr Browning was denied access to the material and was not entitled to attend that part of the hearing). In its judgement the Upper Tribunal referred to the Practice Note "Closed Material in Information Rights Cases" (which appeared after the F-tT hearing). It considered that F-tTs should take the Practice Note into account and give appropriately detailed directions and reasons including a detailed explanation should it fail to apply the Practice Note.
GIA/2146/ 2010 [2013] UKUT 75 (AAC)	Evans v Information Commissioner (Correspondence with Prince Charles in 2004/5)	Freedom of Information	In last year's report reference was made to the panel of the Upper Tribunal which considered the appeals by a journalist, Mr Evans of The Guardian newspaper, against the Information Commissioner's decisions on correspondence between HRH Prince Charles and ministers. The Upper Tribunal upheld Mr Evans' appeal but the Attorney General vetoed that decision via an "executive override" certificate issued on 16 October 2012. The High Court dismissed the claim for judicial review on 9 July 2013: [2013] EWHC 1960 (Admin). Permission has been granted to challenge this in the Court of Appeal. The same Upper Tribunal panel considered and allowed Mr Evans' appeal about his requests for lists/schedules of those letters: Evans v Information Commissioner (Correspondence with Prince Charles in 2004/5) [2013] UKUT 75 (AAC). Permission has been granted by the Court of Appeal to the various respondent government departments to appeal that decision.

GIA/3037/2011 GIA/786/2012 [2012] UKUT 442 (AAC)	Information Commissioner v Devon CC and Dransfield [2012] UKUT 440 (AAC) and Craven v Information Commissioner and DECC	Freedom of Information	Requests for information under the Freedom of Information Act and the Environmental Information Regulations may be refused were they are either 'vexatious' or 'manifestly unreasonable'. Consideration was given to the proper approach to adopt when considering such cases in the Information Commissioner v Devon CC and Dransfield [2012] UKUT 440 (AAC) and Craven v Information Commissioner and DECC [2012] UKUT 442 (AAC).
JR/1510/2009 Supreme Court's decision reported as: [2013] AACR 25 (AAC)	Jones v First-tier Tribunal (F tT) & Criminal Injuries Compensation Authority (CIC)	Criminal Injuries Compensation	The case concerned a claim for criminal injuries compensation (CIC). Mr Jones sustained injuries in a road accident caused by someone else's suicide. His claim for CIC was rejected by the Authority as in its view it did not involve a crime of violence. Mr Jones' appeals were dismissed by the First-tier Tribunal (F-tT) and the Upper Tribunal but upheld by the Court of Appeal. The CICA's appeal to the Supreme Court against that decision was upheld and the judgement involved detailed consideration of the meaning of the phrase "crimes of violence", for the purposes of the CIC Scheme, and the function and relationship between tribunals and appellate courts.
JR/3126/2011 [2013] UKUT 294 (AAC)	R (LR) v FtT (HESC) and Hertfordshire CC (Costs)	Tribunal practice and procedure	A three-judge panel of the Upper Tribunal examined the correct approach to a claim for costs in certain judicial review cases heard by the Upper Tribunal. It decided that the general rule should be not to order such costs where the First-tier Tribunal, whose decision was being challenged, would not have had a power to do so.

V/1565/2011 [2012] UKUT 412 (AAC)	AP v Independent Safeguarding Authority (ISA)	Independent Safeguarding Authority	The case concerned an appeal against the ISA's decision not to remove the appellant's name from the Children's Barred List. Permission to appeal was granted in part because the ISA had failed to follow its own procedure and guidance. However, the Upper Tribunal found there was no basis for holding the ISA's decision to be disproportionate. It was fully entitled to give the weight that it did to each of the different factors; in particular, the seriousness of the offences of which the appellant was convicted and his refusal to acknowledge the full extent of his responsibility for them. The evidence before the ISA fully justified the barring decision and therefore no error of law or fact arose for that reason

Tax & Chancery Chamber
President: Mr Justice (Nicholas) Warren

Judiciary

During the course of the year, we have seen the retirement of one judge (Jill Gort) and one member (Peter Laing). They will both be much missed after long service in the tribunals both before and after the reforms of the Tribunals, Courts and Enforcement Act 2007.

During the course of 2012, a competition was held for the appointment of new members of the Chamber to sit in the exercise of our financial service jurisdiction. Six highly qualified individuals were selected. Between them, they have a huge range of expertise and experience. I am absolutely delighted that they accepted appointment and wish them well in their new positions.

Financial services cases

As in previous years, there has been a regular flow of references from the Financial Services Authority and now the Financial Conduct Authority. I have recently heard one high-profile reference from the FSA/FCA. A number of references from the Pensions Regulator have also passed through the Chamber; a significant jurisprudence is developing.

Charity cases

There has, disappointingly, been no new work in the Charity jurisdiction. It remains to be seen whether the impact of Lord Hodgson's review and his recommendations will have any impact on the level of work.

Tax Appeals

The bulk of our work continues to comprise tax appeals. There is no change to report from last year. As before, there is a steady flow of appeals and references passing through the system. Our workload in tax appeals is, again, very much as predicted.

Judicial review

A number of judicial review applications have now been heard, nearly all of which have been made in the context of closely related statutory tax appeals. These have all been heard by a panel including a Chancery Division judge as presiding judge

New jurisdictions

The jurisdiction of the former Adjudicator to the HM Land Registry has been transferred, with effect from 1 July 2013, to the Property Chamber of the First-tier Tribunal. Appeals from the exercise of that jurisdiction are heard in the Tax and Chancery Chamber. This appellate jurisdiction will, in practice for the time-being, be exercised by a number of specialist Chancery Circuit judges who have been assigned to the Chamber for the purpose. The more complex appeals may be allocated to a Chancery Division judge. The former Adjudicator, Edward Cousins, has been assigned as a judge of the Chamber too and will be bringing a particular expertise and experience to the Chamber.

Another jurisdiction is to be transferred to the Chamber. The regulation of consumer credit business is in the course of being transferred from the Office of Fair Trading to the FCA. The change in the regulatory structure involves consumer credit business being classified as "regulated activity" under the legislation regulating financial services. Accordingly, the architecture of that regulatory structure will be imposed on consumer credit business. The General Regulatory Chamber currently exercises jurisdiction in relation to consumer credit business. It is proposed that, under the new regulatory regime, references will be made, as with financial services matters, to the Tax and Chancery Chamber and that the GRC will cease to have involvement with this jurisdiction.

Our judiciary and members

Apart from the changes which I have mentioned already, there have been no other departures of either full-time or part-time judges or members this year. We expect to carry out a competition, in conjunction with the Tax Chamber, for a number of fee-paid judges in the next 12 months.

Administration

There have been a few further changes in the personnel in charge of the administration of the Chamber. Sharon Sober's assignment to the Tax Chamber has become permanent. Bhu Mistry has taken over from her as leader of the small team in the office. The team as always continues to provide an efficient service to the public and to the judiciary. They have taken on the new, and additional, work brought about by the transfer of new jurisdictions into the Chamber. I would once again like to express my gratitude to them.

Immigration & Asylum Chamber
President: Mr Justice (Nicholas) Blake

This has been a momentous year for the Upper Tribunal Immigration and Asylum Chamber in at least two respects. First, the process of backlog clearance has progressed as planned with the result that total appeals outstanding are 2,212 at the (end September 2013) the lowest number ever seen in the Chamber. We have now reached the minimum level of cases needed to sustain eight weeks' advance listing of appeals before the judges of the Chamber.

Second, the Crime and Courts Act 2013 has been passed by Parliament and the material parts affecting the Upper Tribunal come into force on 1 November 2013. These legislative changes mean that all immigration judicial reviews, as defined within the meaning of the Lord Chief Justice's Direction of 21 August 2013 and the amended Upper Tribunal Procedure Rules, can be issued in and will be automatically transferred to the Upper Tribunal for determination. Further, by s.21 of Schedule 14 to the Act, in force 1 October 2013, there is flexibility of judicial deployment between the courts and the Tribunal and members of the Upper Tribunal are eligible to be nominated as Deputy High Court Judges.

This report is the last to be written by myself as Chamber President as I stood down formally on 30 September 2013 and the Honourable Mr Justice Bernard McCloskey assumed the presidency on 1 October 2013. It offers the opportunity to look back at the events of the past year in terms of what the Chamber has achieved to date and the challenges it faces in the future.

Performance

The headline figure of the reduction in appeals outstanding has already been noted. Behind this figure are a set of other statistics showing that internal targets for the time taken to decide Upper Tribunal applications for permission to appeal, the hearing of appeals and the delivery of determinations relating to appeals have all substantially been met.

Upper Tribunal permission applications

The Chamber considers renewed applications for permission that have been refused by the First-tier Tribunal (FtT). In the year ending March 2013 the FtT determined 20,195 applications and the grant rate was 29%. In the half year to September 2013, it determined 10,546 and the grant rate was 26%. During the year ending March 2013, 9,485 of those refused permission in the FtT renewed to the Upper Tribunal and the grant rate on renewed applications was 14%. 5,092 renewals were received by the Upper Tribunal in the half year to September 2013 and grant rate remained at 14%.

In September 2013 the Chamber revised the 2011 Presidential Guidance on Permission to Appeal, to emphasise the points emerging in the case law and that merely typographical or technical errors in promulgation can be corrected under the slip rule and do not require the grant of permission to appeal. Permission should not normally be granted where the arguable error of law identified has no or minimal impact on the decision under appeal.

There has been a dramatic improvement in the time taken to determine applications for permission in both Asylum and Non Asylum (mainly immigration) cases. Throughout the half year from 1 April 2013 over 90% of such applications have been decided within the target times of 20 and 25 days for Asylum and Non Asylum respectively. In September this figure was 97% with an average clearance time of 14 days. This compares very well with the figures for the year ending March 2013, when only 17% of Asylum and 47% of Non-Asylum applications were decided within the target times.

A claimant may challenge the refusal of permission by seeking judicial review of the Chamber's decision on the grounds that the application met the second appeal criteria laid down in the decisions of the Supreme Court in *R (Cart) v Upper Tribunal* [2011] UKSC 28 (for England and Wales) and *R (Eba) v Lord Advocate* [2011] UKSC 29 (for Scotland).

In October 2012, CPR 54 was amended by the insertion of CPR 54 7A that limits the time for such applications to 16 days, requires the permission judge to be satisfied that there is

both an arguable case that has a reasonable prospect of success that the Chamber erred in law in refusing the application and that the claim raises an important point of principle or practice or that there is some other compelling reason to hear it. The Chamber must be served with the application at the Complaints Correspondence and Litigation Unit, 102 Petty France, London SW1H 9AJ and has the opportunity of lodging a response within 21 days. The Chamber will acknowledge receipt of such applications but will not normally make any response. If the judge grants permission an unopposed order will normally be made quashing the refusal and remitting the application for reconsideration.

Upper Tribunal Appeals

	Yr to end March 2012	Yr to end March 2013	½ yr to end Sept 2013
Disposed	9,073	9,560	4,746
Allowed	43%	33%	31%
Dismissed	50%	52%	53%
Remitted	1%	10%	12%
Withdrawn	7%	5%	4%
Caseload outstanding	5,594	3,321	2,212

The Chamber has succeeded in reducing the live caseload of appeals to the minimum necessary by the end of September 2013. The number of cases remitted to the FtT has increased since September 2012 when the Senior President's Practice Statements were amended to reflect the possibility of remitting appeals where the factual findings of the FtT in asylum appeals are fundamentally flawed and a new hearing is necessary. The Chamber currently expects the remittal figure to settle at around 10% of substantive appeals.

Internal Target 75% of appeals to be determined within	YTE March 2012	YTE March 2013	Half year to September 2013
Asylum 14 weeks	10%	17%	37%
Non Asylum 18 weeks	43%	47%	75%

Not only has the caseload been reduced to the minimum but for the first time in the Chamber's history we have met the internal target for determining at least 75% of Non

Asylum cases within 18 weeks. The figure for Asylum cases has significantly improved in the past six months compared with the figures to the end of March 2013. In fact asylum claims are usually more complex than most Non Asylum claims, and listing major claims for Country Guidance necessarily takes such cases outside the target date.

The Chamber inherited a number of very old cases on inception, a few of which serve to distort performance figures for throughput times. Equally, complex cases that proceed to the Court of Appeal or the Supreme Court and are then remitted to the Upper Tribunal will have a disproportionate effect on the figures. The Tribunal has made significant progress in listing these old cases for final determination and this will continue to be a priority for the future.

The performance of the Chamber in delivering justice within exacting time frames is a great tribute to the industry and enthusiasm of all the judges of the Chamber and in particular to the work of the Principal Resident Judge Paul Southern and the successive Centre Managers, Heather Nelmes and Clare Farren, who have led the innovations in listing that have enabled these figures to be achieved, but there is still room for further improvement.

Performance Committee

Conscious of the enormous burden that falls on the shoulders of the Principal Resident Judge, in January 2013, the Chamber created a Performance Committee chaired by Judge Southern but comprising Judge Latter (Deputy PRJ), and Judges Peter and Clive Lane, Gill, Taylor, Coker, O'Connor, Kopieczek, Hanson, Martin and Pitt who have taken responsibility for different aspects of the work of disseminating good practice and ensuring that work is achieved on time: different members of the Committee take the lead on such issues as listing, case management, emerging legal issues, judicial review applications, appraisals, welfare, permission applications, deputy judges and duty judges. I am immensely grateful to all members of this Committee for the productive work delivered that includes work on the Presidential Guidance Notes on Permission to Appeal, Anonymisation of parties, Reporting Determinations and policy on Video Link Applications

I am pleased to say that during the past twelve months, there has been an excellent response to inquiries made by my office about determinations that appear to be overdue, with the result that, at the time of writing this report, there are no unaccounted for delays.

Judicial Review Applications in the Upper Tribunal

In addition to deciding permission to appeal applications and substantive appeals, the Chamber has had a steady flow of Fresh Claim Judicial Reviews and Age Assessment Judicial Reviews to process. Performance here has depended to some extent on the workload of the Administrative Court Office in transferring both classes of case to us, the ability of the parties to comply with directions and in the more complex age assessment cases, the productive use of adjournments to ensure that full disclosure and opportunity to agreed outcomes to be explored. The Chamber has managed and decided a regular number of age assessment judicial reviews albeit not in great numbers and many of which are settled after case management.

In July 2013, following consultations with Stakeholders, a Chamber Guidance Note was issued explaining the procedures and provision for urgent applications in FCJR applications. The Chamber mirrors the practices of the Administrative Court in respect to urgent applications lodged before 4.30. A duty judge is available to decide them. However, applications lodged after 4.30 and needing a decision before 10.30am the following day will have to be decided by the Out of Hours Judge of the Queen's Bench Division such judges act as Upper Tribunal judges when deciding applications.

The Chamber Guidance Note also indicated that the law enables an oral renewal of an urgent application refused on the papers, even though an application is made late the oral renewal may have to be heard without notice by the Out of Hours Judge.

These arrangements will continue to apply when the Upper Tribunal acquires its uniform Immigration Judicial Review jurisdiction. The numbers of Upper Tribunal judges and their terms of service do not permit it to mirror the Out of Hours service performed by the Queens Bench Division.

It is to be hoped that with sufficient notice of removal being given, applications for urgent relief can be lodged in the UT in sufficient time for an oral application for relief to be heard by the Upper Tribunal judge on duty in normal business hours.

Appeals to the Court of Appeal

Applications to the Upper Tribunal to appeal to the Court of Appeal have averaged 226 per month in the half year to September 2013. That represents approximately one third of the number of Upper Tribunal determinations made in a month. The vast majority of these are refused by the Tribunal applying the second appeal criteria.

Where a point of general importance and principle affecting many hundreds of cases

arises, the Upper Tribal has granted permission with the request that the parties seek expedition from the Court of Appeal. In *Khatel (s.85a-effect of continuing application)* [2013] UKUT 44 the UT granted permission and stayed applications for permission to appeal in cases where the Secretary of State disputed the UT's interpretation of the rules. The Secretary of State's appeal was successful in the Court of Appeal in the case of *Raju and others* [2013] EWCA Civ 754 and a considerable number of decisions had to be re-made, but the UT has been able to do this using its review powers under rule 45 of the Tribunal Procedure Rules, and subject to further directions in appeals where issues remain unresolved, it is anticipated that the appeals will speedily be resolved. We appreciate the great demands on Court of Appeal time, but are most grateful that lead cases affecting a significant number of appeals have been afforded expedition. This is particularly important in the field of Country Guidance.

Developments in case work relating to children

The impact of immigration related decision making on the best interest and welfare of the child has been a prominent theme of jurisprudence in the Chamber and the Court of Appeal. Four classes of case have emerged: the resolution of age-assessment disputes where the Home Office have referred an age disputed child claimant to social services; the treatment of children as asylum seekers in their own right and the consequences of any failure to trace an unaccompanied child's relatives on future decision making in respect of the child or former child; the justification for deportation of a foreign criminal who is a young offender and either committed the index offence as a child or has been brought up for most of their life in the United Kingdom; and the impact on the welfare and future residence rights of the child on the removal of a parent.

As to age assessment disputes, in addition to the emerging pattern of decisions applying the principles of the established case law, the Upper Tribunal has been a participant in a multi-disciplinary panel of experts from the European Asylum Support Office, UKBA, social services, the medical professions, scholars, and practitioners. A seminar was held at Field House in January 2013, that was considered a helpful exchange of perspectives and best practice, and some consensus that the most satisfactory resolution of disputes would be by informal resolution between interested parties applying guiding principles to the available data, but that in the event that resolution was not possible the court would apply an open approach to the question, exploring the reliability of all the relevant data, and not prioritising either the expertise of social workers or medical professionals or the unsupported claims of the child claimant where the narrative of claims had been inconsistent and lacking in credibility. Judge Jane Coker takes the lead on these issues for the Chamber and in addition to participating in the seminar has attended international

conferences setting out the approach of the UTIAC as it develops with some 2 years experience of decision making on the question.

Numerous decisions of the Upper Tribunal have been made in connection with deportation of the child/former child and the parent, and the Tribunal's approach to the challenges of interpreting and applying the decision of the CJEU in *Ruiz Zambrano*, and s.55 of the Borders Citizenship Act 2009 have been largely endorsed by the Court of Appeal in decisions *DH (Jamaica)* [2012] EWCA Civ and *CW (Jamaica)* [2013] EWCA Civ 915, where appeals from the Upper Tribunals conjoined decision in *Sanade and others* [2012] UKUT 48 were dismissed. It is hoped that the decision in *Azimi-Moayed* [2013] UKUT 197 will discourage claimants seeking leave to appeal solely on the basis that detailed consideration has not been given to the interests of the child in a simple case of short residence where the entire family are leaving together.

Recent contributions to the debate about the consequences of a failure to trace relatives include the decision in *EU (Afghanistan)* [2013] EWCA Civ 32. *ST (Child Asylum seekers) Sri Lanka* [2013] UKUT 292; SL (Tracing obligation/Trafficking) [2013] UKUT 312. A further important decision on child trafficking is *EK Article 4 Anti Trafficking Convention* [2013] UKUT 313.

Another important development relating to children in the Chamber has been the conclusion of a joint Protocol between the Senior President of Tribunals and the President of the Family Division in July 2013 on information sharing between the two jurisdictions to be found at:

http://www.judiciary.gov.uk/publications-and-reports/practice-directions/tribunals/tribunals-pd.htm?WBCMODE=PresentationUn

The need for such jurisprudence was highlighted in the case of *RS (Immigration family liaison)* [2013] UKUT 82. The earlier ruling in this appeal to the effect that where there are family proceedings the outcome of which might well be material in pending immigration appeals, the judge should await the outcome of the Family decision before determining the immigration appeal was approved by the CA.

Judge Coker assisted by Judges Christine Martin and Clive Lane have made extensive contributions to the development of this Protocol, that it is hoped will be a practical means of ensuring speedy exchange of relevant data between judges in both jurisdictions. I am very grateful to them for their work.

Finally, the Anonymity Guidelines issued by the Chamber President in September 2013 reflecting existing practice in the Upper Tribunal and the case law, have clarified when and how a child's interests require his or her name and personal details to be suppressed in a determination. I am grateful to Judge Pitt for the important work on this document that also deals with the need to anonymise witnesses and parties in asylum appeals.

Access to the case law

August 2013 witnessed a major breakthrough in the Upper Tribunal's relations with users, when a new determinations database was launched permitting for the first time a search facility on unreported decisions of the Upper Tribunal. Such a development does not alter the Senior President's Practice Direction that only reported decisions of the UT may be cited without the need to obtain permission, but it does mean that decisions that have not been considered to meet the criteria for reporting will be available to the general public henceforth and advocates will be able to search for decisions that they may then wish to ask the Tribunal for permission to cite for either some proposition of law not contained in a reported decision or suggesting serious reasons why a proposition in a reported decision may need revisiting.

The availability of all Upper Tribunal decision making on a publicly accessible data base, sharpens the need for Upper Tribunal Judges to be alert to the need to ensure that decisions where an anonymity order has been granted do not reveal that which is intended to remain anonymous as there will be no or insufficient control of the information once released into the public domain. It was for this reason that only unreported cases dating from 1 June 2013 have been made searchable on the data base, after which measures were implemented to remind judges of the criteria for anonymising decisions and for some checks to be made before a case is loaded onto the database that an anonymity order or an intended anonymity order is respected.

A revised Chamber Guidance Note on reporting decisions has been issued in September 2013. Now that all unreported decisions are available in the database, and with the anticipated huge increase in judicial review applications, it is likely that, in the longer term, not all substantive determinations of judicial review applications will continue to be designated as reported cases. Judge Peter Lane has continued to chair the Reporting Committee and I am grateful to him for his work. In the year to the end of March 2013 there were 78 decisions reported and 53 in the half year to September 2013.

Judge Gleeson has continued to chair the Research and Information Committee whose functions including disseminating of the LRU Update on case law developments. She also

serves on the Judicial Technology Committee and the steering group of the Franco British Irish Colloque of Judges. By all these means she continues to serve the Chamber very well.

Rebeccah Sheen directs the LRU that provides administrative support for our Reporting Committee, produces the Updates, prepares cases for inclusion in the Immigration Appeal reports, and disseminates information about the status of country guidance cases and references relating to immigration and asylum pending before the CJEU. I am very grateful to her and her team for the excellent quality of their work that helps keep judges up-to-date with the case law.

Innovations in appeal decision-making

One of the ways in which the throughput of determinations can be increased is for judges to give ex tempore judgments in cases. Since the summer of 2012, Field House has been equipped with Digital Audio Recording equipment. This has the consequence that a judge is able to give an oral determination at the end of the hearing, call for the transcript that is typed up internally and issue a written determination, having corrected typographical and other minor errors from the transcript. Recording of hearings has other advantages: it enables an oral record of the hearing to be obtained by a judge instantly and it enables a written record of relevant parts of the hearing to be transcribed if necessary. It reduces the need for an UT judge to keep a verbatim record of evidence adduced at a hearing.

The technology has until now been sparingly used in the preparation of determinations, but all UT judges are now being encouraged to make greater use of this facility in appropriate cases where the issues can be properly prepared in advance. The technology will be an essential asset to the timely rendering of decisions in judicial review renewed permission cases.

The strong preference as to mode of hearing in the UT is for the parties and their advocates to be heard live and in person. Where appellants and their representatives live beyond reasonable travelling distance of London, the first question is whether an appeal can be conveniently listed at a regional hearing centre. Where this is not reasonably practical the Chamber will give consideration to hearing cases via video link. In September 2013 a Chamber Guidance Note on Video link applications was issued. The Guidance emphasises the need for early applications when other possibilities are not practical.

Notable decisions

EU Law:

The Chamber continues to develop and apply its understanding of EU law in the immigration context. It has benefited from numerous exchanges and training events in Strasbourg and Luxembourg where the President and other UT judges have been able to meet Judges of the Court of Justice to discuss developing problems and issues.

Aside from the *Ruiz Zambrano* issue mentioned above, the question of whether the continuity of residence for the purpose of the Citizen's Directive is broken by periods of detention has been referred to the Court of Justice in the twin references. In *Onuekwere sentence of imprisonment* [2012] UKUT *269* now Case C 378/12. It remains to be seen whether the approach of the Upper Tribunal in *Jarusevicius* [2012] UKUT 120 approved by the Court of Appeal in *FV (Italy)* [2012] EWCA Civ 1199 will prove to be durable.

In the context of the deportation of EEA nationals who have committed serious offences, the Tribunal has twice had to consider the rehabilitation principle identified by the Court of Appeal in the case of *Essa v Upper Tribunal* [2012] EWCA Civ 1718 in the decisions in *Essa (EEA rehabilitation)* [2013] UKUT 316 and *Vasconcelos* [2013] UKUT 316.

Other notable decisions on EU law decided during the last twelve months are: *Sabani (EEA work seekers* [2012] UKUT 315; *Zubair (self employed persons)* [2013] UKUT 196; *Seye (Chen children employment)* [2012] UKUT 178; *Ahmed (Amos- Zambrano)* [2013]UKUT 89; *Bee (derived permanent rights of residence)* [2013] UKUT 83.

The decision in Sabani was enhanced by having Judge Ward of the UT AAC sitting as a member to address common issues between the two chambers as to when a work seeker is lawfully resident. This reflects inter-Chamber co-operation on issues of mutual concern.

Article 8:

In July 2012 new Immigration Rules were adopted by the Home Office seeking to set out the circumstances when it was considered that Article 8 of the ECHR required leave to remain to be granted. In a number of subsequent appeals, the Chamber has had to consider the applications of these rules in cases where it is considered that there is a strong Article 8 claim where a favourable outcome might well have resulted applying the principles of the earlier case law of the Court of Appeal and the higher courts.

In *MF (Article 8) new rules* [2012] UKUT 393 a two stage test was identified. Such an approach was followed and applied in *Izuazu (Article 8- new rules)* [2013] UKUT 45 and *Ogundimu (Article 8 new rules)* [2013] UKUT 60. The Secretary of State appealed the decision in *MF* and the judgment of the Court of Appeal is awaited at the time this report is

written.

Health based claims have usually been determined applying the high threshold required in Article 3 cases as stated by the Upper Tribunal in the cases of *GS and EO Article 3 health cases* [2012] UKUT 397 where the Upper Tribunal concluded that any modification of the present high threshold was for the Supreme Court or Strasbourg to make. The possibility that the application of Article 8 might yield a different outcome was considered in that case, and further reflection has been given in the context of removal of people who have been permitted to have organ transplants in the case of *Okonkwo* (legacy/Hakemi; health claim) [2013] UKUT 401.

Country Guidance Cases:

The Chamber has continued to develop and enhance its system of Country Guidance in asylum cases where many appeals are likely to be affected by the outcome. The system has been under scrutiny for some years. In November 2012 the President and Judges Storey and Peter Lane attended a seminar in Strasbourg organised with the European Court of Human Rights and the European Chapter of the IARLJ in which judges from the Court of Justice also participated. The papers at this seminar including the President's paper on the merits and challenges of a country guidance system have been published in the *International Journal of Refugee Law* (2013) Vol 25. The paper was intended to address the suggestion that a Country Guidance system is too rigid and imposes a factual precedent where conditions may be changing. The fact that this is not the case can be exemplified by decisions such as *DSG (Afghan Sikhs: departure from CG)* [2013] UKUT 148 where it was clear that earlier assessments were not accurate. Such a state of affairs is a good reason to depart from a previous Country Guidance decision.

More problematic is the shadow thrown by previous guidance where circumstances are fast moving and past assessments may no longer be accurate. Cases assessing the state of affairs in Somalia are one such class. The unhappy recent history of Zimbabwe is another example. There is also a need for cases to be promulgated as soon as practicable after the date of hearing to enable them to make an effective contribution. The system is designed to be a resource efficient means of obtaining expert assistance on the facts in the country of origin without the risk of duplication of appeals or expertise. The Chamber's reporting criteria are flexible enough for cases based on factual assessments only to be reported where the conclusions are of general interest to a large number of appeals. These cases might be called Country Information cases without resulting in the status than designation as Country Guidance has done.

In the meantime important country guidance decisions promulgated during the year include: *GJ (post-civil war: returnees) Sri Lanka CG* [2013] UKUT 319, assessing the risks to Tamil asylum seekers; *MN (Ahmadis - country conditions - risk) Pakistan CG* [2012] UKUT 389; *EH (blood feuds) Albania CG* [2012] UKUT 348 and *T (Political opponents) Burma CG* [2013] UKUT 281.

The challenges represented by Country Guidance cases are demonstrated in the determinations of *CM (EM country guidance; disclosure) Zimbabwe CG* [2013] UKUT 59 and *HM and others (Article 15(c)) Iraq* [2012] UKUT 409. Both were re-making of earlier decisions of the Chamber that had been set aside on procedural grounds, with the unhappy result that assessments of country conditions no longer considered to be relevant had been restored. Both cases proceeded to the Court of Appeal a second time, but with expedited hearing dates. Judgments are awaited in both cases, but the appeal in *CM (Zimbabwe)* was dismissed at the end of July.

International work

Judges of the Chamber have continued to engage with colleagues in other jurisdictions for the exchange of information and best practice in addressing issues of common concern whether the application of the Refugee Convention or European Law. Judge Storey serves on the Council of the International Association of Refugee Law Judges with whom the Chamber continues to have a close association and is a prominent member of the European Chapter of the Association. Judge Dawson serves on the training Advisory Committee of the European Asylum Support Organisation and both he and Judge Coker rotate membership of the International Committee of the Judicial College.

Training

Judge David Allen took over as lead training judge for the Chamber from Judge Andrew Grubb in December 2012. Judge Allen also sits on the Tribunals Committee of the Judicial College. I am very grateful to both judges for the high quality of their work. In Judge Grubb's case this has been delivered over many years in the AIT and the UTIAC.

Training in the past 12 months has focused on the pending arrival of judicial review work in the Chamber. In March 2013 the theme of the annual conference for all UT Judges was public law challenges in the Upper Tribunal where participants had the benefit of stimulating presentations by leading public law silks Michael Fordham QC and Elizabeth Laing QC. There were further papers on child related issues for the Chamber and we were pleased that the Senior President of Tribunals was able to address us on the art of

judgment writing. In September 2013 there was extensive training on the legislations directing transfer of judicial reviews from 1 November 2013.

A joint training session on common issues of EU law was held with the judges of the AAC in June.

Upper Tribunal Judges also participate in joint training events held with the First-tier Tribunal under the strategic direction of the Joint Training Committee chaired by Mark Ockelton, Vice President.

In addition to formal training provided under the auspices of the Judicial College, there are other occasions when judges can enhance their skills. These include discussions every Monday lunch time and a day each year marked as a President's Day for consideration of current issues of practice.

Furthermore, judges are encouraged to participate for a number of days each year in the training events organised by the European Court of Justice, the IARLJ, EASO and others, and a number of judges have participated in such events during the past year.

Personnel

During the year, four long serving salaried judges of the Chamber and the AIT have retired. Judges Spencer, Jarvis and Mather retired in the autumn of 2013 and Judge Waumsley retired in the summer of 2012 I am very grateful to all for their excellent service over the years and wish them well in their retirement.

There have been no new additions to the Chamber in the year under review.

Our Centre Manager, Heather Nelmes, moved on in June 2013 and we welcomed Clare Farren in her place and Surrinder Singh joined the Management team as Delivery Manager with responsibility for transferring the new JR work

George Damalas who was one of the co-managers of the Legal Research Unit left for his native Australia in December 2012 and we have been fortunate that Claire Thomas, Laura Curry and Sarah Linsay have joined the unit to assist the extensive work it undertakes.

The Chamber has decided to develop its own model for appraisal of judges and Judge Deborah Taylor has lead in the development and application of this model. All Deputy

Judges of the Chamber have now been appraised and appraisals will now continue, so as to include all judges. Appraisals help inform where further training and support may be helpful and where improvements in procedure and practice can come about. Deputy Judges are appraised every two years and salaried judges will be appraised every five years unless notice of retirement has been given.

The Judicial Welfare and Support Committee is a Joint Committee of the FtT and the UT, chaired by Libby Arfon-Jones, Vice President. In the past the Committee has arranged for judges to attend a stress management course, future course are the responsibility of the Judicial College. Judicial health has been promoted by including UTIAC judges in the flu jab programme developed for the RCJ. Salaried judges have also been reminded of other health care assistance available to them.

From September 2013 Deborah Taylor will succeed Libby as Chair. I am very grateful to both of them for their work.

Conclusion

My time as Chamber President has been immensely satisfying. I have been extremely well served by both my judges and the administration who have supported this work. Together we have produced efficient systems for the just disposal of cases, while increasing the judicial skills and experience of all judges of the Chamber. It is fitting that I am able to hand over a Chamber of well informed and well motivated judges to Bernard McCloskey for the Chamber to proceed to the next stage of its journey, as it takes on the immense challenge of deciding immigration judicial review applications (rather than merely those involving 'fresh claims'). I have every confidence the Chamber will rise to this challenge with its customary efficiency and expertise and it has been a real pleasure to me to see how much has been achieved and the high standing of the jurisprudence both within the United Kingdom and beyond it.

Lands Chamber
President: Mr Justice (Keith) Lindblom

Although 2013 has seen the first appointment of a High Court Judge as President of the Lands Chamber, no review of the last 12 months could begin without acknowledging the unparalleled contribution made to the Tribunal by my predecessor, George Bartlett QC. As President, first of the Lands Tribunal from 1988 and then of the Lands Chamber of the Upper Tribunal until his retirement at the end of last year, George provided an example of leadership and a quality of decision-making across the whole range of the Tribunal's varied

jurisdictions which those who follow him can only aspire to match. His contribution to the strength and status of the Lands Chamber has been immense. Indeed, I expect it will prove to be unique. George was President, first of the Lands Tribunal and then of the Lands Chamber of the Upper Tribunal, for no less than 14 years. He managed the metamorphosis of the Lands Tribunal into the Lands Chamber with great skill and sensitivity. As President he put the stamp of his wisdom and great learning firmly and lastingly on the law of compulsory purchase, and on each of the many other jurisdictions that fell within his remit.

This year has also been marked by the retirement of the Tribunal's senior surveyor Member, Norman Rose FRICS. His 14 years of service to our users have done much to enhance the reputation of the Tribunal for sound and consistent decisions in its core valuation jurisdictions. An early decision of his, Matthews v The Environment Agency, contributed significantly to improving access to justice for private individuals of limited means, by recognising the reasonable fees of a surveyor for providing advice as a legitimate head of compensation in valuation disputes with public bodies. His patience, courtesy, wisdom and experience would be greatly missed, were it not for the fact that he has agreed to continue sitting in the Tribunal on an occasional basis into his retirement.

Mention should also be made of the arrival of two new full-time members of the Tribunal, its first Deputy President, Martin Rodger QC, and its new surveyor Member, Peter McCrea FRICS. Both bring considerable experience of property dispute resolution to their new roles.

The Lands Chamber is a small tribunal of only four full time members and a President whose availability it must share with the High Court. Our modest size is a strength, promoting a collegiate culture and so contributing to consistency and quality of decision-making, but the Tribunal could not function without the willing assistance of a small team of serving and retired circuit judges who hear many of our cases (HHJ David Mole, HHJ Nicholas Huskinson, HHJ Karen Walden-Smith, HHJ Alice Robinson and HHJ Nigel Gerald). This year we have expanded our pool of specialist visiting judges by enlisting the President of the newly formed First-tier Tribunal (Property Chamber), Siobhan McGrath, and her Principal Judge for Land Registration, Edward Cousins, to sit on selected appeals. With the incorporation of additional tribunals into the first-tier from which appeals to this Tribunal are drawn, our case load is likely to increase, particularly in cases which raise issues of law; it is only by drawing on the expertise of visiting judges that the Tribunal can hope to deliver its specialist service within acceptable time-scales.

The advent of the Property Chamber of the First-tier Tribunal on 1 July 2013 has given rise to a number of significant jurisdictional developments. For the first time the Tribunal

is the destination for appeals concerning rent determination under the Rent Act 1977 and the Housing Act 1988, and those under the Agricultural Holdings Act 1986 and the Land Drainage Act 1991, all formerly having gone to the High Court as statutory appeals. Appeals under the Mobile Homes Act 1983 have also started to arrive, following the transfer of the originating jurisdiction from the county court to the tribunal system. These additions to our remit are likely to produce a modest but regular flow of appeals, which has already begun. The President of the First-tier Tribunal (Property Chamber), in consultation with me, has also begun to exercise her new power to transfer complex cases or those involving important points of principle to the Tribunal for hearing; the first such case has recently been heard and determined.

One common characteristic of many of these new appeals, and others which we already receive in significant numbers in the residential property field, is the modest resources of one or more of the parties. The very recent changes in our own costs regime are likely to come under consideration this year, including a new power to make protective costs orders in cases where there is a significant disparity in resources between parties. This power may also become significant in compensation cases which share these features.

The work of the Tribunal in the field of compulsory purchase compensation is in spate. The Olympic legacy of London 2012 and the route taken by Crossrail through the city's retail and business heartlands appear likely to continue to provide examples of high value, multi-party compensation claims for several more years. With the property press now starting to report the service of blight notices by home owners on the protected corridor for HS2, and the future of London's airports unresolved, we await political decisions on these major infrastructure projects with considerable interest.

2013 will be the last full year of the Tribunal's residence at Bedford Square, which we shall vacate during 2014 to move to the Royal Courts of Justice. Since its formation as the Lands Tribunal in 1948, the Tribunal has been accommodated at 6 different locations and has moved 3 times in the last 12 years. Our impending move to a permanent home at the heart of the judicial estate not only offers the welcome prospect of stability, but also recognises the Tribunal's role under the Tribunals, Courts and Enforcement Act 2007 as a tribunal of equivalent status to the High Court.

Chapter 2
First-tier Tribunal Chamber

Social Entitlement Chamber
President: His Honour Judge Robert Martin

The Social Entitlement Chamber comprises 3 jurisdictions, namely Asylum Support ('AST'), Criminal Injuries Compensation ('CIC') and Social Security and Child Support ('SSCS'). The Principal Judge of AST is Sehba Storey. The Principal Judge of CIC is Tony Summers. SSCS is managed by a Board of 7 Regional Tribunal Judges chaired by the Chamber President. The jurisdiction of AST is UK-wide. The other two are GB-wide.

The Jurisdictional Landscape

In SSCS the most significant feature has continued to be the rise in workload, as shown by the following table.

SSCS Appeals Intake and Clearances

	Intake	Clearances
2008-09	242,826	245,479
2009-10	339,213	279,264
2010-11	418,476	380,220
2011-12	370,797	433,633
2012-13	507,131	465,497

In the first 6 months of 2013-14 (April – September), 289,529 appeals have been received and 289,578 cleared.

The initial rise in the workload was attributable to the impact of the economic recession. From 2010 onwards the principal driving force has been the implementation of the Government's programme of welfare reform. The Welfare to Work strategy has involved the reassessment of entitlement to benefit of some 1.5m recipients of incapacity benefit over a 3 year period from October 2010, as incapacity benefit is replaced by employment and support allowance. From April 2013 the replacement of disability living allowance by a new benefit (the Personal Independence Payment) will entail the reassessment of some

1.7m recipients of disability living allowance. However, the major phase of the disability living allowance reassessment, which was scheduled to begin in October 2013, has been put back by the Government for 2 years. Also, from April 2013, a new integrated benefit (Universal Credit) was launched to replace half a dozen means-tested benefits. Up to 12m claimants were expected to move onto Universal Credit by 2017, but a more conservative approach to the implementation of the new integrated benefit has now been adopted. It seems likely that previous DWP forecasts of a steady progression in the intake of social security appeals, peaking at 807,000 cases in 2015-16, will be revised somewhat downwards.

To match the rise in appeals over the past 5 years the Tribunal has built up its capacity to the point where it is clearing over 50,000 appeals a month. Innovations have included holding sessions at weekends. More flexible deployment of the judiciary has been achieved through assignment from other Chambers and new systems of allocation providing more efficient geographical coverage. In collaboration with the Judicial Appointments Commission and the Judicial Office, the process of recruitment has been streamlined, significantly reducing the time from the initial bid for resources to having new judges and members trained and in post.

In its 2011 report "Right First Time", the Administrative Justice and Tribunals Council examined the standards of decision-making by government departments and commented:

> *"We argue that public sector organisations need to take a step back from their traditional concentration on processes and performance, and instead focus on the overriding need to improve the quality of decisions."*[1]

The Council noted that tribunals were well placed to draw attention to systemic failures in administrative decision-making.

In an individual social security case, the Tribunal's appraisal of the departmental decision that is under appeal is evident from the course of the hearing, the outcome and the written statement of the Tribunal's findings and reasons that either party is entitled, under the Procedure Rules, to request.[2] On the other hand, the identification of systemic failures in departmental decision-making may require different measures, particularly in view of the continuing unwillingness of DWP to be represented at SSCS Tribunal hearings.[3]

1 "Right First Time", Administrative Justice & Tribunals Council, June 2011 at p.8

2 About 40,000 requests for statements are made annually. Around 10% of the requests are made by DWP.

3 The proportion of hearings attended by a Presenting Officer has fallen from 40% in 2000-01 to 6% in

Given the common interest of administrative justice in improving the standard of departmental decisions, the Tribunal is exploring economical methods of providing feedback to DWP. An annual report from the President, based on a small sample of appeals, lacked practical value because it did not allow detailed analysis. So, a scheme was introduced in July 2012, whereby the Tribunal would notify the Department, in each case where it overturned a departmental decision, of the principal factor leading the Tribunal to allow the claimant's appeal. Supplying that notification in a standardised format (via a "drop-down menu") enabled the Department both to review overturned decisions in individual cases and to aggregate data across tens of thousands of decisions to identify any systemic shortcomings.

After running with the drop-down menu for nearly a year, DWP concluded that a more narrative explanation by the Tribunal would afford the Department greater insight into any shortcomings in the process of departmental decision-making. A pilot was, therefore, run in June-August 2013, whereby the Tribunal generated "summary reasons" in 7,000 employment and support allowance appeals. The Department is presently digesting the lessons gleaned from its analysis of the results. The provision of summary reasons has continued at the pilot sites since the initial eight-week period.

A major procedural change in the appeals process began in April 2013 with the introduction of Direct Lodgement. Unlike the established practice in most courts and tribunals, litigation in the SSCS jurisdiction has always been initiated by the claimant sending notice of appeal, not to the Tribunal, but to the department whose decision was being challenged. The rationale was that lodging the appeal with the department afforded an opportunity for the department to reconsider its decision. If, on reconsideration, the decision were revised in the claimant's favour, the appeal would lapse.

The Welfare Reform Act 2012 placed the reconsideration stage on a statutory footing by providing that a right of appeal to the Tribunal would not arise unless the department had considered whether to revise its decision. The implication of the legislative change is that there is no longer any purpose in notice of appeal being routed first to the department for reconsideration, since "mandatory reconsideration" will be a condition precedent to the right to appeal being acquired. Instead, once there has been a mandatory reconsideration, the appeal is to be lodged directly with the Tribunal.

The process change has been reflected in amendments to the Procedure Rules and will be phased in, benefit by benefit, from April 2013. HMCTS has established a Direct Lodgement

2013.

Centre at Bradford to receive all appeals in England and Wales, and a similar Centre in Glasgow to serve Scotland. HMCTS will ensure that appeal forms will be readily available to the public, when DWP withdraws from the current arrangement of supplying them via Jobcentres.

In the Criminal Injuries Compensation jurisdiction steady progress has been made in reducing the number of outstanding 'pre-tariff' cases. The majority of the workload in this jurisdiction comprises appeals against decisions of the Criminal Injuries Compensation Authority on claims brought by victims of violent crime under statutory, tariff-based schemes that were first introduced in 1996. There had, however, remained for some considerable while a relatively small number of claims brought under the earlier pre-tariff scheme. In August 2011 there were 141 such cases awaiting determination by the Tribunal. The release by the Government of funds to the Authority to progress these claims has allowed the Tribunal to move towards a final determination. By September 2013, all but 14 cases had been concluded.

Many of the pre-tariff cases involved applicants who had sustained catastrophic injuries as babies or in early childhood as a result of non-accidental injury or abuse. Typically, awards, which are based on common-law principles, have been in the range of £2-4m. This concentration on high value cases has been very demanding on judicial resources (a Tribunal of 3 judges is convened) and it is to the credit of all involved that such progress has been made.

The number of tariff appeals received by CIC in 2012-13 was 2,431. The number cleared was 2,811. CIC currently carries a live load of 2,014 cases. There are early indications that the introduction of the new statutory scheme on 27 November 2012 (the "2012 Criminal Injuries Compensation Scheme") has led to a significant reduction in the number of claims being made to the Authority. The stated aim of the 2012 Scheme is to focus on "the most serious injuries". While the maximum award remains at £500,000, compensation has been withdrawn from some of the lesser injuries. The conditions of eligibility have been made more stringent and some heads of compensation, such as loss of earnings, have been capped. The volume of appeals reaching the Tribunal has correspondingly begun to decline. On current projections, the forecast intake in 2013-14 will be barely 2,000 appeals.

In the Asylum Support jurisdiction the intake was relatively stable, with 1,600 appeals being received in 2011/12 and 1,320 in 2012/13. 2013.

Of these, 70% were determined at an oral hearing, a further 10% were determined on the papers and the remaining 20% comprised appeals that were withdrawn, struck out or

otherwise cleared. In keeping with past standards of performance, 98% of all appeals were determined within the statutory time-scale of 8 days or less of receipt. In a small number of cases, there was a delay of 2 – 3 days before the appeal was concluded. The main causes of delay were problems with booking and non-arrival of interpreters, and late receipt of documents. Across the Chamber, the service to users had been badly affected by chronic failings in the supply of interpreters.

During the latter part of September 2013, there has been a gradual increase in AST work, probably attributable to an initiative on the part of the North West Asylum Hub to conclude around 800 'further submission' cases at a rate of approximately 65-70 a week. This will inevitably lead to discontinuation of asylum support to some claimants, whose further submissions are rejected, and in additional appeals to the Tribunal. Experience shows that, if successful, this initiative will probably be rolled out nationwide, generating a very real increase in the level of appeals from November 2013.

Previous reports of the Senior President have commented upon the increasing number of appeals from persons refused accommodation under section 4(1)(a) and (b) of the Immigration and Asylum Act 1999. Those provisions enable the Secretary of State to make available full board accommodation. The position of the Secretary of State has been that she would only exercise her power in "exceptional circumstances" but would not publish any guidance on what might constitute an exceptional circumstance. The absence of a published policy caused difficulties for claimants in not knowing the criteria by which their applications were assessed and for the Tribunal in carrying out its supervisory role within the system of administrative justice.

Following a number of judgments by the Tribunal, emphasising those difficulties, the Secretary of State did finally publish her criteria for dealing with section 4(1) applications by way of amendment to the existing section 4 policy. The amendment emphasised that section 4(1) was not available to asylum seekers and failed asylum seekers and that accommodation under section 4(1)(a) and (b) would only be provided in truly exceptional circumstances, which were said to include proof of destitution, non-availability of other forms of support, the requirement that, without support, the claimant was likely to suffer inhuman or degrading treatment if accommodation were not provided, and the claimant's lack of the means to meet their essential daily living needs in the UK.

Shortly after, the Government published clause 40 of the Draft Deregulation Bill proposing to remove the power to provide accommodation under section 4(1)(a) and (b).

Onward appeal and Judicial Review

In SSCS cases, there is a right of appeal to the Upper Tribunal for error of law. In 2012-13, the Upper Tribunal received some 1,700 SSCS appeals (equivalent to about 0.5% of the First-tier's decisions).

In CIC cases, there is no right of appeal against the First-tier Tribunal's decisions. Any challenge must be by way of judicial review. However, judicial review claims against CIC decisions are transferred by the Administrative Court to the Upper Tribunal for determination. Around 80 applications for judicial review were made in CIC cases in 2012-13.

In AST cases, there is no right of onward appeal. Any challenge to the First-tier Tribunal's decisions must be by way of judicial review. Judicial review proceedings against AST decisions are retained in the Administrative Court and not transferred to the Upper Tribunal. 8 judicial review claims were made in AST cases in 2012-13.

Given that the objective of the Leggatt Report on Tribunal Reform,[4] which led to the Tribunals, Courts and Enforcement Act 2007, was to provide the citizen with a single system based on a coherent, user-focussed approach, it is disappointing that such disparate procedures exist even within one Chamber.

Interesting cases

Ahmad - AS/12/11/29199 was a case remitted by the Administrative Court for hearing *de novo*. The original appeal had been dismissed by a tribunal judge because he was not satisfied that the appellant, a Palestinian national, satisfied regulation 3(2)(a) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005. This requires applicants to take all reasonable steps to leave the UK or place themselves in a position in which they are able to leave, including complying with attempts to obtain a travel document to facilitate departure.

At the re-hearing, the Secretary of State ('SSHD') argued that the appellant was in fact of Egyptian origin and not Palestinian and that he was attempting to frustrate his removal from the UK. The appellant had a complex history, which included a number of applications for assisted voluntary return ('AVR'), a prison sentence, the provision of section 4 accommodation on release from prison, ceasing to reside at authorised accommodation, a refusal on the part of the SSHD to entertain any further AVR applications, and an

4 Report of the Review of Tribunals by Sir Andrew Leggatt, "Tribunals for Users – One System, One Service", March 2001

apparent failure to contact the Palestine General Delegates Office in London to secure a travel document. Interestingly, it was conceded by the SSHD that if the appellant was if fact a Palestinian, it would be "impossible for the AVR process to be concluded."

At the re-hearing it was established that the SSHD had not challenged the appellant's claimed nationality in asylum proceedings before an immigration judge or the UTIAC and that it was not open to her to raise the challenge before the First-tier Tribunal. The SSHD could not argue that the appellant had failed to cooperate with the AVR process during the period he was serving a prison sentence, unless he was able to advance the application from prison. Noting the decision of the UTIAC in *HS (Palestinian - return to Gaza) Palestinian Territories CG* [2001] UKUT 124 (IAC), it was held that, whilst there existed difficult obstacles for Palestinians wishing to return to their country, these were not insurmountable and that the appellant must demonstrate through action and documentation that he was taking all reasonable steps to return to Palestine. Finally, the tribunal accepted evidence from the British Red Cross of the appellant's attempts to trace his family in the Gaza as a reasonable step toward leaving the UK and proving his Palestinian origins.

In *Jones (by Caldwell) v First-tier Tribunal and Criminal Injuries Compensation Authority* [2013] UKSC 19, the Supreme Court dealt with a tragic situation in which a man ran out in front of a lorry causing it to swerve and collide with a second vehicle. The man was killed, the inference of his actions being that he had intended suicide. The driver of the second vehicle suffered severe injuries and claimed compensation as a victim of a violent crime, namely the offence of inflicting grievous bodily harm contrary to section 20 of the Offences against the Person Act 1861.

Overturning the decision of the Court of Appeal and restoring the First-tier Tribunal's decision, the Supreme Court held that, while every sympathy must be felt for the injured driver, the terms of the Criminal Injuries Compensation Scheme did not permit an award to be made in the circumstances.

In his judgment in the case, Lord Carnwath made some observations on the role of tribunals:

> *"Where, as here, the interpretation and application of a specialised statutory scheme has been entrusted by Parliament to the new tribunal system, an important function of the Upper Tribunal is to develop structured guidance on the use of expressions which are central to the*

scheme, and so as to reduce the risk of inconsistent results by different panels at the First-tier level."

In *RS v CICA* [2013] EWCA Civ. 1040 the Court of Appeal approved the approach of the First-tier Tribunal to the question whether an award could be made in circumstances where a relative of a victim of a crime of violence did not witness the assault on the victim nor was closely involved in the immediate aftermath of the injuries being sustained.

The pre-eminent case in SSCS during 2012-13 has been the *Reilly & Wilson* litigation.[5] The context to the litigation is the conditions attached to entitlement to Jobseekers Allowance, requiring claimants to participate in schemes intended to improve their prospects of obtaining employment. Miss Reilly and Mr Wilson challenged the legality of the Jobseekers Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011. On 30 October 2013 the Supreme Court gave judgement, holding that the 2011 Regulations were unlawful, that the Secretary of State had failed to provide adequate information to claimants about the employment schemes and that the sanctions imposed for non-compliance were invalid.

Both the Administrative Court and the Court of Appeal had previously found that the Secretary of State had acted unlawfully. Immediately following the Court of Appeal's decision, the Government introduced measures in Parliament to reverse the effect of the Court's ruling. The object of the Jobseekers (Back to Work Schemes) Act 2013 is to validate retrospectively the 2011 Regulations and to avoid repaying benefit to claimants who had been sanctioned unlawfully.

While its appeal to the Supreme Court was pending, the Secretary of State began serving notices on the First-tier Tribunal under the provisions of s.26 Social Security Act 1998, requiring the Tribunal to stay any proceedings before the Tribunal that might be affected by the issues in Reilly & Wilson. Over 2,500 cases have been stayed. Although the outcome of Reilly & Wilson is now known, further litigation has arisen in the form of a challenge by way of judicial review to the validity of the retrospective measures.

5 R (on the application of Reilly and Wilson) v Secretary of State for Work and Pensions [2012] EWHC 2292 (Admin), [2013] EWCA Civ 66, [2013] UKSC 68.

People and Places

As at 15 October 2013, the Chamber had a complement of 2,469 posts. The composition was:

- Judges (salaried) 96
- Judges (fee-pai 852
- Medical members (salaried) 8
- Medical members (fee-paid) 1,085
- Disability members 382
- Victim support members 24
- Accountant members 22

Extensive use has been made of cross-ticketting within the Chamber. For example, most AST judges also sit in the SSCS jurisdiction. Similarly, most CIC medical members sit in SSCS.

In 2013 Regional Tribunal Judge Paula Gray was appointed to the Upper Tribunal. She has been succeeded by Hugh Howard.

AST holds hearings at the Anchorage House venue in London. CIC holds hearings at 13 venues across England, Scotland and Wales. In both jurisdictions the use of video-links is being actively explored to facilitate access by claimants and witnesses. SSCS hearings are held at 179 locations.

Health, Education & Social Care Chamber
President: His Honour Judge Phillip Sycamore

The Chamber is made up of four jurisdictions, Mental Health which covers the whole of England; Special Educational Needs and Disability, which also covers the whole of England; Care Standards, which covers the whole of England and Wales, and Primary Health Lists which also covers the whole of England and Wales.

Mental Health

The main purpose of this jurisdiction is to review the cases of patients detained under the Mental Health Act and to direct the discharge of any patients where the statutory criteria for detention are not met. Mental Health is the fourth largest First-tier Tribunal jurisdiction.

Workload has increased this year with disposals approximately 10% more than forecast. This is not necessarily because a greater number of people are presenting with a mental disorder. Rather, we are regularly seeing patients well known to mental health services being detained for assessment under Section 2 of the Mental Health Act 1983 (as amended) prior to further detention under Section 3. Currently 27% of receipts relate to Section 2 cases, with a further right of application to the tribunal arising 28 days later if and when the patient moves onto a Section 3. The tribunal has achieved its target of listing 100% of Section 2 cases within 7 days of receipt.

The tribunal considers, however, that a real need for assessment should be demonstrated in all Section 2 cases and that Section 2 should only be used if the full extent of the nature and degree of a patient's condition is unclear; or if there is a need to formulate or substantially re-formulate a treatment plan, or to reach a view about whether the patient will accept treatment on a voluntary basis. Section 3, on the other hand, should be used if the nature and current degree of the patient's mental disorder, the essential elements of the treatment plan to be followed, and the likelihood of the patient accepting treatment on a voluntary basis, are already established.

The quality of the jurisdiction's decision-making depends upon the quality of the information that we are given. This year, all judicial office holders within the jurisdiction were asked for input concerning the Senior President's Practice Direction that sets out what information the tribunal needs to do its job properly. As a result of that consultation, the Senior President with the agreement of the Lord Chancellor has approved a new Practice Direction that will more clearly spell out what information we require in order to address the relevant statutory criteria. The format of the new Practice Direction has also been re-designed to make it easier for doctors, nurses and social workers to identify and separate out those parts of the Practice Direction that are relevant to the actual case and to their specific role. We hope that this will improve the quality of reports whilst reducing the length of some of them.

As reported last year, the jurisdiction has introduced Registrars[6] to assist with case management, with around 75% of all case management decisions now being taken by its

6 Legal Advisers from Magistrates' Courts known as Registrars in Tribunals

5 Registrars. An evaluation of this project and of current casework procedures is presently underway which should help to focus the time of salaried judges on their other roles and responsibilities including more complex cases.

The mental health jurisdiction and its Chief Medical Member, Dr Joan Rutherford in particular, has worked closely with the General Medical Council and the Royal College of Psychiatrists to enable those medical members who wish to do so to retain licenses to practice through an in-house revalidation process with our Chief Medical Member designated a "suitable person". This process will ensure that medical members who have retired from NHS practice can remain up-to-date and connected with those wider procedures necessary for ensuring that clinical standards are maintained and improved. In addition, all members, whether holding a licence to practice or not, are required to attend two full days of tribunal training per annum.

This year the jurisdiction has introduced 6-monthly stakeholder meetings to replace the advisory group previously convened by the AJTC. The new listing process is one example of collaborative working with all our stakeholders, with whom we have consulted from the earliest stages of the project. We have also held a meeting with the Parole Board, with whom we share both users and the task of balancing individual liberty with public protection. Recent case law has helped clarify our respective roles, and following an Upper Tribunal decision *AM v South London & Maudsley NHS Trusts, and the SoS for Health* [2013] UKUT 0365 (AAC) we are now keen to further our understanding of issues around mental capacity, as we increasingly see our place at the heart of a system of expert jurisdictions looking after the most vulnerable in society.

Mental Health hearings are private hearings as defined by statute but the rules allow for application to hold a hearing in public. In June this year the public hearing of an application to the tribunal by Ian Brady, a high profile patient currently detained in Ashworth Hospital took place. The hearing was by video-link and I would like to pay tribute to the efficient and professional partnership working of the jurisdiction's judiciary, its administration in Leicester, staff in the Civil Justice Centre in Manchester and hospital staff and administrators. This successful partnership enabled relatives of victims, the public and the media to watch the tribunal conducting its business efficiently and transparently.

Special Educational Needs and Disability (SEND)

SEND's main jurisdiction is to hear appeals brought by parents against decisions made by local authorities about the educational provision to meet their child's special educational needs. Major changes are anticipated in the SEND jurisdiction but their exact nature awaits

the outcome of the Children and Families Bill. In April 2013 new funding arrangements for children with Special Educational Needs were introduced causing changes to almost all appeals. A number of training events were held to accommodate the changes.

Care Standards (CS)

This year, CS has continued to diversify with new appeal rights not only over Dental and Doctors practices but also appeals from Monitor[7] related to licensing and regulation of NHS service suppliers. Further consultations are taking place with regard to proposals to introduce appeal rights in relation to Directors of businesses regulated by the Care Quality Commission.

Primary Health Lists (PHL)

This jurisdiction now hears appeals against the decisions of the NHS National Commissioning Board involving the listing of Doctors, Dentists and Pharmacists, replacing the Primary Care Trusts. This transitional change appears to have gone smoothly. From April 2013 there are now also in place consolidated performers regulations for Doctors and a new set of Performers Regulations for Pharmacists.

Interesting cases

Mental Health

The tribunal often deals with patients transferred to hospital from prison. In *AC v Partnerships in Care Ltd v SoSJ* [2012] UKUT 450 (AAC) the Upper Tribunal held that the tribunal's jurisdiction is limited to the Mental Health Act 1983. Consequently, in considering whether a patient would be entitled to a conditional discharge, the First-tier Tribunal correctly took account only of the conditions it could, itself, impose. It cannot impose conditions as to release from prison, which are the preserve of the Parole Board.

In *MD v Mersey Care NHS Trust* [2013] UKUT 127 (AAC) the Upper Tribunal agreed with the First-tier Tribunal that, depending on the facts of the case, risk can be highly relevant to the question whether appropriate medical treatment is available for a patient (or whether the available medical treatment is appropriate). Lack of engagement, even if as a consequence of a personality disorder, does not mean that available treatment is not appropriate. Although treatment must be capable of doing some good, and the MHA must not be a tool of mere containment, the Upper Tribunal agreed with the First-tier Tribunal that:

7 The sector regulator for health services in England.

> *"When assessing how long it is reasonable or appropriate to wait for a patient to engage with treatment, or to what extent relatively small indications of progress along the road to eventual motivation or engagement are sufficient to overcome the argument that continued detention amounts to mere containment, the likelihood of harm occurring and the potential severity of the harm, especially when taken together, will be highly relevant factors to consider."*

Finally, as part of our improvement of case management, we now ask the parties if they propose to instruct an independent expert. Some representatives expressed concern that an adverse inference might be drawn if they answer 'Yes' to this question, but then fail to table the report. In *MM v Nottinghamshire Healthcare NHS Trust* [2013] UKUT 0107 (AAC) the Upper Tribunal confirmed that the First-tier Tribunal should not draw any adverse inference from the fact that an independent psychiatrist visited the patient and had been instructed to prepare an independent report even though, at the hearing, the patient's representative did not produce or rely upon that report. There was nothing objectionable in a panel knowing that an independent expert had been instructed (or had visited the patient). All MHA judicial office holders should be able to put this out of their minds, the tribunal's duty being to decide the case on the evidence actually presented.

Special Educational Needs and Disability

Several cases of permanent exclusion of pupils from school, where it is alleged to be the result of disability discrimination, have been dealt with successfully utilising the rapid timetable. In *P v Governing Body of a Primary School HS 306* [2013] it was successfully argued that the decision of the school head to exclude was not in fact the final decision until it had been ratified by the governing body, unfortunately since such a body often takes some weeks to meet the usefulness of the expedited procedure has been somewhat lessened.

In *BH HS 1444* [2013] leave has been granted for appeal to the Court of Appeal on the question of whether the relevant costs for consideration by a local authority in deciding whether such costs are inappropriate is based upon ring fenced educational budgets or consideration of wider social spending and benefits with very important consequences for the jurisdiction.

Innovations

For the first time, a pilot joint training course was organised for office holders across all four HESC jurisdictions on the subject of communicating with Vulnerable Adults, a subject,

which crosses all the Chamber's jurisdictions in many respects. The first event was held in May and two similar events will be held in other parts of the country later this year and early next year.

Mental Health

In last year's report I referred to changes in the Chamber's rules affecting adult patients living in the community whose cases are automatically referred to the tribunal. Where such a patient with capacity positively indicates that they do not wish to attend or be represented at a formal hearing, the panel can review the case on the basis of the written reports received, without holding a hearing if that is what the patient wants. The rule change aimed to provide a tailored method for appealing; providing a more proportionate and faster approach to resolution of certain cases and to increase efficiency and flexibility within the tribunal. Take up is regularly monitored and is steadily increasing. A wider evaluation of the data is currently taking place and I look forward to reporting further next year.

This year, the jurisdiction introduced a new system for listing cases, which typically involves the jurisdiction's listing team giving both the detaining hospital and the patient's representative an opportunity to indicate which half-days during a listing window they and their witnesses are available. The team then looks for common ground and subject to panel availability, lists accordingly. This new approach has not only reduced administrative costs (the old system involved repeated ringing round) but has cut the time a detained patient has to wait for their tribunal hearing. This change was part of a wider upgrade of our computer systems, which, as a result of the judiciary and administration working closely together, was achieved on time and under budget.

The mental health jurisdiction is unique in the extent to which it takes justice out into the communities that it serves, holding hearings in over 1500 different hospitals as opposed to court or tribunal premises. We do this for the convenience of our users and we are grateful to those hospitals, large and small, that understand and appreciate that panel members are their guests and therefore look after us and make us feel welcome. The diversity of provision, however, means that we have had to set out our expectations in terms of the facilities we need for panels, and for patients, families and representatives. We have also encouraged a project to improve panel safety and security since both HMCTS and the host hospitals have a duty to keep visiting judicial office holders safe at work. In addition, with the help and support of the Judicial College, we have produced an e-learning module for our judicial office holders on avoiding risk at hearings.

Further e-learning modules on questioning and listening skills and on making and communication decisions will be available to our judges and members shortly.

Special Educational Needs and Disability

Following consultation with stakeholders, a pilot commenced in September whereby the Senior President amended the Practice Statement on composition of panels to allow, in a limited number of cases, a new approach where the number of specialist members will be reduced from two to one. This will allow greater flexibility in the deployment of judicial resources. The pilot will run for 6 months and is restricted to appeals relating to refusals by a local authority to make an assessment of special needs.

The SEND administrative team recently set up a project with stakeholders to improve the service provided to their users. The end-to-end process, at 48 weeks, was far too long for a child to wait for the outcome of the special educational needs application and appeal. The team engaged fully with parents, local authorities and parent representative groups which helped SEND to understand concerns and identify potential for improvements. The team wanted to ensure they provided the best possible service to stakeholders, while ensuring children's needs were always fully considered.

The team have reduced processing times from 48 weeks to 30 weeks and it is hoped that this can be further reduced to 25 weeks in future.

Care Standards

On a limited and security conscious basis CS has been allowed to develop the use of Skype to enable panels to consider cases which the parties have agreed should not have an oral hearing. The cases are often emergency suspension appeals relating to the early years jurisdiction of Ofsted over nurseries and child-minders. It has allowed very speedy and efficient consideration of such cases where livelihoods are at stake.

People and places

The senior judicial management team remains the same and I am grateful for their work, commitment and innovative approach towards the day to day management of their respective jurisdictions; that is Judge John Aitken who is Deputy Chamber President for SEND, CS and PHL and Judge Mark Hinchliffe, Deputy Chamber President for Mental Health. Mark is supported in the Mental Health jurisdiction by Principal Judge John Wright and Chief Medical Member Dr Joan Rutherford.

The Chamber has 24 salaried Tribunal Judges, 20 who assigned to the Mental Health jurisdiction and 4 to SEND, CS and PHL. We welcomed 2 new salaried judges to sit in Mental Health, Alison Callcott and Angela Flower who were appointed in November 2012 and March 2013 respectively.

The Senior President joined group discussions at the HESC salaried judges' annual conference, October 2013

In February Nancy Hiller, lead salaried tribunal judge in Care Standards was promoted to the Senior Circuit Bench as Designated Family Judge in Leeds. Though sad to lose her skills and abilities and her great contribution to the Chamber we are all delighted that one of our colleagues has achieved this success. It demonstrates without a doubt, the qualities and abilities held by salaried tribunal judges and the potential for career development from a Tribunals background.

The Chamber is also fortunate to have a fee-paid judicial cadre of 1,088 judicial office-holders, that is fee-paid judges, medical members and specialist lay members across the jurisdictions, without which it could not operate. The Chamber also makes full use of the avenues available by which to deploy, renew and refresh its judicial resources in its four jurisdictions by using external recruitment via the Judicial Appointments Commission and where appropriate, internal Expressions of Interest, assignment between Chambers and ticketing within the Chamber.

This year, the Chamber held 5 JAC competitions as well as 5 ticketing opportunities to sit across the Chamber and 2 assignment opportunities from other Chambers.

As mentioned above, the use of Registrars in HESC has proved a success and is now well established. I am delighted that the benefit is both ways as evidenced by the appointment of Paul Pearson, a Registrar in SEND, to an independent judicial position as a Parking Adjudicator via open competition.

In September, the SEND jurisdiction received a visit from a delegation of academics from Tohoku University, Japan. Associate Professors Shigeto Yonemura and Tsuyoshi Hondou were conducting a study of concurrent expert evidence for the Japanese government who are considering implementation of the scheme for medical negligence cases. Concurrent expert evidence has been popular for 10-15 years in Australia and for several years within the civil jurisdiction, however, it appears that the oldest and most commonly used form is in fact to be found within the practise of the SEND Tribunal who have conducted around 10,000 cases with concurrent expert evidence since the formation of the Tribunal in 1992, far more than any other jurisdiction across the world. The professors visited the Pocock Street hearing centre and interviewed several judges about the practice for their report.

Administrative support

I am grateful for the continued support and partnership working provided by the administrative teams based in Leicester for Mental Health and lead by Karen Early and in Darlington for SEND, CS and PHL lead by Kelly Swan. Kelly was recently promoted to Cluster Manager but fortunately remains in the senior administrative management hierarchy for all 4 HESC jurisdictions.

War Pensions & Armed Forces Compensation Chamber
Acting President: Clare Horrocks

Whilst the jurisdiction has been spared the impact of any new legislation since the Armed Forces Compensation Scheme Order 2011, the Upper Tribunal continue to provide guidance on the interpretation of this legislation and, latterly, how it interacts with its' predecessor, the Service Pensions Order 2006.

The level of appeals is a little higher than originally anticipated as the existence of the AFCS becomes more widely known among serving members of the Armed Forces. Additionally,

with the pace and scale of redundancies in the Armed Forces, personnel with pre April 2005 injuries will be able to start claiming under the Service Pensions Order on their discharge from Service, and this may affect the workload in the next year or so.

A Judicial Appointments Commission competition in the late spring saw the addition of ten new medical members to our strength, particularly bolstering the psychiatric and ENT specialisms, which are increasingly in demand.

The induction training for these members took place together with three new Service members from the Northern Ireland jurisdiction, just before our main annual conference. This training was augmented by one-day events for each separate specialism, the Service members enjoying the most interesting by far with a visit to RAF Benson, where they were allowed to climb over (but not fly!) the Merlin and Puma helicopters which are used extensively on operations in Afghanistan.

Immigration & Asylum Chamber
President: Michael Clements

Another challenging year for First-tier Tribunal Immigration and Asylum Chamber (FtTIAC). A central feature of last year's report was the extent to which workloads in the FtTIAC were falling. This year has seen work increasing and is higher than the profile. The problem the tribunal faces this year is that the number of appeals awaiting disposal has risen dramatically. The statistics show that the live caseload increased from 33,508 on 30 June 2012 to 45,043 on 30 June 2013, a rise of 34%.

Present Home Office predictions are that in the longer term the volume of appeals expected will begin to decrease again in 2014/15 and the Immigration Bill, published in October, proposes further narrowing of appeal rights.

However, if nothing else, the experience of the last year has shown that it is notoriously difficult to make reliable predictions in the immigration jurisdiction as the amount of work to be done as it is subject to so many variables. It can fluctuate dramatically in the light of, for example, humanitarian problems in other parts of the world; the relative economic fortunes of countries from which migrants originate; the ability of the Home Office to process immigration decisions which lead to appeals; and changes of legislation and government policy regarding the rights of migrants to enter the UK.

As a result of the current increase in workloads it has been necessary to reduce the maximum number of days each year on which salaried judges can perform "other judicial duties", sitting as recorders, or as judges of other courts and tribunals for which they hold authorisation. It is regrettable that this step has to be taken, but it is an inevitable consequence of the unpredictability of the overall workload referred to above.

Conversely, the maximum number of sitting days which can be undertaken by fee-paid judges has been increased. In some senses, this is a welcome development for those judges, as well as the tribunal, because they will be able to use their judicial skills to greater effect if they are used on a regular basis, but they are not assisted by continuing uncertainty as to the requirements for their skills on a year-to-year basis. It is hoped next year will bring greater stability regarding profiled workloads and flexibility to the use of our skilled judicial resources.

One way of helping to iron out the fluctuations to which the immigration judges are subject is to increase the availability of assignment among chambers, and of cross-ticketing among courts and tribunal chambers. In this way, the pool of judicial skills can be deployed to the points in the Courts and Tribunals Service where those skills are from time to time most needed, and the problem of fee-paid judiciary becoming deskilled can be mitigated. To this end, valuable work is being done in the North Shields Civil Justice Centre to establish trials of mixed lists in which more than one tribunal, together with the County Court, hold hearings in the same premises and judges can sit in more than one jurisdiction on the same day. I am grateful to Designated Judge David Zucker for the innovative work he has done in this connection, and for the very constructive co-operation he has received from the other jurisdictions concerned.

In order for there to be closer unity of the various jurisdictions with HMCTS, harmonisation is needed of the systems for booking fee-paid judges across the service as a whole. This is a substantial task and is "work in progress" within the FtTIAC.

During the past year a panel of seven judges and an equal number of Ministry of Justice administrative staff have been conducting the Fundamental Review, which is an exercise to examine, from both the judicial and the administrative viewpoints, the activities of the First-tier, including determination writing, listing, case management, assignment and cross-ticketing, and practical ancillary matters such as typing services, electronic documentation and the recording of hearings.

The findings of the panel will be reported shortly to the Tribunals Judicial Executive Board, following which, subject to the availability of the required funding, any proposals involving

possible changes to the tribunal's current practices will be "piloted" in order to assess their impact on the promotion of justice in accordance with the Overriding Objective.

Because of the vital consequences to litigants of decisions made in the immigration jurisdiction, there has always been a strong culture of appealing from the First-tier to the Upper Tribunal. This process involves applicants in applying to the First-tier for permission to appeal, and if unsuccessful making a further application to the Upper Tribunal. Formerly, the First-tier applications were dealt with by Upper Tribunal Judges sitting as First-tier Judges. However, following extensive training programmes, the First-tier application work has been transferred to specifically trained First-tier Judges. John McCarthy, the IAC Training Judge, together with his deputy, Peter Digney, are to be congratulated for their success in bringing about this change in the efficient use of judicial resources.

Continuous high quality judicial training is essential to the delivery of justice, and is particularly so in a jurisdiction subject to frequent legislative change and the consequent development of caselaw. At the same time, training budgets are coming under severe pressure. The present training judges, and their successors, Designated Judges Julian Phillips and John Manuell, who will take over on 1 January 2014, have been working hard on new ideas for delivering frequent in-centre training by way of regular short lectures, and the delivery of electronic training materials.

A body of judges is an essentially non-hierarchical organisation in which all members, regardless of their level of appointment, benefit from as free a flow of information and exchange of views as possible. The FtTIAC places great importance on good communication among its members. Wherever possible I share information with the Council of Immigration Judges (CIJ), which represents judges in the First-tier and Upper Tribunals, and which as well as maintaining a website communicates with members by e-mail and through representatives at IAC hearing centres. This is a two-way traffic as the CIJ is proactive in making proposals for the improvement and development of the jurisdiction. It is also able to deal with wider general tribunal issues in the Tribunals Forum and the Judges' Council.

In the past year I have instituted a scheme in which judges are offered annual one hour meetings with the Resident Judges who are responsible for their hearing centres. These meetings are confidential, have no agendas and are not in any way recorded. Judges are not obliged to engage with them, but are encouraged to raise any matter, whether personal or general, which may be of concern to them. There has been a virtually one hundred per cent take up of the offer. These discussions and exchanges of opinions have led to a greater feeling of inclusion and I believe we have all benefited as a result.

The tribunal could not operate without the backup of our administrative staff. I am conscious that throughout the FtT we enjoy exceptionally close and effective liaison between judiciary and our court clerks, ushers, listing staff and all those who perform our essential "back office" duties. They always seem able to maintain their good humour and their co-operative approach, even on those (rare!) occasions when judges' fuses become short. We are very grateful to them. My particular thanks are due to my own office staff Jane Blakelock and Vicky Rushton.

In the past year a number of both fee-paid and salaried judges have retired. We wish them all a long and happy retirement.

Sadly, I must also record the death of Michael Neuberger from Taylor House.

I am happy to congratulate a number of FtTIAC judges on their promotion within HMCTS.

I and my colleagues in FtTIAC welcome the new President of the Upper Tribunal IAC, Mr Justice McCloskey, and look forward to continuing the constructive dialogue between the First-tier and Upper Tribunals.

Tax Chamber
President: Colin Bishopp

I referred in my report last year to press comment to the effect that it would require 38 years to clear the backlog of appeals before the Chamber. That was a considerable exaggeration; but we nevertheless did have a backlog which was increasing, and which was causing some concern.

The root cause of the problem was the very large number of appeals—more than two thirds of our entire case load at its peak—which were stayed behind other cases. One case alone, *Hok*, had over 1300 appeals stayed behind it; now that *Hok* and two others with many appeals stayed behind them, *Total Technology* and *Noor*, have been decided by the Upper Tribunal we have been able to make great inroads into the backlog. These appeals, another recently heard by the Upper Tribunal and a few more yet to come all challenge the limits on the First-tier Tribunal's jurisdiction. I am particularly grateful to the Revenue Bar's pro bono unit for its help in ensuring that these difficult issues are properly argued, both before this Chamber and before the Upper Tribunal.

The release into the system of so many hitherto stayed cases has, inevitably, led to serious volumes of work for the staff, who have handled it with great good humour, and has demanded a determined effort by, in particular, our fee-paid judges and members. I offer them my thanks too. I am delighted to say that over the last year we have made good progress: we have reduced the backlog, and are now consistently disposing of more cases than we receive. We have some way to go, but the signs are promising.

Tax avoidance, or alleged tax avoidance, has continued to take up a lot of our time. A general anti-avoidance rule, or GAAR, was introduced by the Finance Act 2013. We have yet to see any appeals arising from it, but they are forecast to start reaching us over the next year or so. In the meantime we have seen a great many appeals in which arrangements have been attacked by HM Revenue and Customs using established principles. Many of the arrangements which reach us are extremely complicated and the work is demanding but also very interesting.

I mentioned in last year's report the prospect that the large number of so-called missing trader appeals we have would have diminished considerably by now. The number has certainly gone down—and, because of legislative changes, we are receiving very few new cases of this kind—but there are still a good number, more than I expected, yet to be heard. One of the problems, for the parties as much as for the tribunal, is the sheer volume of evidence and the time necessary to get through it. In one such appeal, in progress as I write, the tribunal is required to consider almost 2000 chains of transactions. The hearing is scheduled to take 17 weeks. I remain very grateful to the judges and members of the Chamber for their willingness to hear these appeals which are not only very demanding of time, but also require considerable attention to detail in the preparation of the written decision.

The now not-so-new penalty regime changes introduced in recent Finance Acts continue to represent a fertile source of work. Some of the appeals are routine and of no great intellectual interest, but novel points, and unforeseen glitches, do crop up from time to time. A particular point of interest, which will be decided in the next few months, is whether the legislation permits HMRC to use a computer to impose certain penalties, without any human intervention.

Our one and (so far) only MPs' expenses appeal has been determined. The appeal related to the interpretation of the new rules on expenses; the amount at stake was only £26 but it appears that the issue in the appeal affects many MPs who now have clearer guidance about the treatment of expenses incurred partly for Parliamentary and partly for party purposes.

A forthcoming event of some moment will be our move from Bedford Square, to which our predecessors, the Special Commissioners and the VAT and Duties Tribunal, moved in 1990. The building is in part Grade I listed, and for good reason; but it was built as a dwelling (it was the home of, among others, Herbert Asquith and Lady Ottoline Morrell, though not at the same time) and has never been a very satisfactory tribunal hearing centre. The expectation is that we will be split over two sites: the judges and a small number of staff in the Royal Courts of Justice and the remainder of the London staff in the Rolls Building or Field House. That is not an ideal arrangement but it does at least keep us where we need to be, in central London. The move is expected to take place in the autumn of 2014.

I mentioned last year the retirement of some judges and members. Further retirements have occurred over the year, and more are imminent, notably David Demack who has been one of the two resident salaried judges in Manchester since 1992, and who retires in April 2014. There are still sufficient members in the Chamber, but we will soon have too few judges to provide a high quality service, and I have booked a place in the JAC queue. The forthcoming recruitment exercise will be undertaken jointly with the Tax and Chancery Chamber of the Upper Tribunal.

Contrary to my expectation last year, there has been little further discussion of the future handling of Scottish tax appeals. We are, in fact, still waiting to see the shape of the legislation introducing purely Scottish taxes as well as the provisions which will address cross-border issues. Some changes are, however, inevitable in the near future. I am confident we will cope with them.

I conclude with thanks to the Chamber's staff, in London, Birmingham, Manchester and Edinburgh. They have worked hard in difficult times, and have been a great support to the judiciary.

General Regulatory Chamber
President: Nicholas Warren

The case load of the smallest Chamber in the First Tier Tribunal does not begin to compare with that of the others. Still, the range of subject matter brings its own demands. The judges and administrators must work together to assist and enable parties, neither of whom are likely to be familiar with the Tribunal process.

Over the past year several new rights of appeal have made their home with the General Regulatory Chamber (GRC). Disputes about climate change agreements, plastic carrier bags in Northern Ireland, high risk reservoirs, and some food labelling all now come within

the Chamber's jurisdiction.

The most active of last year's newcomers has been the "Community Right to Bid". The Localism Act 2011 requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. Once an asset is placed on the list it will usually remain there for five years. The effect of listing is that, generally speaking an owner intending to sell the asset must give notice to the local authority. A community interest group then has six weeks in which to ask to be treated as a potential bidder. If it does so, the sale cannot take place for six months. The theory is that this period known as "the moratorium" will allow the community group to come up with an alternative proposal – although, at the end of the moratorium, it is entirely up to the owner whether a sale goes through, to whom and for how much. There are arrangements for the local authority to pay compensation to an owner who loses money in consequence of the asset being listed.

Contentious listings have included public houses, playing fields and a scout hut. The Chamber has a policy for any hearing to take place, if possible, within the community. The first such hearing concerning a pub in Hackney attracted nearly 100 members of the public to the Council Chamber at the Town Hall. Appeals so far have always been lodged by the owner of the land or buildings concerned. Tribunal administrators routinely write to any community group involved in the nomination to enquire about whether they want to make representations or be joined as a party.

Last year's report referred to the consequences for the charity jurisdiction of Lord Hodgson's review of the Charities Act 2006. Since then there has also been a report from the Public Administration Select Committee. There seems to be a consensus that a greater number of the decisions taken by the Charity Commission should be subject to a right of appeal. Along side this run concerns about costs. Of course, the Tribunal cannot prevent parties from spending a lot of money on legal representation; it can only continue to be flexible and accessible, enabling people to participate without feeling the need to engage an expensive advocate.

Two developments will help in this. First the National Council for Voluntary Organisations has produced a welcome guide to the Tribunal's procedures. Second, Tribunal judiciary met with representatives of the Charity Commission to discuss a number of initiatives to improve access to the Tribunal and proportionality in the handling of disputes.

The environment jurisdiction completed its handling of over four hundred appeals concerning nitrate vulnerable zones. No more will be heard of them for another three years although it is possible that the hydrologists who were recruited to judicial office will

have their expertise tested in connection with other aspects of environment law.

The biggest jurisdiction in the chamber is information rights. For the first time this year the Tribunal decided appeals against "monetary penalties", or in ordinary language "fines" imposed by the information commissioner. Large sums of money are at stake – the maximum penalty is £500,000. They represent a new challenge for the Tribunal and raise some difficult legal issues which will no doubt in due course be tested before the Upper Tribunal.

There have been some significant changes in the organisation of the information rights jurisdiction. Rebecca Worth, a solicitor already working within HMCTS, has been assigned to work as a registrar for the chamber. She has taken over almost all the case management in information rights adopting in her case management notes a new user friendly style which generally replaces the old fashioned reliance on "directions" to the parties. She is on hand to assist administrative staff at Leicester with occasional queries. New listing systems have been introduced allowing the Tribunal to be more productive. At the same time, there has been a greater emphasis on using courts and tribunals buildings up and down the country so that hearings are reasonably local for the Tribunal user. Early indications are that these new ways of working have reduced administration costs by about 13% and led to a substantial reduction in judicial costs.

Not all GRC administration takes place in Leicester. The Transport and Immigration Services jurisdictions are dealt with in London. During the course of the year this team moved from Kingsway to the Rolls Building which houses the Upper Tribunal.

Finally, Vivien Rose, who sat in the Charity and Environment jurisdictions, resigned from the Chamber on her appointment to the High Court Bench.

Property Chamber
President: Siobhan McGrath

The Property Chamber was successfully launched on 1st July 2013. The Chamber brings together the jurisdictions previously dealt with by the Residential Property Tribunal Service, the Adjudicator to the Land Registry and the Agricultural Land Tribunal. The Chamber marks a new departure for the Tribunal Service as its jurisdictions are almost exclusively party v party. The work of the Property Chamber Tribunals is therefore much more akin to (and in some cases the same as) disputes dealt with by the Courts. Altogether we will deal with almost 200 different jurisdictions, all concerned with property and valuation.

The work that has been necessary to bring the Chamber into being should not be underestimated. Thank you to the many people involved in the preparation of the necessary legislation, rules, new terms and conditions for judges and members, practice directions and statements, amendments to the IT and the drafting of new forms and guidance. All achieved whilst work continued as usual.

It is worth reflecting that it has taken more than 10 years for the Chamber finally to arrive. In 2002, the Law Commission had been asked to consider the position of tribunals concerned with land, valuation and housing. In 2003 its report, *Land, Valuation and Housing Tribunals: The Future*,[8] was published. It recommended that property tribunals should be grouped together into a generic Property and Valuation Tribunal with the right of appeal to a reformed Lands Tribunal. But the report did not reflect developments in the wider tribunal world and probably for that reason the recommendations were not taken forward. In 2004, the Law Commission was asked to undertake an extensive review of the way in which residential property disputes are resolved. So far as formal dispute resolution was concerned, it was asked to consider the case for establishing a housing court or housing tribunal with jurisdiction to determine all major disputes, including possession. Martin Partington's 2008 report, *Housing: Proportionate Dispute Resolution*[9] was the result of that review. Five years later we finally said goodbye to Rent Assessment Committees, Rent Tribunals, Leasehold Valuation Tribunals, Residential Property Tribunals, Agricultural Land Tribunals and the Adjudicator to HM Land Registry (the old Tribunals).

The Structure of the Property Chamber

The Property Chamber is divided into three parts reflecting the grouping of the source jurisdictions: Agricultural Land and Drainage; Land Registration; and Residential Property. The Principal Judge for Agricultural Land and Drainage is Nigel Thomas the Principal Judge for Land Registration is Edward Cousins. As well as being Chamber President, I will also be the Principal Judge for Residential Property.

For Agricultural Land and Drainage and Residential Property, the regional structures in place before the creation of the Chamber have been retained, but on a non-statutory basis. Each region has a Regional Judge and a number of Deputy Regional Judges or Deputy Regional Valuers.

8 Law Com 281

9 Housing Proportionate Dispute Resolution Law Com No 309

In order to take the work of the chamber forward we have established a Chamber Management Board which is supported by three sub committees dealing with membership, training and procedures.

Appeals

From 1 July, appeals for all decisions of the First-tier Tribunal go to the Upper Tier Tribunal. For Residential Property and Agricultural Land and Drainage decisions appeal is to the Upper Tier (Lands Chamber) and appeals in Land Registration cases go to the Upper Tier (Tax and Chancery Chamber).

Legislation and Rules

The Transfer of Tribunal Functions Order 2013 SI 2013/1036, abolished the old tribunals and effected the transfer to the Chamber and is a work of some complexity. The Order has amended every statutory reference to the old tribunals. This task was made even more complex by the fact that, as mentioned above, the equivalent Welsh Tribunals, for Agricultural Land and Drainage and Residential Property, remain outside the system.

The procedure for the Property Chamber is governed by the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, which replaced the six sets of rules which applied to the old tribunals. The task of designing and drafting suitable rules was not easy and the challenge for the Tribunal Procedure Committee was probably made more difficult by the need to accommodate the difference between administrative and party v party Tribunals. However, the task was accomplished and so far the rules have been a success. Perhaps the single greatest benefit for both the Chamber and for parties is that there is now one single set of procedural rules that will apply to all proceedings. This can only enhance both consistency and transparency. The statement in Rule 3 of the overriding objective to enable the tribunal to deal with cases fairly and justly is also welcomed.

Other highlights in the rules include the new case management powers contained in rule 6. Certainly for the Residential Property Tribunal Service (RPTS), one of the main difficulties in dealing with sophisticated jurisdictions had been the lack of flexibility in the procedural rules. Some of the old rules included little to enhance case management. Rule 6(1) now provides that subject to the provisions of the 2007 Act and any other enactment "the Tribunal may regulate its own procedure" and rule 6(2) enables the tribunal to "give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting asked an earlier direction". Rule 6(3) goes on to describe a number of case management powers, but these are expressed to be set out "without restricting the general power in paragraph (1) and (2). Together these provisions

will mean that the tribunal will be able to adapt properly to the demands of a varied and challenging caseload. Rule 8 which deal with failure to comply with rules, practice directions or tribunal directions is worth noting. It is constantly a matter of frustration when parties fail to comply with rules and directions. Under this rule, the tribunal "may take such action as the Tribunal considers just" to deal with default, which may include striking out a party's case under rule 9.

Practice Directions

In support of the new rules are Practice Directions. There are currently four: one setting out the Property Chamber regions; one giving details of documents to be included with applications; one specific to Residential Property dealing with amendments made by the Mobile Homes Act 2013 and one specifically for Land Registration giving supplementary detail on how the rules are to be applied to the proceedings.

Costs

For Land Registration cases, the full cost shifting rules continue to apply. For Agricultural Land and Drainage and Residential Property the tribunal may make an order in respect of costs only – under section 29(4) of the 2007 Act (wasted costs) or if a person has acted unreasonably in bringing, defending or conducting proceedings. The power to award costs under the second limb does not apply to rent cases. In 2011, Sir Nicholas Warren's report on costs in tribunals had recommended that the current cap of £500 cost in Leasehold Valuation Tribunal (LVT) and Residential Property Tribunal (RPT) cases be removed. Accordingly, there is now no limit on the amount of costs that may be awarded.

Caseload

The number of applications received and cases disposed by each jurisdiction in the Property Chamber for the financial year 2012-13 is set out below.

	Cases received	Cases Disposed
RP	10311	10047
LR	1185	1296
AL & D	253	252

Conclusions

The creation of the Property Chamber may be a first step in the rationalisation of housing dispute resolution. In such a specialist area, great care must be taken to ensure the proper application of expertise in law, in valuation and housing condition and in adjudication. So far as is compatible with the proper administration of justice, protection must be given to the more vulnerable parties who access those jurisdictions. Careful thought must be applied to the incidence of costs and the use of the new default powers. Whilst it is undoubtedly correct that users in particular will benefit from a rationalisation of dispute resolution, that advantage will only be achieved with careful preparation and consensus.

Chapter 3
Employment

Employment Appeal Tribunal
President: Mr Justice (Brian) Langstaff

The Employment Appeal Tribunal has suffered the curse of living in interesting times. Legislative change continues to affect, and increase, the jurisdictions which an Employment Tribunal will consider and hence those which may be appealed. But procedural changes are those with the greatest impact, in particular the introduction of fees, coupled with the limited circumstances in which remission of fees will be granted: £400 (for issuing a Notice of Appeal) with a further £1,200 (should a full hearing of the appeal be ordered on the ground that there is a reasonable basis for proceeding). These sums may not be easy to find and if the employment right at stake is likely to be of relatively low value, it may render it uneconomic to appeal. When coupled with the newly introduced cap of one year's salary, where the claim is for unfair dismissal, the impact was always likely to be significant, but it is impossible as yet to say what the long-term position will be: the fee remission system is still settling down, the underlying trend in appeals, prior to fees, remained on an upward trajectory, and experience from elsewhere suggests alternative methods of funding may become more prevalent. Viewed across 2013 as a whole there is little significant difference in the number of appeals lodged in comparison with 2012, and within the current financial year (beginning 1st April 2013) appeals have been received at an average rate which if extrapolated for the remainder of the year will show the receipt of 2,060 appeals. Since, in my previous report I recorded a total of 2,172 appeals received in 2011/2012 (a figure which rose to 2296 for 2012/13), this does not seem a great change. However, the impact of fees and allied changes has been present for only half the period since 1st April, and it is apparent that within that period there has been a reduction in receipts of a little over a third.

Within the year there have been revisions to the Rules governing the procedure at the Tribunal; a fresh Practice Direction; and a legislative change requiring the Appeal Tribunal to consist of a Judge alone unless (in judicial discretion) there are good reasons to sit with Lay Members.

A greater proportion of appellants are not professionally represented. The Tribunal remains particularly grateful to the legal professionals who operate what has been a trail-blazing scheme to provide free advice and representation by knowledgeable expert advocates

to those who would otherwise be unrepresented (the "ELAAS Scheme"), and for the continued involvement of the Free Representation Unit.

HHJ McMullen QC who as a senior circuit judge had been resident at the EAT for 12 years retired in October: he has been succeeded by HHJ Eady QC. Lady Smith, who sat mainly in Edinburgh, was appointed to the Inner House of the Court of Session; and has been succeeded by Lady Stacey in that role. The Tribunal also said 'goodbye' during the year to the services of HHJ Pugsley. Financial constraints have necessarily limited fresh staff appointments such that, particularly in the earlier part of the year, the staff worked especially hard in attempting to maintain their service to the public. Recognition of the quality of that service was afforded by the honour given to the Registrar, Pauline Donleavy, who received an OBE. Thanks are due to those retirees, and to those long serving Lay Members who also retired during the year, for the significant contribution each has made to employment law. The President continues to sit in Scotland, currently for five weeks per year, and Lady Stacey in London for a commensurate period. Practices have been re-organised so that appeals lodged in the Tribunal in the Edinburgh office are initially considered on paper in London (and some of those lodged in London, in Edinburgh). This takes full advantage of the fact that judges from both Scotland and England sit in the Tribunal to administer a system of employment law common to mainland UK. They benefit from this sharing of judicial approach, a benefit which it has been common experience that the mainland UK nature of the jurisdiction can provide.

Links with European and other jurisdictions at judicial level have remained strong – for instance the Tribunal has been visited by the President of the Industrial Court of Trinidad and Tobago and a reciprocal visit made; by Russian Employment Judges and by Hungarian colleagues; and the Resident Judges frequently speak to professional and student groups or participate in international employment law conferences, this year notably in Belgium.

The Tribunal, too, has played its part in the training of young advocates and professional development of more experienced Judges – a marshalling scheme is in operation and visits of law students encouraged; and Employment Judges have been offered an opportunity (in rotation) to sit alongside an Appeal Tribunal to observe though not participate. They have enthusiastically welcomed this.

The future is particularly difficult to predict, save that continued legislative change seems inevitable; appeals are likely to continue to become increasingly complex and litigants in person are more numerous; a drop in the number of appeals received in response to the introduction of fees is likely, though moderated by the trend, apparent before fees were introduced, towards an increase; and there are inevitable uncertainties that surround the

result (whatever it may be) of the referendum to be held in Scotland in September. The times are indeed interesting: but I report a Tribunal prepared for the challenges.

Employment Tribunal (England & Wales)
President: David Latham

The last 12 months has been a hectic and pressurised period for the Employment Tribunal system with an inordinate and unprecedented amount of change.

The jurisdictional landscape

The period of November 2012 to October 2013 continued to be hectic for Employment Law change and the Employment Tribunal. Regular consultations have continued as have requests for information and views, responses to consultations, statements of Government's intention in respect of Employment Law, Statutory Instruments and draft legislation. Some of it has resulted in legislation including the Enterprise and Regulatory Reform Act 2013 which received the Royal Assent on 25th April 2013. The provisions of that act are now being implemented progressively, some of which started upon Royal Assent and some implemented in summer and Autumn of 2013.

Implementation of further changes are expected over the next 12 months in respect of Employee Shareholder Rights, TUPE Reforms, rights and requests, flexible working for all employees, Tribunal penalties, early conciliation by Acas, shared parental leave the posting of workers enforcement directives.

As previously reported Ministers had agreed that there should be a review of the Rules on procedure. That work was carried out under the leadership of Mr Justice Underhill as he then was, a former President of the Employment Appeal Tribunal. Reports were made to Ministers and following consultation, the planned changes to the Rules were expected to be implemented in early April 2013. Unfortunately, and despite judicial concern, the implementation was deferred until 29th July 2013 so that the Rules could be implemented on the same day as the implementation of Fees which, in itself, then required further additions to the Rules (not at the behest of the working group). Although this resulted in some inconsistencies and difficulties, the primary concern of the judiciary and the Employment Tribunals was the delay in implementing the Rules. Our fear was that the introduction at the same time of two major changes to the system would inevitably result in software problems and confusion for users and experience has confirmed those fears.

However, now implemented the rules in essence are achieving what was intended in terms of providing flexibility, simpler language, more judicial discretion but also an obligation on the judiciary to explain why certain courses of action are taking place. In addition, a novel process was incorporated in the Rules of providing Presidential Guidance for the benefit of parties. Two such pieces of guidance have been issued in respect of England and Wales and a further Presidential Guidance in relation to Case Management is imminent.

The introduction of Fees has undoubtedly caused difficulties. The first apparent effect was a surge in claims lodged immediately before the implementation of the Fees and a reduction of claims lodged immediately after although levels are slowly increasing. Time will tell as to what the ultimate effect is but there is no doubt that the number changes to Employment Legislation, the new Rules and the introduction of Fees will substantially change the landscape of Employment Law, employment relations and the work of Employment Tribunals probably both as to volume and as to its nature. There is also the likelihood that the behaviour or pattern of parties, representatives and the Employment Tribunal system will substantially change, albeit progressively. Time will tell.

What has certainly not changed however is the complexity of the jurisdiction and the nature of the claims that arise before the Employment Tribunals. Lengthy and complex hearings are still common. It is of note that full hearings held by Employment Tribunals have become much more focussed on lengthy and complex hearings than in previous years. Many of the smaller claims do not proceed now to full hearing as they are resolved at the case management stage without the need to go to a hearing. The average award in Tribunals has not increased over the years. There is a misconception in the political and the business world that high awards are a common feature of Employment Tribunals.

Trends

The high volume of claims that were made to the Employment Tribunal during the recession and economic downturn has to a large degree abated. The intake of cases prior to the introduction of Fees on 29th July 2013 had not yet returned to pre recessionary times. There is still a considerable volume of work in the Employment Tribunal system particularly in terms of multiple claims which are unique to this jurisdiction. However, the volume has gradually reduced over the years following an increase in resources and the implantation of changes to judicial systems. In the first 4 months of the financial year 2013/14 the intake of single claims was roughly equivalent to the same period in the previous financial year. This was allied to a substantial volume of multiple claims. No doubt a contributory factor to this was the surge in claims that were received immediately prior to the implementation of Fees on 29th July 2013. Indeed, it has taken some weeks for the

whole increase in claims to be properly entered into the system.

Workload

The Employment Tribunal has again experienced a substantial reduction in its overall budget available for hearing cases. Despite this the tribunal has maintained the trend of a reduction in the workload and the overall number of cases disposed of. Given the reduction in resources and coupled with the increase in multiple cases and the increase in complexity of those cases going to a full hearing it is not expected that this downward trend will continue. As at the end of the first 4 months of this financial year, the date upon which Fees charging was implemented, in England and Wales there were 22,171 single claims and 527,446 multiple claims waiting to be dealt with[1]. The majority of the multiple claims remaining are Equal Pay cases (almost entirely from the public sector), a group of claims known colloquially as "the airline cases" and a considerable volume of cases arising from various insolvencies. The airline cases are in the process of being resolved and the intake of Equal Pay cases from the public sector is diminishing.

Developments

The Employment Tribunals continue to adapt and change practices particularly in respect of the new Rules which require considerable change in the approach by both parties and the judiciary. Previously implemented case management provisions and processes are accentuated and supported by the new Rules. The new listing procedures in unfair dismissal cases adopted 2½ years ago have resulted in considerable improvements in the way shorter cases are processed and have led to considerably fewer of them requiring a full hearing.

The new Rules have themselves provided additional focus on Case Management but also focus on the use of ADR by the system particularly by the judiciary. This is welcomed by the Employment Tribunal judiciary. Working groups have been formed by the President of the Employment Tribunals (England & Wales) to consider further areas where reforms and change can be made. Recommendations will be made through the Senior President in due course.

1 Figures in this section, and the following section, are taken from management information.

Judicial mediation

This facility offered by the Employment Tribunals continues to be popular with users. The savings in hearing days that arise from this continue to increase with the success rate in England & Wales in excess of 70%.

People and places

As reported last year, following changes introduced by the Government in April 2012, non-legal members no longer sat on unfair dismissal and related cases. That continues to be the position and has resulted in considerably fewer cases on which non legal members actually sit. As a consequence it may well be that the role of the Non Legal Members needs to be reviewed.

A recruitment exercise for up to 30 full-time equivalent Salaried Employment Judges took place at the end of 2012. The outcome of that was known in early 2013 but unfortunately because of administrative resource constraints the number eventually recruited was reduced to half that originally advertised and recruited for. The last of these to be appointed took up office in November.

A recruitment exercise for up to 60 fee-paid Employment Judge (an amalgamation of 2 consecutive year's exercises) also took place. It was only after that exercise was completed that administrative and resource constraints meant that only 40 of these could be appointed. It is disappointing that with no shortage of suitable candidates only 40 of the original intended 60 could be appointed. Those appointed attended induction training at the end of 2013 and started sitting on a limited range of cases.

The centralisation of each of the 12 Regions in England and Wales reported in the last two Senior President's Annual Reports, continues apace. Only very few of the Regions have yet to complete that centralisation. It is hoped that the benefits of efficiencies will soon be seen. The changes to the Regions reported in the last year's Report which had as part of its objective a rebalancing. This has now been fully implemented and the workload balance adjusted accordingly. The workload balance is however still distorted to a degree by the volume of multiple claims (a unique situation in the Employment Tribunal system) and which account for the largest proportion of claims in the Employment Tribunal system. Work is currently being carried out to analyse how if these matters can be dealt with differently and dealt with in a way that would be of benefit to the parties and to the Employment Tribunal system. As a result the Employment Tribunal is increasingly utilising court rooms and hearing rooms across the estate in accordance with HMCTS policy to ensure that the estate is utilised flexibly and as fully as possible.

Future developments

Managing change has become a primary objective of judicial managers in the Employment Tribunal. The volume of work continues to be dictated by the economic climate which is always difficult to predict, but the effect on morale both of the staff and the judiciary is undoubtedly of great concern. Low morale will always have an adverse effect on performance. The influence of Europe in such matters continues unabated, at least at the moment. All of this continues to contribute to a difficult and evolving future for Employment Tribunals.

Whatever results from proposals to change the funding basis of Her Majesty's Courts & Tribunals, it hoped that resources will increase to allow a better service to be delivered to the public.

Employment Tribunal (Scotland)
President: Shona Simon

The jurisdictional landscape

Last year I highlighted the fact that the Employment Tribunal system was waiting, with collective bated breath, for the introduction of fee charging and new rules of procedure. Each of these developments on its own could be characterised as a very significant change for the jurisdiction but in fact both were implemented on the same day – 29 July 2013 – in something that might be called a "big bang" approach!

While it would not be true to say that the introduction of fees or the new rules went entirely without a hitch the expertise, dedication and capacity for hard work of both the staff and judiciary in ET (Scotland) is reflected in the fact that, despite some significant difficulties, (particularly in relation to the ability of the case management system to generate the standard letters which are so crucial to service delivery) a good standard of service did continue to be delivered to tribunal users. It is difficult to over emphasise just how well all those involved did in what was always going to be a trying period for the jurisdiction. Behind the scenes administrative staff and members of the judiciary (working closely with their counterparts south of the border) worked far beyond the call of duty to ensure that standard letters (hundreds of them!) and guidance booklets were updated and, where none existed before (for example, in connection with fees), that new ones were produced. Standard Operating Procedures, used by staff to enhance consistency in

administrative processing across offices, were painstakingly amended in line with new rules and changes required due to fee charging.

While it had always been predicted that there was likely to be a spike in claims prior to the introduction of fees it was difficult to predict its size and the duration over which one might expect to receive a greater than usual volume of claims. Ultimately the spike turned out to be large but concentrated on the 2 to 3 day period immediately prior to 29th July. In that brief window Scotland received the number of claims it would normally receive in about a 5 week period. This, of course, added to the pressure faced by staff and judiciary already coping with significant changes. That said, August saw a very significant decline in the number of claims one would normally expect to receive in that month of the year. Undoubtedly this is due in part to the fact that many of the claims that might normally have been lodged in August were lodged early to avoid the payment of a fee. What is more difficult to assess is whether the fact that fees are now payable (principally when lodging the claim and just prior to any final hearing) has resulted in fewer claims being made than might otherwise have been received. At the time of writing it is just too early to say what the real impact is likely to be. What is clear, however, is that for the month of September 2013 the number of claims received by Employment Tribunals (Scotland) is, roughly speaking, one seventh of the number received in the same month in 2012.

Much work has been done in terms of communicating the changes to users, through National and Local User groups and through a series of judicial talks given in an effort to ensure that as many as possible are aware of the rule changes and what is now required in light of the introduction of fees.

Despite the administrative problems occasioned by IT related difficulties which impacted on the production of new standard letters, early user feedback in connection with the introduction of the new ET Rules of Procedure has been largely positive, particularly in relation to the relative simplicity of the language used in the rules. So far as fees are concerned it is clear that claimants and indeed some of their representatives have had some difficulties in getting to grips with some aspects of the system, particularly the provisions governing fee remission. This is likely to persist for a little while yet since the fee remission system in place on 29 July 2013 has been altered significantly with effect from 7 October 2013. Further public legal education work is thus likely to be required in this area over the coming months.

Further significant change is expected to occur in April 2014 with the introduction of early conciliation. The scheme envisaged will require all claimants considering bringing an ET claim to contact Acas before they can make a claim. Conciliation itself will not be

compulsory since a claimant will be able to say to Acas that s/he does not wish to explore resolution of the dispute through Acas but the main objective of the scheme is to try to increase the number of employment disputes which can be resolved without a claim even having to be made to the Employment Tribunal. If conciliation is not successful or a claimant does not wish to engage in the process then Acas will provide the claimant with a numbered certificate which confirms that the claimant has made the necessary contact with Acas. The number on the certificate will require to be provided as part of the minimum information which must be specified before a tribunal claim can be accepted. It is difficult to predict at this stage what impact pre-claim conciliation will have on the caseload of the Employment Tribunals. An update on this will be provided next year.

Cases/trends

Reference has already been made above to the significant spike in claims received in July 2013. However, looking at the year to the end of September 2013 there is a very significant reduction in the number of claims received by ET (Scotland), down from 6,232 to 4,276. That said, these figures should not be taken quite at face value: when one looks in a little more detail it is clear that the majority of this reduction is accounted for by multiple (group) claims which have declined from 3,985 to 2,219. The number of multiple claims received can vary dramatically from year to year: it only takes, for example, one large group equal pay claim to be made to double or even triple the multiple case load that might have been received in the previous year. Single claims are a much more reliable indicator of workload: there were 2,057 to end of September 2013 compared to 2,247 in the same period in the previous year.

As at the mid year point in 2013 Employment Tribunals (Scotland) are achieving the administrative target of 75% or more of cases being heard on their merits within 26 weeks of the claim being made. So far this year Employment Judges have issued 82% of their judgments within 27 days of the hearing concluding. It is worth noting in this context that there have been a number of complex, lengthy hearings this year, particularly in the field of equal pay, giving rise to decisions which in turn are complex and can take a great deal of time and effort to produce.

Since April 2012 it has been possible for Employment Judges to sit alone in unfair dismissal cases. The percentage of cases in which this has happened in the year to end of September is around 60%, up from the same time last year when the figure was just over 50%. Parties do have the right to request that a full tribunal is convened in such cases but very few requests are received for members to be appointed in such cases.

So far as individual cases of interest are concerned, the Scottish case of *North and Ors v Dumfries and Galloway Council* [2013] UKSC 45, which was heard by the Supreme Court on 20 and 21 May 2013 resulted in clarification of what the phrase "in the same employment" means for the purposes of equal pay law. Gratifyingly, the decision of the Employment Tribunal sitting in Glasgow, which had been reversed by the EAT, that reversal being upheld (although on different grounds) by the Inner House of the Court of Session was restored by the Supreme Court, that court holding that "The employment judge asked herself the right question and was entitled on the evidence to answer it in the way that she did".

A significant amount of judicial time has been spent over the last year dealing with equal pay cases, particularly two very complex challenges to Job Evaluation Schemes implemented by local authorities in Scotland, the position of the claimant being that the schemes are discriminatory on the grounds of sex. Each of these cases has involved painstakingly detailed evidence requiring to be considered by employment tribunals over a period of several weeks. Equal pay work remains a significant part of the case load of employment tribunals in Scotland, with just short of 55,000 claims outstanding although the number of cases is gradually declining over time as appeals on various points are dealt with by higher courts.

Judicial mediation

A judicial mediation service has continued to be provided by specially trained Employment Judges. Judicial mediation can, in theory, be made available in all cases likely to last three days or more. However, an assessment process is undertaken by the Vice-President to whom Employment Judges refer cases where both parties have expressed interest in mediation and the Employment Judge considers the case may be suitable. Ultimately it is for the Vice President to decide if the facility can be made available. In the year to end of September 2013 35 judicial mediation hearings took place in Scotland. The success rate was 77% with 89.5 hearing days estimated to be saved. In this regard it is worth bearing in mind that the cases which proceed to mediation are ones in which Acas has already had an opportunity to assist parties to resolve them through conciliation. Judicial mediation has been a highly successful in Employment Tribunals but it is not clear whether the fact that there is now a fee of £600 payable (by the respondent) will lead to a decline in interest in the scheme.

Innovations

Video conferencing equipment has now been made available in the Aberdeen Office

of Employment Tribunals (a shared venue with First Tier (Social Entitlement) which also makes use of the equipment). It has proved to be very useful on a number of occasions, particularly when dealing with parties in remote island locations. As one might imagine equipment of this type comes into its own when a service is being provided to a large geographical area, as is the case with the Aberdeen Office. The Employment Judges based in that office have developed a variety of techniques for ensuring that the interests of justice can be maintained when using the equipment.

We have continued with our evening sitting initiative which is very popular with service users. Short hearings take place from 17.30 to 19.30 on Tuesday and Thursday evenings each week in the Glasgow ET office. The vast majority of cases considered are small money claims (unpaid wages and the like). It remains to be seen whether the introduction of fee charging will have an impact on the number of claims of this type which the tribunal has to hear.

People and places

In 2013 we lost the services of a highly experienced salaried Employment Judge who was appointed to the Sheriff Court bench. However, her post has been filled on a job share basis by two Employment Judges, each of whom had already gained a great deal of experience while sitting as fee paid Employment Judges which has enabled them to "hit the ground running".

We continue to operate from five permanent venues (four full time and one part time) and from Sheriff Courts in Scotland as and when the need arises. There is an ongoing programme of Sheriff Court closures in Scotland. While most of the venues which we use are not affected a small number have or are due to close (e.g. Kirkcudbright Sheriff Court). It has been possible however to make alternative arrangements consistent with the desire to deliver justice as locally as possible.

Conclusion

Overall, it has been a very challenging year for Employment Tribunals (Scotland). Despite the uncertainty occasioned by the possible impact of fees on caseload, the Employment Judges and administrative staff have once again risen to the challenges they have faced with a display of commitment, enthusiasm and dedication, which is, in all the circumstances, nothing short of remarkable.

Chapter 4:
Cross-border issues

Northern Ireland
Dr Kenneth Mullan

On 25 January 2013, the Civil Policy and Legislation Division of the Department for Justice for Northern Ireland (DOJ) published a document entitled *Future Administration and Structure of Tribunals in Northern Ireland - Consultative Document*.[1] The Consultative Document was launched at a conference [2] hosted by the Department of Justice, the Law Centre (Northern Ireland) and the University of Ulster. The principal speaker was the Justice Minister.

The proposals in the Consultative Document were developed following responses to the *Discussion Paper on the Future Administration and Structure of Tribunals in Northern Ireland*.[3] The background to that Discussion Paper has been described in previous Annual Reports of the Senior President.

In summary, the Consultative Document '… proposed to create a simple, efficient and independent tribunal system by:

- merging the separate first instance tribunals into a single integrated structure, to be called the Appeal Tribunal, with common titles, practices and procedures and scope for the integration of further tribunals in the future;
- establishing common judicial leadership across all tribunals under the Lord Chief Justice of Northern Ireland, supported by a Presiding Tribunal Judge. The Lord Chief Justice will be responsible for the efficient disposal of business within the new system;
- streamlining existing mechanisms for hearings, reviews and onward appeals to provide greater consistency, efficiency and equality of arms;

1 The Consultative Document can be found at http://www.dojni.gov.uk/index/public-consultations/archive-consultations/tribunal-reform-in-northern-ireland-consultation.pdf

2 http://www.lawcentreni.org/news/recent-news/38-featured-slideshow/973-conference-launches-consultation-on-access-to-justice-for-tribunal-users.html

3 http://www.dojni.gov.uk/index/public-consultations/archive-consultations/tribunal-reform-consultation-on-the-future-administration-and-structure-of-tribunals-in-northern-ireland.htm

- underscoring the impartiality of tribunal decision making by providing a statutory guarantee of independence for tribunal members and consistency in appointment arrangements; and

- supporting the effective operation of the system by enhancing advisory mechanisms.'

The Consultative Document sought responses to nine key questions, as follows:

'1. Do you agree with the proposals to establish a new Tribunal?

2. Do you agree with the proposed new judicial structures?

3. We propose that cases on a point of law should normally be heard by a legal member sitting alone. Do you agree?

4. Do you agree that interlocutory work may be taken forward by suitably qualified Tribunal legal staff?

5. Do you consider that it would be helpful if the Tribunal encouraged the use of alternative dispute resolution procedures?

6. What should the grounds for reviewing a decision of the new Tribunal be? Are there any categories of cases which you consider should not be capable of review? Please give reasons.

7. Do you agree with the proposed arrangement for appeals from the new Tribunal?

8. Do you agree with the proposed new arrangements for the making of tribunal rules?

9. Do you agree with the proposal to establish a new advisory body to keep the tribunal system under review?'

A Summary of Responses to the Consultative Document[4] has now been published by Civil Justice Policy and legislation Division. Responses were received from a range of stakeholders with varying backgrounds including the judiciary, legal profession, academics, local government, voluntary organisations and medical profession. The key findings and next steps were summarised at pages 6 to 7, as follows:

4 A copy of that Summary may be found at http://www.dojni.gov.uk/index/public-consultations/archive-consultations/summary-of-responses-future-administration-and-structure-of-tribunals.pdf

'Overall, the respondents welcomed the overarching proposal to reform the tribunal system in Northern Ireland.

The key positive findings from the responses received are that:

- almost all of the respondents agreed with the proposal to establish a new Tribunal;
- most respondents agreed with the proposed new judicial structures (although there was some concern about the support required by the new Presiding Tribunal Judge);
- the majority of respondents agreed that some interlocutory work could be taken forward by suitably qualified legal staff;
- most respondents considered that it would be helpful if the new Tribunal encouraged the use of alternative dispute resolution ('ADR') procedures;
- most respondents were in favour of the suggested grounds for reviewing a decision of the new Tribunal; and
- almost all respondents agreed with the proposal to establish a new advisory body to keep the tribunal system under review.

The main issue of discontentment related to proposals for appeals from the new Tribunal. The majority of respondents did not agree with the proposed arrangements.

There were also mixed views on the proposal that cases on a point of law should normally be heard by a legal member sitting alone. Opinions were divided over the proposed new arrangements for the making of tribunal rules and the proposal not to confer the title of judge on individual tribunal members.'

It is important to note that the original proposals for onward appeals from the new amalgamated Tribunal had not included a proposal to establish a parallel body to the Upper Tribunal. As was noted above, the majority of respondents to the Consultative Document did not agree with such arrangements.

The Department of Justice has indicated that it wishes to take some time before finalising its proposals.

Scotland
Shona Simon

In last year's report I made reference to the fact that about two years had passed since a consultation document was first promised by the Ministry of Justice which would deal, amongst other things, with the options available for the governance and judicial leadership of reserved tribunals in Scotland. In essence, it had been indicated that consideration was being given to the devolution of the reserved tribunals, it being mooted that their administrative support could be provided by the recently created Scottish Tribunal Service, and that judicial leadership could lie with the Lord President, Scotland's most senior judge. However, it has now been made clear by the Lord Chancellor that the governance position of the reserved tribunals operating in Scotland will remain unchanged for the foreseeable future. The main reason put forward for this change in position is that there are already a number of changes underway which affect reserved tribunals (for example, the introduction of fees within the Employment Tribunal, changes to the benefit system which impact on the First Tier (Social Entitlement) Tribunal) and that it would be sensible for these changes to be bedded in before further change is contemplated.

The governance arrangements for reserved tribunals operating in Scotland continue to be a little different to those which apply to tribunals in England and Wales. The HMCTS Board does not have direct governance responsibility for Scottish reserved tribunal matters, but instead the Senior President of Tribunals, together with the Chief Executive of HMCTS on the administrative side, remains directly responsible for ensuring effective performance and for providing appropriate leadership and support. While this was a provisional arrangement put in place pending further consideration of the devolution of the reserved tribunals, it would be fair to say that it is now the established position, albeit there has been one change in the past year which it could be said strengthens the cross-border links on the administrative side. Previously, responsibility for operational delivery, so far as the reserved tribunals were concerned, lay with a senior civil servant who was based in Scotland and whose HMCTS responsibilities (which he combined with the role of Chief Executive of the Scottish Tribunal Service) were limited to Scotland. Since that individual has moved to pastures new, Jason Latham, Deputy Director (Tribunals) has been given the additional responsibility of acting as Delivery Director for Scotland. Given his overall remit is cross-border in nature, it may be argued that this strengthens the link between the reserved tribunals in Scotland and those which are operating in England and Wales on the administrative side.

The foregoing arrangement does not mean that what happens at the HMCTS Board has no relevance to Scotland. Decisions taken there about resourcing and policy matters generally are applicable in Scotland. It follows that it is important that Scottish views

and concerns can be relayed to the Board. As I have previously noted, one of the steps taken to assist with this process was the formation of the Scottish Reserved Tribunals' Group. That group, made up of senior reserved tribunal judiciary and senior Scottish HMCTS administrators, has continued to meet over the course of the last year, under the chairmanship of Lady Smith (a judge of the Court of Session who was also previously the Employment Appeal Tribunal judge in Scotland). This group provides a useful forum for discussion of a range of policy and operational matters of interest both to the judiciary and the administration and continues to be a mechanism designed to ensure that any concerns of the reserved tribunals can be highlighted to the HMCTS Board. By way of example, in the past year discussions at the group have assisted the reserved tribunals' judiciary to understand how the newly-developed HMCTS security policy and protocols are to be implemented in Scotland.

Given the reserved tribunals will remain part of the HMCTS world for the foreseeable future, it will be important to ensure that they remain closely linked both judicially and administratively to the structures in place in England and Wales. That having been said, it is also beneficial for the reserved tribunals to be recognised as a significant part of the justice system in a Scottish context, given that they are providing justice to people who reside in Scotland. One of the ways in which the reserved tribunals are linked into the Scottish system is through membership of the Judicial Council for Scotland. The Council, which was established in 2007, has a membership which is drawn from all categories of judicial office-holder in Scotland. The purpose of the Council is to provide information and advice to the Lord President on matters relevant to the administration of justice in Scotland. Ongoing work is carried out through a committee structure. Both the reserved and devolved tribunals are represented on the Council and on its sub-committees: this provides a very useful linkage between all tribunals and courts in Scotland.

Links between the reserved and devolved tribunals' judiciary in Scotland are maintained through the Scottish Tribunals Forum, which is chaired by Lady Smith. Senior judiciary from the reserved tribunals (at first instance and appellate levels) and from the larger devolved tribunals sit on this group, together with senior administrators and Scottish Judicial Office staff. Until its abolition, the AJTC (Scottish Committee) was also represented at the Forum. The Forum provides an opportunity for the reserved and devolved tribunals' judiciary to share knowledge and experience as well as allowing them to discuss tribunal related developments in Scotland which are relevant to both devolved and reserved jurisdictions.

While it might be said that little has changed in the context of the reserved tribunals since last year, the same cannot be said of the devolved tribunals' world in Scotland. On 9 May 2013 the Scottish Government introduced the Tribunals (Scotland) Bill into the

Scottish Parliament. That Bill, if enacted, will establish two Tribunals known as the First Tier Tribunal for Scotland and the Upper Tribunal for Scotland. The approach adopted in the Bill to tribunal structure and governance is not dissimilar to that found in the Tribunals, Courts and Enforcement Act 2007. Of particular note is an obligation on Scottish Ministers, the Lord Advocate and members of the Scottish Parliament to uphold the independence of the members of Scottish Tribunals. The Bill also sets out provisions for the establishment of an office which will be known as President of the Scottish Tribunals. It is the responsibility of the Lord President to assign someone to that office and the incumbent must be a judge of the Court of Session. The Lord President has already indicated that should the Bill be enacted, it would be his intention to nominate Lady Smith to this position.

The Scottish Justice Committee took evidence in September 2013 from a variety of individuals including the Lord President and other members of the judiciary. The Bill completed Stage 1 of its parliamentary progress on 7th November 2013. As at January 2014 it was at Stage 2 of the process which provides a further opportunity for amendments to be proposed. There is every reason to expect that the Bill will be enacted in the early part of 2014.

Wales
Libby Arfon-Jones

The tribunal landscape in Wales continued to provide challenges. The Silk Commission on Devolution is due to report by March 2014 which is eagerly awaited.

At a Law Society Legal Seminar on 6 June 2013, chaired by the President of Queen's Bench Division, Sir John Thomas, there was discussion on devolution in practice; how the administration of justice actually works and the practicality of strengthening the legal profession in Wales.

I had the opportunity to give a short presentation focussing on tribunals in Wales. I reported on the role of the Welsh Government in assisting the tribunal system in Wales and acknowledged the hard work of the Administration Justice and Tribunals Unit within the Welsh Government to provide coherence in the field of administrative justice. The Unit has made sustained progress in administering devolved tribunals.

The Welsh Tribunals Contact Group (WTCG) met throughout 2013 and was delighted to welcome the Senior President of Tribunals, Lord Justice Sullivan, to one of its meetings.

The provision of training for legal and non-legal members of devolved tribunals in Wales remains a matter of concern, one which the Welsh Committee of the Judicial College is well aware. That committee is now chaired by Mr Justice Wyn Williams, following Mr. Justice Roderick Evans' retirement earlier in the year.

The Judges' Council Standing Committee for Wales, chaired by the Lord Chief Justice, met during the year and tribunal issues were discussed regularly at those meetings.

The recruitment of a President for the new Welsh Language Tribunal is to be launched shortly. Final interviews are scheduled for mid- March. The panel will be chaired by his Honour Judge Milwyn Jarman QC; Professor Noel Lloyd, a Judicial Appointments Commissioner and I are the other panel members.

It is anticipated that the process will provide a template for future judicial appointments to devolved tribunals in Wales.

Following the abolition of the AJTC, a new Welsh Administrative Justice and Tribunals Advisory Committee has been established to assist in taking forward the tribunal reform agenda. The Committee met in November; its membership is substantially the same as its predecessor committee.

Chapter 5
Committees, Working Groups and Training

Tribunal Procedure Committee
Mr Justice (Brian) Langstaff

The Tribunals Procedure Committee (TPC) plays a vital role in ensuring that justice is delivered. It does so by making the rules which govern procedure within tribunals: the rules are critical in ensuring that justice is achieved. The statutory duty is to ensure this by making the tribunal system accessible, fair, quick and efficient by making simple, and simply expressed, rules.

The period of this report spans 20 months, in order that a perspective can hereafter be given, year by year, beginning each January. That period has been particularly busy, but, as always, interesting.

In addition to keeping all sets of Tribunal Procedure Rules under constant review, the TPC made four amending Statutory Instruments; ran six detailed public consultation exercises; and worked on two major sets of new rules in respect of the First-tier Tribunal.

A major piece of work was formulating rules for the launch of the Property Chamber in July 2013. The Chamber brings together jurisdictions which had previously been separate, though sharing some commonality of subject: Residential Property Tribunals, Leasehold Valuation Tribunals, Rent Tribunals, Rent Assessment Committees, Agricultural Land Tribunals and the Adjudicator to Her Majesty's Land Registry. The work had to begin well in time for extensive consultation, and development of the new rules.

Provision had to be made to enable the transfer of judicial review proceedings from the High Court to the Upper Tribunal, following earlier provision to enable the determination of "fresh claim" judicial review applications by a Tribunal rather than by the Administrative Court.

Quite apart from this, the volume of work was as substantial as in previous years, and on occasion subject to considerable time pressures. For example, a quick response was needed to implement a rule change called for by a decision made by the Court of Appeal in respect of decisions in judicial review proceedings before the Immigration and Asylum Chamber

of the Upper Tribunal. The Upper Tribunal Rules have been amended UK-wide to allow an application for permission to appeal to the Court of Appeal to be made to the Upper Tribunal immediately at the hearing. Similarly, the TPC quickly introduced consequential amendments to the Upper Tribunal Rules applying in financial services cases to reflect changes made by the Financial Services Act 2012 to the Financial Services and Markets Act 2000. This ensured that some 20 financial services cases that were in hand at the time were able to proceed without any delay.

A key part of the TPC's work is to consider the many new appeal rights and consequential technical amendments, such as nomenclature, brought about by policy and legislative change. This year has been no exception with a significant piece of work, involving Her Majesty's Courts and Tribunals Service and the Department for Work and Pensions, on amendments specific to the Social Entitlement Chamber Rules to reflect the introduction, as part of the welfare reforms, of the mandatory reconsideration of decisions prior to appeal; direct lodgement of appeals at the Tribunal; and consideration of time limits for responses. This work has largely been completed.

There were also almost 40 new appeal rights to consider during the period of this report. The range is eclectic, and may impact on a small section of the general population, but nonetheless requires a consideration which may have to be all the more careful as the subject matter becomes less familiar. Examples of new appeal rights for which the TPC has had to provide include the "Green Deal", Drink Drive Rehabilitation Schemes, Flood and Water Management Act appeals, appeals in respect of Nitrate Vulnerable Zones and the Community Right to Bid. For each new appeal right provided for by legislation, the TPC considers whether to include questions or issues in government consultation papers, reviews the draft regulations and ultimately considers whether any rule changes are needed and if so, what they are and how they should best be expressed.

I am proud to have led a Committee whose members have shown unwavering commitment and energy. This is all the more remarkable because the job itself carries no remuneration and often involves extensive hours of work of a technical and detailed nature, which (when the call has come) all have unstintingly given often at the cost of their personal convenience or that of their families. That they should be prepared to offer this is in my view the best testament to the value of the work which the TPC does: if it were not of such importance to justice, it is difficult to see why they should volunteer and persevere as they do. I am grateful, too, for the devoted assistance given to the TPC throughout the year by its Secretariat, drawn from within the Ministry of Justice, from policy and legal officials – especially the invaluable work, of high quality and often under significant pressure, done by its inestimable Secretary, Julie McCallen, whose patience has

been sorely tested on occasion yet has never failed; and by everyone who has taken the time to respond to the Committee's public consultation exercises. In particular, I would like to thank those who have given specialist input and expertise from the First-tier and Upper Tribunals, and in particular Siobhan McGrath, Peter Lane and Mungo Deans.

Tribunals Judicial Executive Board

TJEB is chaired by the Senior President and membership comprises the Chamber Presidents and the Presidents of both the Employment Tribunals in England & Wales and Scotland and the Employment Appeals Tribunal. Lady Anne Smith has continued to attend as the Lord President's nominee for tribunals issues in Scotland.

The Senior President has reviewed the leadership meetings and as a result TJEB now meets four times a year; February, June, October and December. In place of verbal reports from sub groups, chairs now make short written reports which are circulated in advance of TJEB allowing greater time for discussion of substantive issues.

TJEB has continued to consider a range of both policy and practical issues. With Judicial HR now established as a standing item on the agenda, officials attend regularly to update the Board on a range of initiatives and policy matters that affect tribunal judiciary such as the Skills and Abilities Framework, stress management and a pilot of revised grievance procedures. Other items included the proposed transition of HMCTS and MoJ website content to Gov.UK; new jurisdictional databases and the tribunal phase of the Judicial Office review of the Handling of Judicial Personal Data.

Judicial Activity Group
Phillip Sycamore

The Judicial Activity Group (JAG) provides for the four largest First-tier Tribunals chambers and jurisdictions to have a focused discussion about judicial and operational issues and in so doing to support the Senior President in carrying out his statutory responsibilities. The group is not a decision making body. That role rests with TJEB.

Following the Senior President's review of the governance structure towards the end of 2012, the Judicial Activity Group now works to a set schedule of meetings rather than the previous ad hoc arrangement. Under the new arrangements JAG meets four times a year,

each meeting taking place roughly two weeks in advance of the meetings of TJEB. This allows for discussion at TJEB of any matters arising from the preceding meeting of JAG.

The core judicial membership remains as the Chamber Presidents of the four largest jurisdictions although the agenda is circulated to the other Presidents in the First-tier Tribunal so that they may attend if items for discussion have a direct interest or impact on their chamber. The administration is represented by the Director and Deputy Director HMCTS Civil, Family and Tribunals. HMCTS officials attend regularly to provide updates on appointments and performance.

Discussions this year focussed on the resource allocation, judicial recruitment and performance. HMCTS Workforce Planning attended to provide progress updates on current competitions and to discuss forecasting for 2013-14.

The reports provided on performance are work in progress and continue to be refined to take into account the views of the Chamber Presidents and the needs of individual jurisdictions.

Tribunals Judicial IT Group
Judith Gleeson

This is my first full year as the Senior President's Judicial Lead on IT in the Tribunals. What follows is a summary of the most important concerns for the Tribunals Judiciary up to the end of October 2013.

The principal themes for 2013 have been the replacements for the Portal and for our telephone system; network performance; e-filing, eBooks, and eDocuments generally; video hearings; and the monitoring of pilots and trials across the judiciary.

Portal replacement

Work is well advanced on eJudiciary, which will replace the Portal and provide a modern solution on a secure web-based platform, with a full suite of Microsoft applications, including email, held outside the GSi. It has needed a complete reassessment of the security requirements for judicial work, which (except for certain more sensitive matters) are in reality well below the high IL3 standard which the GSi requires. Those files, emails and folders requiring higher protection can be encrypted and access to them limited to those who have authority to consult them.

EJudiciary will also provide secure video telephony for video hearings through the Microsoft Lync product. It is very much cheaper to run than the Portal and it will therefore be possible to give access to all judges, salaried and fee-paid, on whatever equipment they use, and wherever they are working. It can be rolled out very soon, probably toward the middle of next year, and because of the cost savings, we expect there to be enthusiasm for so doing.

Other electronic solutions

The criminal courts are piloting an eFiling/eDocument product. While there was some involvement by Tribunals IT judges in choosing that product, the pilot does not concern us at the moment since it is limited to criminal proceedings.

The Upper Tribunal (IAC) will be piloting early next year an eReader which will allow us to consult page-identical versions of our two main handbooks on any equipment. If that is successful, it will be rolled out more widely and for more publications, subject to cooperation from the publishers. Not all judges will continue to require hard copies of the books though all judges may have them. Again, it should be possible to negotiate significant financial savings as well as providing more flexible working.

Network problems

There were significant problems with the network over this summer, as well as an absolute blizzard of announcements about network problems. JAG is endeavouring to get proper statistical information about the sources and frequency of network issues at priority 1. ATOS have had some difficulty in providing them in a usable and statistically reliable format but a third version is awaited for the next JAG meeting. It is not yet possible to say whether the anecdotal impression of serious problems is statistically sound.

The timing is poor: our existing telephone system requires urgent replacement and contracts had been signed (without any judicial testing or adequate judicial input) for a network telephony system over our existing networks. It will be cheaper to run telephony through the network we already have, but the network cannot properly support it, even on the partial rollout so far. It works very badly indeed. It is certainly not good enough for telephone hearings and it places even more strain on a network which may already be performing poorly. The rollout is now on hold pending resolution of the technical issues.

The IT Board

The Tribunals Judicial IT Board has been reshaped and pruned, to ensure coherent

representation of all Chambers, though not necessarily individually. The new Board will meet at the end of November 2013.

We are currently reviewing the Terms of Reference, which are inconsistent as to what is required from the Board. In my opinion, the Board is best used to provide a focus for information about the needs and use of technology in Tribunals, both for the senior judiciary and for MoJ admin when commissioning or replacing equipment or software. The existing Terms of Reference also require the Board to supervise judicial pilots and projects. There is no common list of projects on which to draw.

The habit of judicial consultation with reporting back via this Board seems to have been lost over the last few years, resulting inter alia in an extremely poor decision being made about the network telephony system.

Future thoughts

2014 should see us out of the GSi and with a usable product enabling us to work anywhere and to access our emails and diaries from any modern equipment. The move to working electronically and on any available kit is particularly relevant to judges, and to disability adjustment where required, since it reduces the need to carry about large files and textbooks. However, it remains my firm view that judges are entitled to work either on paper or electronically, in the way which best suits them. Judicial time is one of the greatest expenses in the preparation of any final decision and judicial work practices should not have to adapt to the kit available; it should always be the other way round.

Tribunals Judicial Medical Advisory Group
Robert Martin and Dr Jane Rayner

The First-tier Tribunal is an expert body that makes extensive use of the expertise of the medical profession among its office holders. There are currently 1,438 medical practitioners serving as members of the Tribunal. The 7 jurisdictions which use medically qualified members include Mental Health, Social Security, War Pensions, Criminal Injuries Compensation, Primary Health Lists and Care Standards. Medically qualified members also sit on the Gender Recognition Panel.

The Medical Advisory Group advises the Senior President of Tribunals on issues relating to

medically qualified members of the First-tier Tribunal.

The main activity of the Group over the past year has been to develop a scheme to support medical members who wish to participate in the GMC's system of revalidation but who have no avenue to do so, save through their tribunal work. The system of revalidation is closely similar to the appraisal schemes operating within tribunals.

Tribunal Judicial Publications Group
Robert Martin

The object of the Group, which comprises judicial representatives from each chamber and pillar and specialists from the Ministry of Justice's Library and Information Services, is to promote ways of improving the efficient supply and distribution of publications, on-line services and other reference materials for judicial use. The Group has a standing role in the budgetary process by reviewing information expenditure and procurement plans.

A theme of the Group's activities in 2012-13 has been examining the scope for replacing hard copies of legal reference works by e-Readers installed on judicial laptops and other mobile devices.

Communications Committee of the Judges' Council
Alison McKenna

Alison McKenna has continued to represent the Senior President on the Judges' Council Communications Committee. Much of this group's work goes beyond the remit of Tribunals, for example in relation to the Judges' Media Panel and the forthcoming arrangements for broadcasting from the Court of Appeal.

In relation to Tribunals, this year the Judicial Office press team has worked closely with judicial leaders in a number of tribunal jurisdictions to ensure that Judges are aware of the type of cases which attract press comment and to ensure that they know how to obtain assistance when they need it. The press team has emphasised to Tribunal Judges in these jurisdictions that it relies on them to provide a copy of the decision in question promptly so that it can respond to any press queries by quoting accurately from the decision itself. This initiative has been well-received by the jurisdictions concerned.

The Judicial College
Professor Jeremy Cooper

General Background

Since last year's report I am pleased to record that the Judicial College continues to go from strength to strength. Against a background of diminishing resource we have maintained both the level of tribunal training programmes and a high level of satisfaction amongst the judicial office holders who attend our courses.

Core statistics

The Residential Property Chamber became part of the Judicial College in April 2012 and, with the creation of the Property Chamber in July 2013, training in the Agricultural Land and Drainage Tribunal (England) is now under the auspices of the Judicial College. This means that the College now provides training in 34 separate jurisdictions across large parts of the United Kingdom.

In purely statistical terms, in the financial year 2012-13, the College delivered 373 residential and non-residential courses (including 79 evening training events in SSCS) to 11,033 judicial office holders in tribunals (1,045 of which were judicial office holders attending evening training events).

Evaluation of Tribunal Training Programmes

In the period 2012-2013, there were two multi-jurisdictional summary evaluation reports drafted for the Tribunals Committee, which is chaired by Judge Nicholas Warren. The reports covered the Social Security and Child Support, Mental Health, Immigration and Asylum, Residential Property, Tax, and Criminal Injuries and Compensation jurisdictions.

The evaluations reports (based upon participant feedback) suggested that in 91% of courses the learning outcomes were met and that 93% of participants deemed the training events to be useful to them in carrying out their judicial roles. Lectures, case studies, small group work, opportunities for discussion with colleagues and materials were all aspects of the programmes highlighted as being useful. Conversely, the lack of time to practice, read documents, for more syndicate work, and to master the range of materials and exercises was seen as the biggest challenge consistent throughout most jurisdictions, suggesting that judicial office holders want more rather than less training opportunities. Overall, participants reported that the courses increased their knowledge and confidence to enable them to carry out their judicial functions and further develop their skills.

The Mental Health jurisdiction has devised a challenging new approach to evaluation called the Whole Programme Evaluation which they hope will inform their planning process when developing programmes to meet the changing needs of their jurisdiction in the coming years.

Training for Hearings with Unrepresented Parties

As the availability of legal aid to parties in a wide range of disputes continues to haemorrhage, the civil and criminal courts are facing increasing numbers of unrepresented parties appearing before them. This is causing great concern amongst the courts' judiciary. In contrast, most tribunals already have long experience of dealing with unrepresented parties and adapt their working procedures to accommodate this reality.

Across the tribunal sector we maintain a broad consensus that embedding the practice of dealing with unrepresented parties lies at the heart of any good training programmes. This in turn reflects the law based overriding objective for tribunals to deal with cases 'justly and fairly', requiring that a) tribunals should conduct their affairs avoiding unnecessary formality; and b) tribunals should ensure so far as practicable, that the parties are able to participate fully in the proceedings. Excellent examples of tribunal training programmes that focus on hearings involving unrepresented parties are to be found inter alia in jurisdictions dealing with Social Security and Child Support, Criminal Injuries Compensation, Immigration and Asylum, Care Standards/Primary Health Lists/Special Education Needs and Disability and Asylum Support.

Judgecraft Training

The Judicial College Strategy for 2011-14 commits us to piloting various approaches to common training for both tribunal and courts in the skills and social context of judging. Cross-jurisdictional pilots on judgecraft skills for judges took place early in 2013. The pilot was called The Business of Judging, and was delivered under the Chairmanship of Mrs Justice Cox. Following these successful pilots the course has been refined and repeated on several occasions mixing together judges drawn from every jurisdiction within the College remit (with the exception of magistrates) Around 200 judges have now completed this course and it continues to be a popular training event for judges from a wide range of tribunal jurisdictions.

Training in the Social Context of Judging

The Judicial College Strategy 2011-14 states that Judicial Training consists of 3 elements as follows namely 1) substantive law, evidence and procedure and, where appropriate,

"subject expertise"; 2) the acquisition and improvement of judicial skills including, where appropriate, leadership and management skills, and 3) the social context within which judging occurs. 'Social context' includes diversity and equality.

These elements are integral to the College's training programmes. Following a detailed review of the ways in which tribunal training events cover issues of social context I can report that in tribunal training programmes a great deal of thought has been given to ensure that wherever appropriate the social context in which judging occurs plays a central role in training activities.

To this end programme designers for tribunals' training have developed a range of innovative and imaginative approaches to social context training. For example, a number of jurisdictions invite speakers to address delegates on social issues of relevance to their work. The list is voluminous and includes disabled users, specialist academics, deaf interpreters, audiologists, speech and language therapists, and representatives of specialist bodies such as the Police Force, the Probation Service, Stonewall, the Scottish Transgender Alliance, Southall Black Sisters, the Ethnic Minority Law Centre, Combat Stress and the British Legion.

Challenging common misconceptions in the security of a small group training forum through guided discussions of case studies, analysis of unconscious bias in individual participants, and its relevance to issues of recusal is another popular training method. Other programmes seek to ensure that office holders are trained to build flexibility into the conduct of hearings to respond to disability, or lack of communication skills or other disadvantages experienced by tribunal users at a hearing. Some programmes seek directly to engage with the expertise of specialist tribunal members with particular understanding of social context issues (medical and psychiatrist members, educationalist and social worker members etc.) both in training programmes, and in managing a hearing. Another method encourages observations of the conduct of other hearings as a pathway to self-assessment regarding more personal responses to social context issues. The mental health tribunal runs a training session entitled The More Productive Tribunal which focuses upon the range of tribunal skills required to understand and address the negative impact of social background of some users on their capacity to experience a fair hearing. Other jurisdictions in that Chamber provide special training sessions on 'communicating with vulnerable adults' and the use of language generally as a facilitation of a fair hearing. The Special Educational Needs jurisdiction has invited judicial office holders to examine the forms that are used by users applying to a tribunal, to provide feedback on their (in) appropriateness in certain social contexts with a view to changing them if necessary as part of training programme. Most jurisdictions provide special sessions on equal treatment issues at induction

programmes. The list is impressive and expanding exponentially.

Developing e-Learning Programmes

In order to maximise the benefits now available to all judicial office holders through the recently established Judicial College Learning Management System (LMS) we are developing a range of interactive e-Learning programmes including an on-line orientation course for all new judges. We already have around 10 programmes available on the LMS for tribunal office holders with at least the same number being developed in the course of the next 12 months. We envisage the use of e-Learning as an increasingly important source of complimentary learning in our training programmes over the coming years.

Leadership and Management Development

The College is in the process of designing tailored leadership and management training and development for tribunal and courts judges holding leadership and management positions. It is intended to launch the programme in March 2014.

International Activity

The College has submitted a number of tribunal training practices for consideration as examples of best practice to the EU Project on Best Practice in Judicial Training. The Project Final Report will be published in the Spring of 2014. We hope that some of our training practices might be seen as transferable models of best practice that could be used across the European Union. A number of tribunal judges have participated in this year's EJTN exchange programme, and others are attending study tours at the European Court of Justice and the European Court of Human Rights, alongside courts' judge colleagues.

Equal Treatment Bench Book (ETBB)

The new edition of the ETBB has been published online on the LMS. The advantage of the electronic format is the wide number of links to further information that it provides, together with its capacity to be regularly monitored to ensure it is up to date with developments in this field.

The College Academic Programme

As part of our drive to expand our engagement with judicial office-holders beyond the strict confines of our training programmes, the College put together in the course of 2013 an academic programme to complement its core training programme. The Academic

Programme consisted of a series of six lectures entitled *Being a Judge in the Modern World*. The lectures were open to all judicial office holders and proved highly successful. A large number of tribunal office-holders attended. As we go to press the first five lectures have been delivered respectively by Lord Carnwath (London), Lord Judge, (Cardiff), Shami Chakrabati (Manchester), Joshua Rozenberg (Oxford) and Madame Justice Desiree Bernard (London). The final lecture in the series is to be delivered in March 2014 at Birmingham University by Lord Thomas, the Lord Chief Justice.

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