

RMM LAW COLLEGE SAHARSA

ADMINISTRATIVE LAW

IIIrd Part

Paper -VII

TOPIC- Administrative Tribunals and their decisions & Administrative Acts and Functions

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INTRODUCTION

Tribunals have been defined as “Bodies outside the hierarchy of the courts with administrative or judicial functions” (Curzon, *Dictionary of Law*, 1994, p387).

Administrative tribunals resolve disputes between, for example, the citizen and an officer of a government agency or between individuals in an area of law in which the government has legislated the conduct of their relations.

REASONS FOR EXISTENCE

Administrative tribunals have been established by statute, in the main, to resolve:

- disputes between a private citizen and a central government department, such as claims to social security benefits;
- disputes which require the application of specialised knowledge or expertise, such as the assessment of compensation following the compulsory purchase of land; and
- other disputes which by their nature or quantity are considered unsuitable for the ordinary courts, such as fixing a fair rent for premises or immigration appeals

The main reasons for the creation of administrative tribunals may be identified as:

- the relief of congestion in the ordinary courts of law (the courts could not cope with the case-load that is now borne by social security tribunals, employment tribunals and the like);
- the provision of a speedier and cheaper procedure than that afforded by the ordinary courts (tribunals avoid the formality of the ordinary courts); and
- the desire to have specific issues dealt with by persons with an intimate knowledge and experience of the problems involved (which a court with a wide general jurisdiction might not acquire).

Note: a distinction must be drawn between administrative tribunals and domestic tribunals. Domestic tribunals are bodies appointed within an organisation to decide disputes, eg, the Disciplinary Committee of the General Medical Council, which controls the professional activities of doctors.

CLASSIFICATION OF TRIBUNALS

Administrative tribunals are sets of tribunals which adjudicate on specialist civil disputes outside of the court system. Darbyshire has reported (2008) that there are over 130 such bodies in the UK covering a vast array of areas. Until recently each tribunal was separate and in 1996 the list of administrative tribunals included: agricultural land tribunals, child support appeal tribunals, the Civil Aviation Authority and the Director General of Fair Trading in their licensing functions, criminal injuries adjudicators, the Data Protection Registrar, education appeal committees, immigration adjudicators and the Immigration Appeal Tribunal, industrial tribunals (renamed employment tribunals), the two Lands Tribunals, mental health review tribunals, the Comptroller-General of Patents, war pensions appeal tribunals, rent assessment committees, social security appeal tribunals and the Social Security Commissioners, disability and medical appeal tribunals, the general and special commissioners of income tax, traffic commissioners, valuation and community charge tribunals, and VAT tribunals.

However, these tribunals have now been incorporated into the unified Tribunals System which includes all administrative tribunals with the exceptions of Patent Office tribunals and the Investigatory Powers Tribunal.

GENERAL CONSIDERATIONS

(a) Some tribunals may be composed of a lawyer alone, but commonly there will be a lawyer ‘chair’ (called a ‘tribunal judge’) and two lay people who may be drawn from the relevant industry. The Judicial Appointments Commission is now in control of the selection process.

(b) Appointments are usually made for a fixed period of years.

(c) Many tribunals, like the Lands Tribunal and the commissioners of income tax, exercise strictly judicial functions. Some, like the Civil Aviation Authority, base their decisions on wider aspects of policy, exercising regulatory functions in a judicial form.

(d) In 1997, legal aid was available before the Lands Tribunal, the Commons Commissioners and the Employment Appeal Tribunal; legal assistance by way of representation was available before mental health review tribunals and for certain proceedings before the Parole Board. Legal advice and assistance without representation can be obtained in connection with all tribunal proceedings (Part III, Legal Aid Act 1988).

(e) In general, tribunals are not bound by the rules of evidence observed in courts and could not reach decisions simply and speedily if they were. Some tribunals follow procedures that are essentially inquisitorial rather than adversary, but minimum standards of evidence and proof must be observed by tribunals if justice is to be done.

(f) The legal profession has no monopoly of the right to represent those appearing before tribunals. This fact alone makes tribunals more accessible to the public than the courts, since an individual’s case may often be presented effectively by a trade union official, an accountant, a surveyor, a doctor, a social worker or a friend.

The Administrative Justice and Tribunals Council

This body supervises tribunals and replaces the Council on Tribunals. Its aim is to aid in making tribunals fair and accessible by keeping them under review. The Council reports directly to the

Ministry of Justice. Currently (2011), a consultation process is underway which may result in the abolition of the Council.

Legatt Review of Tribunals

In 2000 the Legatt Review was set up to look into the operation of administrative tribunals. The Review found that each tribunal had its own processes and standards and were not accessible to users. It also raised concerns about the level of independence of tribunals and the long delays which users faced in having their dispute resolved by the tribunals.

The Legatt Review recommended that a new independent tribunal service be set up so that the relevant sponsoring government departments could no longer be seen as influencing the individual tribunals and that a composite two-tier tribunal structure should be adopted.

Tribunals, Courts and Enforcement Act 2007

Ultimately, the Legatt Review Recommendations were adopted by the government in the form of the Tribunals, Courts & Enforcement Act 2007 (TCEA 2007).

The TCEA 2007 created a new structure for tribunals. There are now two tribunals in the unified tribunals system with generic rules of procedure, a system of appeals and one Senior Precedent. The two tribunals are the First-tier Tribunal and the Upper Tribunal. All the previously existing tribunals (with the exception of Patent Office tribunals and the Investigatory Powers Tribunal) are now contained within the unified tribunals. It should be noted that the Employment Tribunal and the Employment Appeal Tribunal are not within the unified structure, however these are not in essence administrative tribunals but deal mainly with private issues.

The First-tier Tribunal is a fact-finding tribunal which hears appeals directly from decision makers. Thus, if an individual is unsatisfied by a decision made eg by a Secretary of State he may appeal to the First-tier Tribunal. The First-tier Tribunal is divided into Chambers, with each Chamber having its own President and its own area of law eg social security. This separation into legal-area Chambers allows the system to continue to provide specialist judges with relevant experience to the area in question in each individual case. The Upper Tribunal is

mainly an appellate tribunal to hear appeals from the First-Tier tribunal. However, it also has primary jurisdiction to hear certain matters including finance and tax matters.

Tribunal Procedure

Section 22 TCEA 2007 requires that Tribunal Procedure Rules are made by the Tribunal Procedure Committee and states that the objectives of the rules are that: justice is done; the tribunal system is accessible and fair; proceedings are handled quickly and efficiently; the rules are both simple and simply expressed; and that the rules where appropriate confer on members of the relevant Tribunal responsibility for ensuring that the proceedings are handled quickly and efficiently.

There are variations in procedure depending on the area of law involved. However, each set of procedures must follow the basic objectives listed above. Schedule 5 TCEA 2007 provides the rules relating to the tribunal procedures. Part 1 sets out that the procedural rules may contain certain provisions relating eg to time limits, whether hearings should be in public or private, representation, evidence, witnesses and notice.

The Tribunal Procedure Committee is in charge of creating the individual sets of procedural rules. So far several sets of procedural rules have been devised including those relating to social entitlement, health and education. Generally, the procedural rules do not require leave for the commencement of proceedings, but normally the applicant should send an application within 28 days of the decision in dispute. The respondent must then state the grounds, if any, on which the application will be opposed. A hearing will then normally take place, with the general rule being that these are in public except in relation to mental health issues and some educational issues. Each party may have a representative, who may be legally qualified or not, and the tribunal has wide powers to control the way in which evidence is given and the amount of evidence which may be presented. Once a decision has been reached the Tribunal must provide written reasons for it and notification of any rights of review or appeal.

Appeal

The First-tier Tribunal is capable of reviewing its own decisions on application by a dissatisfied party. Decisions reached by the First-tier Tribunal may be appealed to the Upper Tribunal.

Beyond this, the next point of appeal is the Court of Appeal, rather than the High Court as was previously the case.

ADVANTAGES AND DISADVANTAGES

The advantage of a tribunal is that it is:

- (a) quick with no long waits for the case to be heard and it is dealt with speedily;
- (b) cheap, as no fees are charged;
- (c) staffed by experts who specialise in particular areas;
- (d) characterised by an informal atmosphere and procedure;
- (e) allowed not to follow its own precedents, although tribunals do have to follow court precedents.

The disadvantages of tribunals are that:

- (a) some are becoming more formal;
- (b) they are not always independent of the Government, although the Independent Tribunal Service now recommends possible chairmen to the Lord Chancellor;
- (c) some tribunals act in private;
- (d) they do not always give reasons, although under s10 of the Tribunals and Inquiries Act 1992, tribunals listed in the Act must give a written or oral statement of reasons, if asked to;
- (e) legal aid is not generally available, except for the Lands Tribunal, the Employment Appeal Tribunal and the Mental Health Review Tribunal;
- (f) there is no general right of appeal to the courts: it all depends on the particular statute creating the tribunal. The 1992 Act gives a right of appeal on a point of law to the High Court from specified tribunals.

EVALUATION OF TRIBUNALS

According to T. Blakemore and B. Greene, *Law for Legal Executives*, 1996, p95: They do a useful job in taking some types of work away from the courts and dealing with specialised matters, less valuable claims and matters involving the exercise of a discretion. It has been estimated that they deal with over one million cases a year (Partington, Martin, 'The Future of Tribunals', *Legal Action*, May 1993, p9). Problems remain over lack of standard rights, like the right of appeal, and procedures. In many instances they make important decisions affecting people's livelihoods and quality of life. The Council on Tribunals has begun to investigate the use of precedent, the establishment of a standard complaints procedure. Training for tribunal members is provided in association with the Tribunals Committee of the Judicial Studies Board. The Council on Tribunals has proposed setting up a Tribunals Association as a representative body for all tribunals. Its influence is hampered through lack of funds and having part time members. Some tribunals, for example the Lands Tribunal, have a backlog as large as the ordinary courts. Following the Genn Report ('Effectiveness of Representation at Tribunals') the Council on Tribunals believes that legal aid should be available at tribunal hearings. Although the Woolf Report pays little attention to tribunals, some see them as offering an alternative to the courts in certain cases and a way of solving the problems of access to the civil justice system identified by the Woolf Report, as tribunals are cheap, informal and quicker than the ordinary courts