

RMM LAW COLLEGE SAHARSA

ADMINISTRATIVE LAW

IIIrd Part

Paper -VII

TOPIC- Administrative Tribunals

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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.