

RMM LAW COLLEGE SAHARSA

ADMINISTRATIVE LAW

IIIrd Part

Paper -VII

TOPIC- Administrative Tribunals

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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 (Zuckerman and Cranston (eds), *Reform of Civil Procedure*; Roy Sainsbury and Hazel Genn, *Access to Justice: Lessons from Tribunals*, Clarendon Press, 1995). (adapted from T. Blakemore and B. Greene, *Law for Legal Executives*, 1996, p101.)