

ADMINISTRATIVE TRIBUNALS

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

A list of tribunals under the supervision of the Council on Tribunals is published annually in the council's report. In the report for 1995-6, this list 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.

GENERAL CONSIDERATIONS

(a) Tribunals may consist of one person but usually there will be three members. Tribunals are not composed of government officials. Often they are constituted of lay members of the public, sometimes coming from groups such as employers' organisations and trade unions. But in certain tribunals specialist qualifications are required (eg, in medicine or in land valuation) and membership may involve a full-time salaried appointment. The chairman is independent and is usually legally qualified in accordance with s71 of the Courts and Legal Services Act 1990 (a seven year general qualification). Chairmen undergo training organised by the Judicial Studies Board.

(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.

(g) Regarding appeals, the Franks Committee on Tribunals and Inquiries (1957) considered that the ideal appeal structure took the form of a general appeal from the tribunal of first instance to an appellate tribunal; that as a matter of principle appeal should not lie from a tribunal to a minister; and that all decisions of tribunals should be subject to review by the courts on points of law. The structure of social security appeals complies broadly with this pattern but many other tribunals depart from it.

CONTROL OF ADMINISTRATIVE TRIBUNALS

It can be said that tribunals are "controlled" in three ways:

- They are governed by the Tribunals and Inquiries Act 1992;
- The Council on Tribunals keeps under review the constitution and working of a large number of tribunals; and
- They are controlled by the courts, usually through an appeal route, and tribunals are obliged to observe the principles of natural justice and are subject to the supervision of the Queen's Bench Division of the High Court.

TRIBUNALS AND INQUIRIES ACT 1992

The Franks Committee on Tribunals and Inquiries (1957) made recommendations for improving tribunals which were implemented by the Tribunals and Inquiries Act 1958, which was re-enacted in 1971 and again in 1992:

(a) The chairmen of certain tribunals *were* selected by the minister concerned from a panel of persons approved by the Lord Chancellor (s6). Chairmen are now selected by the Lord Chancellor and the minister.

(b) In the case of most tribunals the minister's power to terminate membership of a tribunal can only be exercised with the concurrence of the Lord Chancellor (s7).

(c) All tribunals are under a duty, if requested on or before the giving or notification of the decision, to give reasons for their decision, such reasons whether written or oral being deemed to form part of the record for the purpose of review by *certiorari* (s10).

(d) Appeals on points of law lie from certain tribunals to the High Court (s11).

COUNCIL ON TRIBUNALS

The council is under a duty to keep under review the constitution and working of a large number of tribunals. The members of the Council (between 10 and 15) are appointed by the Lord Chancellor. The Council meets once a month. The role of the Council on Tribunals is as follows:

(a) To report on tribunals under its supervision and any matters referred to it by the Lord Chancellor (s13);

(b) To receive and investigate complaints about tribunals (but there is no power to alter tribunal decisions);

- (c) To make an annual report to the Lord Chancellor (s4);
- (d) To be consulted before any procedural rules are made for any tribunals subject to its supervision (s8);
- (e) To make general recommendations on the appointment of tribunal members (s5).

THE COURTS

See Jacqueline Martin, *The English Legal System*, chapter 7 for examples of the appeal system.

Tribunals are obliged to observe the principles of natural justice, namely, that no man may be a judge in his own cause (the rule against bias) and that both sides to the dispute must be heard and, moreover, given a hearing which is fair. Administrative tribunals are public statutory bodies inferior to the ordinary courts of law and, as such, they are subject to the supervision of the Queen's Bench Division of the High Court, which, on an application for judicial review of a tribunal's decision, may issue the prerogative remedies of *certiorari*, *mandamus* and prohibition. It may do so for a variety of reasons, as where there has been a violation of the principles of natural justice, or where the tribunal has refused to exercise its jurisdiction in a particular case or has exceeded its jurisdiction, or where there is an error of law on the face of the record of the tribunal's proceedings. *Note*: this supervision by the High Court takes the form of reviewing the legality of the tribunals' acts, not the rehearing of the case on its merits.

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.

(adapted from T. Blakemore and B. Greene, *Law for Legal Executives*, 1996, p101.)

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).