JUDICIARY OF ENGLAND AND WALES

# BENCHMARK

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Editor: jo.pennington@judiciary.gsi.gov.uk | 020 7073 4833 *Benchmark* | Issue 57 | Feb 2012

# Assessing evidence for social harm

*Immigration Judge Kyrie James tells* Benchmark *about assessing risk of harm as a member of the Advisory Council on the Misuse of Drugs*

*Immigration Judge Kyrie James*

The Council's wide-ranging remit is to advise the Government on drug-related issues in the UK. ACMD's remit is not just confined to illegal drugs as 'substance abuse' includes: alcohol addiction, poly-drug use, use of legally prescribed drugs and the mix of alcohol and drug misuse – as Kyrie explains, "it would be relatively unusual for a person just to take drugs – it's usually a mix of alcohol and drugs".

"And when people do decide to come off drugs, they often turn to alcohol and self-medicate with that, rather than trying to stop taking drugs with help and support from the drug treatment services available."

→

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## Also inside...

→ Assessing which drugs are likely to harm – or even kill – the user is a large part of the council's work. But it is in some ways the simplest; looking into the wider social harm is a far more intricate task: "There is drug-related crime, victimisation, secondary victimisation, the breakdown of relationships, the custody of children, debts, violence…"

And so the ACMD's formal responsibilities are fittingly long and complex:

- Making recommendations on the control of dangerous or harmful effects (including social harm), in regards to the classification and scheduling of drugs under the Misuse of Drugs Act 1971 and whether to ban, restrict or supervise the supply of drugs;
- Inquiries into aspects of drug use that are of current concern, and publishing reports both at the request of the government, and independently;
- Regarding measures on proper advice, facilities and services for treatment, rehabilitation and aftercare of substance misuse users;
- Promoting co-operation of various services in this arena;
- Educating the public about the dangers of misuse of drugs; and
- Promoting research into these matters, including the social harms caused by drug abuse.

Just because a substance is termed legal does not make it safe – nor may it be legal

## ACMD's membership

The responsibilities sound even more daunting considering that the members of the council – not less than 20, by statute, and currently 25 – are all unpaid volunteers.

"The members who do this work are committed and dedicated – we are all very busy professional people with other full-time jobs," says Kyrie.

There is a wide range of expertise among the members, who currently include a vet, Deputy Chief Probation Officer, pharmacologists, psychologist, a Deputy Chief Constable, a Commander from the Metropolitan police, academics and those involved in NHS treatment for addiction.

ACMD also draws upon the expertise of others in this field by inviting them to undertake presentations, or to provide input to relevant inquiries to the working group undertaking the work.

It is supported in its advisory role by the work of a variety of organisations including Non-Governmental Organisations, NHS, UK Border Agency and HM Revenue & Customs regarding imports, as well as Advertising Standards Association and Trading Standards regarding misleading and illegal sales.

Kyrie adds, "of course victims' families and users also have a valuable contribution to make concerning physical and social harms".

## The importance of evidence

In a subject area, which is presented as fiercely political in the media, the ACMD is resolutely evidence-based, relying on timely and credible research of others to support it in its task, in particular the analysis of chemical structures and psychosocial effects of drugs.

The ACMD also has a role in assessing the effectiveness of programmes for treating drug and alcohol addiction and educating the public on their potential harms - in a field of competing ideologies on how best to deal with such misuse be it abstinence or reduction by way of risk management - and identifying those which are evidence-based, with proper follow-through review to assess the efficacy of methods used and their outcomes.

## Novel Psychoactive Substances – 'Legal Highs'

Just because a substance is termed legal does not make it safe - nor may it be legal.

Kyrie is a member of two ACMD working groups. One is the intriguingly named Novel Psychoactive Substances (Legal Highs) Working Group, chaired →

→ by Professor Simon Gibbons, Professor of Phytochemistry and Head of Department at the UCL School of Pharmacy. This deals with substances, which are not controlled but their psychoactive effects are intended to be similar to controlled drugs, such as cocaine or ecstasy.

"It is a fascinating area of our work, particularly the tremendous creativity of illegal manufacturers of drugs," says Kyrie.

"They will take a proscribed substance and tweak the chemical structure so it is technically different and no longer 'banned', resurfacing rapidly as a legal high within a matter of months. By evading the proper stringent drug testing controls the adverse effects are unpredictable and potentially fatal. Legal highs sold as 'plant food', 'spices', 'room odouriser' or 'bath salts' are often far from harmless and users are playing Russian roulette with their young lives."

The challenge facing the ACMD in its advisory role to the Government is the increase of novel untested legal highs which quickly come onto the market, often through overseas websites, the intricate chemical analysis required with little to no data available about their toxicity or safety, and the difficulty of assessing long-term social harm.

The ACMD recommended controlling one of the most popular drugs in this category, mephedrone ('meow meow"), as a Class B drug in March 2010 and the Government legislated to proscribe its sale and supply. British Crime Survey data (2010/11) indicated that 34 per cent of young people had used it in the previous month and the National Programme on Substance Associated Deaths has recorded 42 confirmed mortalities. It is also noteworthy that 20 per cent of drugs sold as legal highs are in fact illegal substances.

"Of particular concern is that users of legal highs tend not to have a previous history of using drugs, so are more vulnerable due to their lack of knowledge and assumption that the substance is harmless as its freely available. Yet it can take an amount of drug the size of a grain of sugar to put them at risk of an overdose or worse," says Kyrie.

The Government has promptly responded to this live issue by introducing the Temporary Class Drug Order (a temporary banning order) to tackle illicit manufacturers, suppliers and importers in order to protect the public. The ACMD will have a short 20 days to swiftly respond to any new drug on the market and to make a recommendation to the Government on a legal high.

## Warning System

Without scientific facilities or a research budget, the ACMD relies on other stakeholders to support and inform their work to help classify and assess drug harm.

"Cutbacks in the global recession have a negative impact on the timeliness of academic and pharmaceutical research available, as well as research projects implemented and limit the number of reports available as these new drugs come onto the market," says Kyrie.

"That is why the Home Office's Forensic Early Warning System is imperative to this work."

There are several strands to the system, including using data given anonymously to the annual British Crime Survey, A&E admissions at Guy's Hospital in regard to drugs overdoses, analysis of the contents of the drug amnesty boxes at nightclubs, test purchases on the internet and at shops of novel psychoactive substances by Home Office scientists, and confiscation of drugs by the UK Borders Agency and HM Revenue and Customs.

There is also the international angle.

"The ACMD's link with the European Centre for Monitoring Drugs and Drug Addiction, and United Nations work, and sharing of information and initiatives ensures there is a global response to these issues, and assessment of the UK amongst other countries as a potential transit hub for illicit trade," Kyrie explains.

## Khat

Kyrie is also a member of the Khat Working Group, set up late in 2011 at the request of the Government, to review advice given by the ACMD in 2005.

Khat is a psychoactive herb – a leaf, which can be chewed or taken as a tea. The effects are similar to amphetamines, and longer-term harms include psychological dependency, potential psychosis, oral cancer, increased risk of heart attack, and potential ingestion of pesticides.

Two chemicals (cathinone and cathine) present in khat are currently classified as class C drugs. An indication of its use is that 60 tons of khat is airfeighted into the UK from Kenya each week. →

The Working Party headed up by Hew Mathewson (previously President of the General Dental Council) plans to consider international research and multi-jurisdictional legal approaches – including the recent ban on khat in the Netherlands - and will invite experts to provide information and presentations.

It will consider information from the Forensic Early Warning System, and carry out public consultation with the community in assessing social harms, taking into account multi-cultural and diversity issues.

> Legal highs sold as 'plant food', 'spices', 'room odouriser' or 'bath salts' are often far from harmless and users are playing Russian roulette with their young lives.

The report should be available at the end of 2012.

## Decriminalisation v Diversion

Kyrie is quick to stress the difference between decriminalisation and diversion - giving examples from Portugal, where the policy of decriminalisation meant abolishing criminal penalties for personal possession of any drug, including heroin, and the current use in the UK of community sentences for some of those convicted of possession of drugs, who are given drug treatment and testing orders.

She also points out the ACMD's proposals to Lord Justice Leveson, Chairman of the Sentencing Guidelines Council, for more 'creative' ways of dealing with drug users (assuming the offender in question is not also charged with other offences, such as burglary or theft), including drug education/awareness courses, similar to those for speeding drivers, with a view to reducing drug related harms and reducing the risk of the stigmatisation of young people by diverting them away from the criminal justice system.

"I have found the Chairman, Professor Les Iversen's inclusivity and willingness to delegate projects to the members a welcome approach, and enjoy working with such a diverse range of members with international expertise in their specialist fields - I am also looking forward to the challenge of the legal highs work to advise the Government on temporary banning orders."

## About Kyrie James

Kyrie James is an Immigration Judge and University Lecturer, who is also a member of the appeal panel of the Video Standards Council. Kyrie was previously on the Chairman's Group of the Parole Board and was Chair of Nominations for the Council for the Registration of Forensic Practitioners. She has undertaken consultancy for Penal Reform International and regularly provides talks for overseas Judges. She set up the first multi-disciplinary conference on Child Soldiers at the Tavistock NHS Trust in 2011, chaired by Lady Hale with the keynote speech given by Sir Nicholas Blake. She is qualified in adolescent psychotherapy.

# The next issue of *Benchmark*

*Benchmark's* next issue will be a combined March/April edition to take account of the Easter break. It will be published in early April.

If you have any ideas for articles, please contact Jo Pennington on **jo.pennington@judiciary.gsi.gov.uk**.

# A fresh breadth of experience

This month's guest editor is Judge John Aitken, Deputy Chamber President of the Health, Education and Social Care Chamber of the First-tier Tribunal

There is plainly a great deal that can be learned from other parts of the system that we operate in, and as the system itself now combines courts and tribunals, the scope for learning new practices which enhance everyone's experience is growing ever larger.

Beyond even that, within this month's issue are articles on the success of constitutionalism in South Africa by Justice Edwin Cameron of the Constitutional Court of South Africa, and the "Khmer Rouge" Tribunal in Cambodia described after a visit by Mr Justice Tugendhat; both offer international perspectives on apparently intractable problems following great upheaval and tragic events.

They would also seem to indicate that no problem is insoluble, given sufficient flexible thinking.

Within our own system, there is a remarkable breadth of experience out there, just waiting to be adopted elsewhere, from the adopting of informal docketing arrangements in civil cases at Leeds, a sharing of resources between courts and tribunals in North Shields and the use of Legal Assistants from magistrates' courts to deal with applications in tribunals.

Across the country the combined courts and tribunals system is evolving to take account of the experience and expertise of other areas to better provide what we all aspire to offer to the public.

There is also an interview with a judge who has spent a good deal of time within both of the recently merged systems.

Barbara Mensah was the training judge for the Immigration and Asylum Authority, then joined the Upper Tribunal before becoming a circuit judge and has a perspective on the systems which is not unique but still fairly uncommon.

We are moving cautiously. I have described the use of legal advisors as registrars. Their use involves a mandatory procedure to notify the parties of a right to review by a judge; that direction in turn is subject to our procedure rules allowing for an application to vary case management decisions.

*Judge John Aitken*

Still dissatisfied? Well it must be on a point of law but permission to appeal can be sought from the First-tier Tribunal, and if refused can be automatically renewed to the Upper Tribunal, who will hear you orally if your paper application fails.

No-one has yet felt the need to test all of the safeguards but they are there.

Cautious the progress may be but what I think is clear is that the opportunities for learning from the experience of others have grown and will continue to do so within the expanded system.

# News

## 'Docketing' system shows promising results

A pilot scheme assessing a new way of 'docketing' files in civil cases has proved successful.

The scheme, carried out at Leeds County Court and Registry as part of the reforms suggested by Lord Justice Jackson's Review of Civil Litigation Costs, was based on informal practices which had evolved at the court over a number of years.

The pilot scheme envisages docketing as "the management of a case by a particular judge all the way through to and including trial if necessary", although it actually involved only district judges, and was limited to pre-trial case management rather than the trial itself.

Administrative staff were key to ensuring a docketed case got back to the right judge at the right time.

The scheme had its disadvantages, according to the report:

- To include circuit judges within an effective docketing system would require much more fundamental change.
- Practitioners did not see it as necessarily beneficial that the pre trial judge and the trial judge should be the same person.

However, advantages raised by the district judges who took part included:

- Satisfaction in bringing a case to settlement or trial
- Greater opportunity to steer the case and check its progress →

### Costs Management: interim thoughts

The Costs Management Pilot in all Technology and Construction Courts and Mercantile Courts published an interim report on February 3.

The pilot, which applies to any case which has its first case management conference on or after 1 October 2011, is scheduled to run until 30 September 2012.

The purpose of the Pilot, as stated by Lord Justice Jackson, is to assess:

- the benefits and disadvantages of costs management; and
- how the process might be improved for the benefit of court users.

At Lord Justice Jackson's request, the pilot is being monitored by the Centre of Construction Law at King's College, London.

The Interim Report sets out the results of this monitoring exercise for the first four months of the pilot.

**http://www.judiciary.gov.uk/publications-and-reports/reports/civil/review-of-civil-litigation-costs/judical-pilots/cost-management-pilot-int-report**

→ • More consistent case management

- Less 'forum shopping' or opportunities to mislead the judge
- Potential for time to be saved in preparation and at trial.

No loss of flexibility or inefficient deployment of resources was found to be caused by docketing at Leeds. However, Leeds is a large court, and the report warned that small court centres could find that docketing reduces flexibility

No significant financial implications were found for the abbreviated docketing scheme – positive or negative – but cases were better managed and prepared for trial.

The report concluded: "The abbreviated docketing pilot brought advantages using existing resources and without major reorganisation. There is little to prevent its adoption in larger court centres other than the potential reluctance attached to a change in working cultures."

**http://www.judiciary.gov.uk/publications-and-reports/review-of-civil-litigation-costs/judical-pilots/evaluation-pilot-docketing-files-leeds-cc-and-reg**

# Judicial College: new directors

The Lord Chief Justice and Senior President of Tribunals released a joint statement on February 20, appointing two Directors of Training for the Judicial College:

"The Lord Chief Justice and Senior President of Tribunals are pleased to have appointed HHJ John Phillips CBE and Professor Jeremy Cooper as Directors of Training for respectively courts and tribunals within the Judicial College.

"Both John and Jeremy had roles within previous training arrangements before unification of judicial training and have helped to establish the Judicial College which was created in April 2011. These appointments are effective for an initial three-year period and follow an expression of interest process, open to all salaried full-time judiciary.

"Their main role is to ensure that all the college's training, which includes induction, continuation and academic programmes, are designed and delivered to the highest professional standards.

→

## In brief...

### Spanish judge loses place on the bench for 'abuse of judicial power'

A Spanish judge renowned as a human rights campaigner has been disbarred for 11 years for abuse of power.

Baltasar Garzon, who sought the extradition of the Chilean dictator Augusto Pinochet, was found guilty of overstretching his judicial powers during an inquiry into allegations of illegal financing of Spain's ruling conservative People's Party.

In a unanimous ruling, a panel of Supreme Court judges said he would also permanently lose his position as judge.

The cases have divided Spanish opinion and caused condemnation from international human rights groups.

Garzon forged a reputation for investigating the Basque terrorist group ETA, and death squads organised by the government to fight Basque separatists.

He came to international prominence with his use of universal jurisdiction to pursue human rights abusers, including General Pinochet and Osama bin Laden.

There is no right of appeal in Spain but it is thought that Garzon's legal team may take the case to the constitutional court or possibly the European Court of Human Rights.

→ "They are full members of the Judicial College Board and joint members of second tier committees.

"They will work closely with the Chairman of the Board, Committee Chairmen, the Directors and members of the judiciary who direct and deliver training, Course Directors and the Executive Director and Judicial College staff. Not least, they will work in close partnership with each other in taking forward the college's training strategy."

# Inside Judicial College: article

Legal journalist Joshua Rozenberg was given a rare insight into the Judicial College last month.

The writer dropped in on a two-and-a-half-day judgecraft course, which took place in Warwick and was attended by 36 full-time circuit and district judges.

Mr Rozenberg concluded: "Learning how to judge is becoming increasingly important because it is no longer essential for new recruits to sit part-time before taking a full-time judicial appointment.

*Legal writer Joshua Rozenberg*

This change has been made to encourage a more diverse judiciary: solicitors find it difficult to take days off to sit as judges, and tribunal judges seeking an appointment in the courts judiciary may also face difficulties.

"You'd think, therefore, that the government would be pouring money into the new Judicial College, realising that its induction courses in judgecraft and refresher courses like this one are essential if we are to maintain high judicial standards.

"Think on. Like other bodies funded by the Ministry of Justice, the college is having to cut its budget by six per cent a year for four years. Poor judgment, if you ask me."

**http://www.guardian.co.uk/law/2012/feb/08/behind-scenes-judicial-college**

## In brief...

### Court of Appeal judiciary: Warning over increase to court fees

The judges of the Court of Appeal have expressed reservations over the proposed changes to court fees.

The views were expressed in a formal response to the Ministry of Justice consultation Fees in the High Court & Court of Appeal Civil Division, which closed on February 7.

The response began by pointing out: "The judiciary does not support the ongoing commitment to render the justice system self-financing.

"That commitment, as has been pointed out on a number of occasions, and most strikingly by Sir Richard Scott VC, now Lord Scott of Foscote, 'profoundly and dangerously mistakes the nature of the system and its constitutional function.'

"Access to justice is a fundamental feature of any society committed to the rule of law; it is not a service which the State provides at cost, but rather an element of the State and of the governance of the State.

"As such the State is under a duty to provide effective access to justice; it is under that duty irrespective of the court's ability to secure full-cost recovery."

The response did concede that certain fees, which had not been reviewed in some years, could be increased.

**http://judiciary.sut1.co.uk/docs/cons_paper/coa-civil-div-response-fees.pdf**

# Presumption of death

The Justice Committee of the House of Commons published a report on the presumption of death on February 7.

The report looked at the current law and processes surrounding the presumption of death, as well as making recommendations on improvements for the future.

The report said: "When a person goes missing their family can suffer serious financial repercussions, as well as inevitable pain and distress.

"Having examined the law and processes we have found that such suffering is exacerbated by: a legislative patchwork of bewildering complexity; the inability to administer the financial situation of their missing relatives; a lack of information about the actions they are able to take; and ignorance of the correct procedures to be followed by police, lawyers, banks, insurers and others."

The report recommended that the Government adopt a threefold approach: "Firstly, we recommend the introduction of a presumption of death act to clarify the legal position. Such an act should be modelled on the legislation in Scotland and Northern Ireland. In almost 34 years since the Scottish act came into force, only one person who has been the subject of an order under the statute has reappeared. ...We believe that there is no good reason not to proceed with legislation for England and Wales, and the longer such legislation is delayed the longer families will suffer.

"Presumption of death orders, however, can only solve some of the problems families face. It will only be appropriate to declare a missing person dead several years after their disappearance. In that time, their financial affairs can be devastated beyond hope of recovery, mortgages or rent may be unpaid, leading to repossessions or the loss of a secure tenancy, bank accounts can be drained by years of direct debits that do not benefit the missing person and the value of many years of paying into an insurance premium may be lost.

"Equally, dependents are unable to access financial resources or the missing person's financial information meaning they can do little to protect themselves. We therefore recommend that legislation be introduced to allow for a system of guardianship orders, similar to those in Australia. These will allow for the administration of the missing person's property in his or her best interests if they have not returned after three months, as well as support for dependents.

"Finally, we call on the Government and industry to provide effective guidance for families in very difficult and distressing circumstances, as well as those who provide services for them."

**http://www.publications.parliament.uk/pa/cm201012/cmselect/cmjust/1663/166302.htm**

## In brief...

### ECHR: a year in numbers

The European Court of Human Rights published its Annual Report at the end of January.

Alongside the report was a summary, giving key statistics relating to the court's work, including:

- Approximately 151,600 applications were pending before a judicial formation on 1 January 2012. More than half of these applications had been lodged against one of four countries: Russia, Turkey, Italy and Romania.
- In 2011, more than a third of the judgments delivered by the Court concerned four of the Council of Europe's forty-seven member States: Turkey (174), Russia (133), Ukraine (105) and Greece (73). Of the total number of judgments it has delivered in 2011, in over 85per cent of cases the Court has found at least one violation of the Convention by the respondent State.
- In 2011, the Court delivered 1,157 judgments concerning 1,511 applications.
- A total of 52,188 applications were decided in 2011.
- More than 23 per cent of violations found by the Court concern the right to life or the prohibition of torture and inhuman or degrading treatment (Articles 2 and 3 of the Convention).

**http://www.echr.coe.int/NR/rdonlyres/C99DDB86-EB23-4E12-BCDA-D19B63A935AD/0/FAITS_CHIFFRES_EN_JAN2012_VERSION_WEB.pdf**

# Seeing justice done: Cambodia

Mr Justice Tugendhat on his visit to the Extraordinary Chambers in the Courts of Cambodia ("ECCC") - also known as the Khmer Rouge Tribunal

In less than four years, between April 1975 and January 1979, more than 1.7 million people are believed to have died under the Khmer Rouge regime: a number equal to nearly a quarter of the population of Cambodia as it was in 1975. Many were deliberately killed, by being tortured to death or executed. Others died of starvation and exposure in the mass evacuations from Phnom Penh and other cities that the Khmer Rouge ordered as soon as they entered them, or in the forced labour in the countryside that followed. Most of the victims were ordinary Cambodians, who endured these crimes, and others, including rape (by mass forced marriages). Buddhists were persecuted. Some minorities were specifically targeted, including Cham Muslim and ethnic Vietnamese, thus giving rise to the charges of genocide. Breaches of the Geneva Conventions were committed in the armed conflict with Vietnam, including the disappearance of more than 30,000.

In each of 2009, 2010 and 2011 over 30,000 people, most of them ordinary Cambodians, have attended the court to hear and see the trials before the Extraordinary Chambers in the Courts of Cambodia (the ECCC"). Tens of thousands of rural Cambodians have watched video screenings. Research into the opinions of the public in general, and of victims, has shown consistently high, and increasing, support for the ECCC.

## The framework for the trials

The trials are conducted under Cambodian law and international law, and under a procedure influenced by French law.

The ECCC was established pursuant to an agreement made in June 2003 between the UN and the Royal Government of Cambodia with the mandate of helping the Cambodian people in the pursuit of justice and national reconciliation. It has a jurisdiction limited by time (to offences committed between 17 April 1975 and 6 January 1979) and by the status of the alleged offender (senior leaders of Democratic Kampuchea). The number of potential defendants is now very limited, by reason of their age.

## The first trial

The first trial (Case 001) resulted in the conviction of Kaing Guek Eav alias Duch, former Chairman of Phnom Penh's security prison S-21. This was a converted secondary school in which no fewer than 12,272 victims, men, women and children, were tortured and executed.

In a judgement issued on 26 July 2010 the Trial Chamber found 'Duch' guilty of one offence of a crimes against humanity (persecution on political grounds, subsuming the crimes against human extermination encompassing murder, enslavement, imprisonment, torture including one instance of rape, and other inhumane acts), and of grave breaches of the Geneva Conventions of 1949. The Trial Chamber sentenced Duch to 35 years' imprisonment, reduced to 30 years as a remedy for his eight years' unlawful detention before 2007.

In a judgment issued on 3 February 2012 the Supreme Court Chamber dismissed Duch's appeal and allowed in part appeals by Co-Prosecutors. It entered additional convictions for crimes against humanity of extermination (encompassing murder), enslavement, imprisonment, torture and other inhuman acts. It quashed the determinate sentence of imprisonment and substituted a sentence of life imprisonment.

The trials of the three remaining defendants in Case 002 commenced with Opening Statements by the Co-Prosecutors on 21-24 November 2011. They submitted that the three defendants, Nuan Chea (former Deputy Secretary of the Communist Party), Khieu Samphan (former Head of State), and Ieng Sary (former Minister of Foreign Affairs) were parties to a joint criminal enterprise. These defendants have not made admissions. A fourth has been found unfit to stand trial by reason of dementia.

## Funding and composition

The Court is funded by voluntary contributions from states. The major contributor has been Japan, which has contributed 50 per cent of contributions, which so far total over $110 million. A total of more than a third has →

*'Duch' at the appeal judgment*

→ been contributed by Australia, Germany, USA, France and the UK in addition to the Royal Government of Cambodia.

There are three Chambers constituted by judges: the Supreme Court Chamber, the Trial Chamber and the Pre-Trial Chamber. There are also the separate offices of Co-Investigating Judges and Co-Prosecuting counsel. Each has a majority of Cambodian judges. The rules of court require that at least one international judge be included in a majority decision. There is an international judge from each of Australia, Korea, New Zealand, France, Japan, Poland and Sri Lanka. One co-prosecutor is British.

The proceedings are held in public in a large auditorium, in which the court is divided from the public gallery by a glass screen. There are seats for about 500 members of the public.

## Unusual features

Two features of the procedure are most notable to a common lawyer. The first is that there is no provision for a plea of guilty.

The second notable feature is that there are civil parties, who are "are allowed to seek collective and moral reparations". In Case 001 the Trial Chamber accepted 66 applications to be Civil Parties and rejected 24. On appeal the Supreme Court accepted a further nine applications. In Case 002 the Trial Chamber has accepted 3,866 applications to be Civil Parties and rejected 102.

The participation of civil parties in a criminal trial is a feature of French law. In the same proceedings, a defendant may be convicted and sentenced, and compensation granted to victims of crime. But the ECCC have no jurisdiction to grant requests for reparation that entail an active involvement of the Cambodian authorities in the expenditure of money.

To a common lawyer, these two features of the procedure may at first seem questionable. But it is necessary to consider them in context. If the public are to have confidence in the conviction of a defendant upon his plea of guilty, the public must have confidence that the plea is truly voluntary, and is not a forced confession. Public proof of guilt provides some guarantee of that.

## The scale of the challenge

The fact that the ECCC are constituted by Cambodian and international judges and lawyers from such a variety of different jurisdictions, gives rise to particular challenges. International judges must become familiar with a system of law which is not their own. The work that they produce is of the highest standard. The Trial Chamber's Judgement in Case 001 covers 275 pages, with over 1,156 footnotes.

The work is challenging in other respects. The working conditions of the ECCC are correct, but not luxurious. The judges and lawyers all work in one large building on the outskirts of Phnom Penh, a former military establishment. They have to travel some distance to work. This is not a relaxing journey, and in some cases it can be hazardous. The international judges must remain in Phnom Penh for many months, far from their homes.

The only comparable procedure in the UK, in terms of cost and duration of proceedings, is the Bloody Sunday Inquiry. This cost an estimated $300 million over 12 years. The number of victims was 26, of whom 16 were killed, in the space of a few hours in 1972, not the millions of Cambodians who suffered death and appalling hardship over a period of nearly four years.

## The price of justice

For a British public, the distinction of the judges is best exemplified by Dame Silvia Cartwright, a judge of the Trial Chamber. She was formerly a Judge of the High Court of New Zealand and served as Governor-General of New Zealand. If the ECCC and other international or hybrid courts are to maintain the respect of the public, they must find judges and lawyers of distinction willing to serve.

Justice and reconciliation are beyond price. How many millions of dollars should be expended on it in Cambodia is a question which the international community will have to consider, as funding continues to be required for the ECCC.

The suffering inflicted upon the people of Cambodia was inflicted by their own people in the name of an ideology learnt abroad. The enthusiasm shown by the Cambodian people for the justice administered in the ECCC is proof that the values of international human rights are values indigenous to Cambodia.

## Thanks

During my visit in January 2012 the following were generous to me with both their time and their thoughts: Dame Silvia Cartwright, Judge of the Trial Chamber, Chang-ho Chung, Judge of the Pre-Trial Chamber, Andrew Cayley, Co-Prosecutor, Elisabeth Simonneau Fort, Civil Party Lead Co-Lawyer, and Yuko Maeda, Public Affairs Officer. I would like to express my thanks to them, and to state that the views expressed in this paper are no more than my own personal views. The factual information set out above, and much more, is available at http://www.eccc.gov.kh/en/

# Breaking new ground - united

David Zucker, Designated Judge of the First-tier Tribunal (IAC) on a truly ground-breaking co-operative effort between all branches of the judiciary

If you ever visit North Shields – and you would be very welcome – you would find yourself just six miles or so from Newcastle upon Tyne with its theatres and iconic buildings, and about nine miles from Tynemouth, with its spectacular views across the sea, sweeping bay, glorious beach with its cafes where you might just find a moment if you were sitting with us. In North Shields itself you would find a ferry port from which you could travel to Europe; Royal Quays Outlet Mall; and on the second floor of an unremarkable, unprepossessing building on Earl Grey Way, a small Combined Hearing Centre, breaking new ground.

Kings Court was, until about 2006, the exclusive home of the Asylum and Immigration Tribunal. It was then joined by the local County Court, though you might not have known it, since the two entities kept themselves very much apart in different parts of the building; there would, of course, be the odd exchange between the two sides as they inadvertently came into contact. Even the one waiting area used by the parties was divided by different coloured chairs and two reception desks.

The Tribunal Courts and Enforcement Act 2007 brought about some changes, again not immediately obvious. Tribunal Judges were being required to take the Judicial oath and just as Registrars in the late 1990s metamorphosed into District Judges, so too did Tribunal Chairpersons became Tribunal Judges, of one sort or another, with nearly all first instance decisions, save for employment, being heard, irrespective of jurisdiction, in the same Tribunal i.e. the First tier Tribunal with, save for employment, ongoing appeals to the Upper Tribunal. However, any lay →

*A study in co-operation - left-right: Mr S Ion JP; Immigration Judge Holmes; Mr C Jones (Social Security); Mr M Donelly (Social Security); Immigration Judge K Henderson; Employment Judge G Johnson; Mr M Worth (Employment panel); District Judge P Jackson; Miss E Jennings (Employment Panel); Ms A Hardy (CICAP); Designated Immigration Judge D Zucker; Dr G A Mcloughlan (CICAP); Ms M Wiles (Employment Panel); Ms D O'Neil (Employment Panel); Mr M Mildred (CICAP); Employment Judge N Sharkett; Mr J Kean JP; Immigration Judge K Gordon; Miss S Roberts (SEND); Mrs L Docking JP; Mr K Chapman (SEND); Mr R Cardinal (SEND)*

→ person visiting North Shields would not have noticed much difference. It was still, on the Tribunal side, bar the odd exception, only Asylum and Immigration appeals that were being heard at North Shields.

Suddenly in 2011 all changed. The effect of the Court Service and Tribunal Service merging into one was felt in North Shields "big time"! Judge's chambers were all mixed up. Magistrates, District Judges, First-tier Judges, Recorders, Circuit Judges and Upper Tribunal Judges were all working along side each other - not always the same mix but always a mix. That was not all. Judges from just about every tribunal chamber imaginable could also be found: taxation; social security; land; special educational needs; Primary Health Lists and Care Standards the list goes on, and let us not forget employment.

The county court administrative office vanished, only to be found in the same room working alongside the tribunal staff, with tribunal staff now working in every tribunal jurisdiction. That was not all. Tribunal and county court managers were swapping their staff and offering training to each other. Everybody was talking to everyone else. By Christmas all judges and staff were so bonded that not only did they come together for a 'glass of cheer' but you might have been forgiven for thinking they had been working together for years in the same enterprise.

> From a judicial perspective the change at North Shields has been enriching… it is invaluable to be able to discuss cases with judges from different jurisdictions who can so often offer different insights into how particular problems might be approached

From a judicial perspective the change at North Shields has been enriching. It would be wrong to give the impression that at North Shields only work is talked about – far from it – but when it is, it is invaluable to be able to discuss cases with judges from different jurisdictions who can so often offer different insights into how particular problems might be approached; after all much of what we do it the same: hear cases, decide the facts, apply the law and make a judgment.

In parallel with the administration many of the tribunal judges sit in more than one jurisdiction, be it as deputy High Court judges, Recorders, deputy district judges or in other chambers of the First-tier. Having seen how the county court staff and the tribunal staff have developed, who knows what the future will bring for the judges?

## HMCTS: unifying courts and tribunals

HM Courts & Tribunals Service

Her Majesty's Courts and Tribunals Service has been operating as a unified organisation since 1 April 2011.

The agency employs 21,000 staff and operates from around 650 locations. It has a gross annual budget of around 1.7bn, approximately 585m of which is recovered in fees and income from service users. It handles over 2 million criminal cases, 1.8 million civil claims, more than 150,000 family law disputes and almost 800,000 tribunal cases annually.

In the organisation's first Business Plan, the Lord Chancellor, Lord Chief Justice and Senior President of Tribunals said in a joint statement: "At a time of immense budgetary pressures we believe that unifying the administration of the courts and tribunals through the establishment of HM Courts & Tribunals Service offers the best way forward, in particular to deliver improved performance, efficiency and service across all aspects of the administration of the courts and tribunals.

"We will work together to support the operation of HM Courts & Tribunals Service in its vital role to run an efficient and effective courts and tribunals system, which enables the rule of law to be upheld, and provides access to justice for all."

# Securing a decent society

Justice Edwin Cameron, of the Constitutional Court of South Africa, gave the Law Commission's Leslie Scarman lecture, "What you can do with rights". Extracts are reproduced here.

Rights are claims or entitlements. They can be useful things, in language and in public debate. But there has long been scepticism about them.

...In your own country, Mr Jonathan Sumption, QC, who has recently taken office in the Supreme Court, has charged that the European Convention on Human Rights has required judges to deal with "the merits of policy decisions". In a democracy, he says, these "are the proper function of parliament and of ministers answerable to parliament and the electorate".

… It is a bad business to put too much trust in lawyers, judges and the law. Doing so mistakes the value of legal regulation, which is not to plan or initiate social change, or make the public policy choices essential to it. It is rather to resolve conflicts, and to protect against mistakes in the exercise of power by measuring decisions against a framework of public values.

To trust legal regulation and legal rights too much overloads the legal system. It may strain, crack or even break under the resultant political and social burden.

But if we accept the limited value of legal rights – if we accept that the law is an adjunct social instrument, that it cannot mend society, nor choose its pathways, and that its remedies and rhetoric should be approached with scepticism – then we may nevertheless be able to defend a modest role for it.

It is that the law and legal rights can, despite rightful misgivings about them, play a practical part in securing what a decent society should promise its citizens.

## Bricks and mortar – legal rights and the material conditions of life

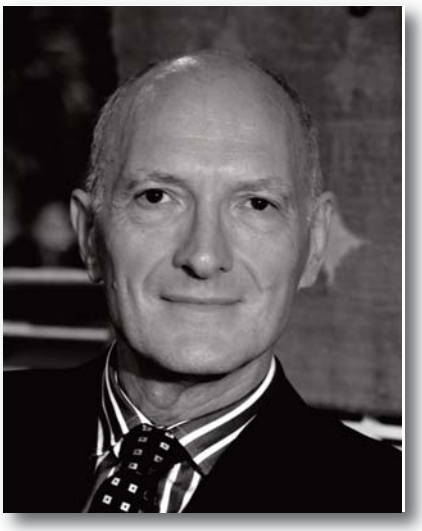
The first democratic elections in South Africa were in April 1994. They took place under an interim Constitution negotiated principally between the outgoing apartheid government and the African National Congress (ANC). South Africa's first Parliament, functioning as a constitutional assembly, then drafted the final Constitution.

…Unlike the interim Constitution, the final Constitution enshrined rights to social and economic goods ("subsistence rights"). Apart from the right to basic education and the provision that no one may be refused emergency medical treatment, the entitlements are not absolute or immediate. They are expressed as rights "to have access" to various social goods. These include adequate housing, health care services, sufficient food and water, social security and further education. And government is not required to realise them immediately: the obligation on the state is to "take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation" of each right. Given these intricate qualifications, and the high hopes pinned on the transition to democracy, the first rulings on these rights were awaited with very considerable expectation.

...Mrs Irene Grootboom was one of a group of desperately poor people who moved onto private land to erect informal homes, or shacks. But the land had already been set aside for formal low-cost housing. So government evicted them. But they had nowhere to go. …The Court, in a unanimous judgment, refused to grant an order realising specifically Mrs Grootboom's entitlement to housing. Instead, it faulted government's housing programme generally for making no express provision for those in desperate need.

… Mrs Grootboom died in August 2008, eight years after the judgment. She was still living in a shack.

… But the judgment did



*Justice Edwin Cameron*

not achieve nothing. ...The nub of the judgment was to require the state to take active steps to create access to social services and economic resources for the most vulnerable.

## Rights and public discourse

Rights can also achieve more ethereal, though no less dramatic, effects. They can change the spirit of the times.

Differently put, rights-talk and rights-assertion can alter social discourse in signal ways. In 1999, President Thabo Mbeki plunged South Africa into a ghastly nightmare. The reason was his support for AIDS denialism.

…In 1999, perhaps one quarter of a million people died in South Africa of AIDS-related causes.

I had close personal knowledge of death from AIDS, since I had escaped it. In 1997, twelve years after becoming infected with HIV, I fell severely ill with AIDS – but my judge's salary meant I could start taking anti-retroviral (ARV) therapy. The result, for me, was momentous. From facing certain death, my health and energy and vigour were restored to me. Little less than a year later, by 1999, I was so well that I could start campaigning for the drugs that saved my life, at very high cost, to be made available to all on my continent.

President Mbeki did not agree. … Conservative calculations show that more than 330,000 lives (or what epidemiologists call 2.2 million "person-years") were lost because President Mbeki thwarted a feasible and timely ARV treatment programme.

…In an historic judgment, the Court ordered government to make Nevirapine, or a suitable substitute, available at public clinics to pregnant mothers who sought it. The judgment was a ringing victory for treatment access as well as for rational public discourse. As a simple matter of history, it was the pivot that eventually forced government to take decisive action in the epidemic.

...Today, nearly 1.5 million people in South Africa are on ARV treatment. It is the largest publicly-provided AIDS treatment programme in the world. This is undoubtedly the most significant material consequence of the decision. More even than Grootboom, TAC materially changed the conditions of life for hundreds of thousands of people: it enabled them to not to die.

## Rights talk and moral citizenship

Rights and rights-talk serve a further important function. They can confer the dignity of moral citizenship. Moral citizenship is a person's sense that he or she is a fully entitled member of society, undisqualified from enjoyment of its privileges and opportunities by any feature of his or her humanhood.

…If all this seems impossibly abstract, let me recount my first experience of the heady sense of moral citizenship. It was Saturday 13 October 1990 in Johannesburg. I was among a small band of marchers who set out on the first gay pride march on African soil.

… The business of the city was brought to a halt, while we … asserted our entitlement to full citizenship in a democratic South Africa. It was a moment of exhilarated insight, and it has never entirely left me.

In a country pulsing with xenophobic tensions, the Court has confirmed that non-citizens illegally in the country can benefit from constitutional rights and protection. It has voided a regulation prohibiting foreign teachers from finding permanent employment in state schools. And it has found that noncitizens with permanent residence are entitled to claim social security benefits.

…Let me be precise about what I am saying. It is that even when their realisation is only partial, law and legal rights confer civic dignity, a perception of personhood, and a sense of moral agency on their beneficiaries. ...In short, what the Constitution has conferred on all South Africa's inhabitants is a sense of themselves as bearers of constitutional rights, rather than just legal subjects.

## Conclusion

I have come to my ending. In some ways, what I have propounded is not only modest, but obvious: that law and legal rights can be human goods. …But it is equally obvious that the law, while almost always better than no law at all, can be used as much for great evil as it can be used for good.

… The modest successes of constitutionalism in South Africa are the more remarkable if one considers how, without law, chaos, bloodshed and dictatorship seemed inevitable – but that, with the law, we have achieved the small beginnings of a state of human dignity.

# What we can learn from each other

Guest editor John Aitken and HH Judge Barbara Mensah talk about the similarities and differences between courts and tribunals, and what each can learn from the other

**JA:** I have been asked to be guest editor of *Benchmark* in February and whilst I do not have to find articles, I have decided that my theme will be Courts and Tribunals integration.

**BM:** Interesting topic in the light of the recent integration of the Courts and the Tribunal services.

**JA:** Since you are an example of someone who has made the move from tribunals to court - tell me, do you think there are things courts and tribunals can learn from each other?

**BM:** Most certainly. It was always a common assumption that the tribunal judiciary had everything to learn from the court judiciary and little the other way round. From preparation to judgment – the model for emulation came from "real judges" or "the uniform brigade". But the assumptions and the comparisons between the two jurisdictions were of course unfair. The tribunal service and the court service were providing different services in different circumstances. They were represented by different administrative services, their recruitment and training processes were different, their judges came from more diverse and different backgrounds. There was a lot that the tribunal judiciary could and did learn from the court judiciary. But equally there was much that could be learnt the other way round and the integration has demonstrated that.

**JA:** Were you part of the court and tribunal integration process?

**BM:** No, but as an outsider I have found it interesting to see the way in which the court service is adopting some practices that the tribunals service had been using for many years and it is instructive to realise that the learning need not be and is not just a one-way process.

**JA**: Can you give any examples of areas where the courts followed practices or procedures of the tribunals?

**BM:** Yes, a few areas come to mind. One obvious one is the current move to digitisation in the criminal courts.

*John Aitken and HH Judge Barbara Mensah*

About 15 or more years ago the Parking Tribunal (now Parking and Traffic Appeals Service) started life under its then Chief Adjudicator Caroline Sheppherd as a paperless tribunal.

Every application, every piece of written or photographed evidence was scanned into the main computer and the judges worked from the documents which they called up on the computer in front of them in the hearing (or non hearing office) rooms. Documents, pictures, videos could all be viewed on screen in the paperless hearing room and the parties could also view the images on screen with the judge. After hearing the evidence (or considering it in the absence of the parties) the judge would type up a short reasoned decision or directions and it would be posted or immediately handed (in the case of those attending) to the parties. Judges were also able to adjourn cases and fix next hearing dates on the computerised system, which split each sitting day into quarter-hour slots.

Judges could view the papers on a particular case at any time (the tribunal opening hours for judges was greater than that in most Crown Courts – early morning opening to about 8pm closing and Saturday morning opening too).

With the facilities we now have in many courts the possibilities for further use are greater – for example, with the projectors and monitors we have in most hearing rooms we could call up documents and project them onto the screens rather than passing them around, particularly in

those courts where we are short of ushers. I would be surprised if the current move to digitisation of the court system was not in part inspired by the success of its use in the Tribunal Service.

**JA:** Are there any other areas where you think the court service can or has learnt from the Tribunals service?

**BM:** Yes. There are two other areas where tribunal practices used some years ago are now also being used by the courts. I don't know if they came from discussion or observations between the two. They may have come from independent inspiration. But it is nevertheless interesting to see the courts moving in the same direction and it may be that they can still get ideas from the Tribunals Service in those areas. Those areas are training and mentoring.

> There was a lot that the tribunal judiciary could and did learn from the court judiciary. But equally there was much that could be learnt the other way round and the integration has demonstrated that.

Many years ago, under the direction of Godfrey Cole, the tribunals training section of the Judicial Studies Board, was offering modern, innovative training both in method and content. Some of the things we noticed in tribunal training included more small group discussion sessions with case studies and fewer lectures.

There were judgecraft courses, courses testing analytic and deductive skills, communication skills, videoing of judicial delegates and sessions dealing with unrepresented litigants. There were also judicial management courses.

The training committee introduced a variety of new processes and courses – courses to train the trainers, walk-throughs before each residential training session, follow up courses (six months later) for new appointees, video presentations, sessions dealing with judgment writing, giving ex tempore judgements, dealing with unrepresented litigants and dealing with accommodating inadequate/difficult representatives.

> I would be surprised if the current move to digitisation of the court system was not in part inspired by the success of its use in the Tribunals Service.

Every two years there was a huge annual meeting for all the full-time judiciary from England, Scotland and Wales in a, usually geographically centrally located, conference centre. In addition administratively a training record was opened for every judge which detailed all the courses they had attended (whether as delegate or trainer or facilitator), whether in the UK or overseas and whether provided by the tribunal training scheme or an outside provider (such as a professional lawyers association). Each year a questionnaire was sent out to all judges (full and part time) asking them what they would particularly like to see on the training programme. A variety of courses were offered and judges were allowed to choose which course they wished to attend. In other jurisdictions, such as the Asylum Support Tribunal, there were training days which involved all court staff (administrative as well as judicial) at the same time – providing an excellent opportunity to discuss communication skills and day-to-day practical and procedural matters affecting all court staff. The Judicial College now offers a choice of courses from which judges can choose and there are follow on sessions for new appointments, there is also increased emphasis on presentation within the small group sessions.

Mentoring has recently been introduced into the criminal court service. It was introduced into the IAA Tribunal service in 2000. In the latter scheme the new appointee was paired with a mentor prior to his/her sitting in observation and attendance on the induction course.

Every new appointee was asked to arrange a day sitting in with an experienced judge and take the opportunity if possible to contact the assigned mentor(s), who would usually be at the same hearing centre. The mentoring scheme being introduced and formalised in the court service is in its infancy by comparison but looks to become every bit as successful and appreciated as the one established in the Tribunals Service.

**JA:** Interesting....

**BM:** Yes it is – the Tribunals Service has been the leader in many areas, often unacknowledged.

But just as its judiciary have learnt much from court judges over the years and particularly senior judges, I hope that even from the three examples I have given it will be seen that there is much we can also learn from the tribunal jurisdiction.

# Nonsense or loophole?

The Occupy London protests saw prominent roles being played by self-styled 'Freemen on the land' – a set of beliefs described, depending on the source, as a credible method of opting out of being governed, or "pseudolegal woo".

'Freemen on the land' believe they can declare themselves independent of government jurisdiction on the grounds that all statute law is contractual, and only applicable if an individual consents to be governed by it. They believe the only "true" law is their own definition of common law.

## History

The "Freeman on the land" movement can be traced back to various US-based groups in the 1970s and 1980s onwards. It reached the UK some time around the start of the new Millennium, with the actual term "Freeman on the land" first appearing around 2008.

## Common law and the 'legal person'

Freemen believe that individuals can choose to opt out of statutory law on the basis that it is a contract, living instead under 'common' (case) and 'natural' laws. Natural laws, in this sense, require only that individuals do not harm other human beings, damage the property of others, or use "fraud or mischief" in contracts.

They maintain that everyone has two strands to their existence: their flesh and blood body, and their legal 'person', represented by (and to some freeman, actually limited to) their birth certificate.

The 'strawman' is created when a birth certificate is filed, and is the entity which is subject to statutory law. Their physical self is referred to by a slightly different name, for example "John of the family Smith".

## The law of the sea

Many FOTL beliefs centre on Admiralty or Maritime law – which they claim governs the world of commerce. The reasons are baffling, but may stem from misunderstanding nautical-sounding words in common usage – for example, ownership amd citizenship, dock, or birth (berth) certificate.


*The Occupy London protest at St Paul's Cathedral*
*Source: Neil Cummings via Flickr*

Freemen will take this further by using further nautical terms, referring to the court as a "ship", its occupants as "passengers" and claiming that anyone leaving are "men overboard".

Freemen will try to claim common law (rather than admiralty law) jurisdiction by asking "do you have a claim against me?", which supposedly removes their consent to be governed by admiralty law and turns the court into a common law court, forcing the court to proceed according to their version of common law. (NB: This has never worked.)

Freemen do not accept legal representation, as to do so might entail contracting with the state.

Freemen believe that the UK and Canada are now operating in bankruptcy and are therefore under admiralty law. Since the abolition of the gold standard in 1917, UK currency is now backed not by gold but rather by the people, or rather the legal fiction of their persons. →

→ They describe persons as creditors of the UK corporation.

Courts are thus seen as being a place of business, making a summons an invitation to discuss the matter at hand, without any powers to compel attendance or compliance.

## Contracts and statutes

Freemen believe that the government has to establish what they refer to as joinder to link yourself and your legal person. If you are asked whether you are "John Smith" and you confirm that you are, then you are establishing joinder. You have connected your physical and human persons.

The next step is to obtain consent. Statutes are seen as invitations to enter a contract, which are only legally enforceable if one enters into the contract consensually. If one does not enter in to a contract then statute laws are not applicable. Freemen believe that the government is therefore constantly trying to trick people into entering into a contract with them. They often return bills, notices, summons and so on with the message "No contract — return to sender".

## Notice of understanding and intent and claim of right

A notice of understanding and intent and claim of right is a document freemen use in an attempt to declare sovereignty. They will sign such a document, sometimes with a notary, and then send it to the Queen and sometimes various other figures such as the Prime Minister and police chiefs.

It usually consists of a series of lines beginning "Whereas it is my understanding" followed by a series of lines giving their (highly individual) interpretation of the law and their understanding that they do not consent to it.

## FOTL in court: not a success story

Given that FOTL beliefs are based largely on misunderstandings or wishful thinking, they do not stand up well to legal scrutiny.

Gavin Kaylhem, of Grimsby, received a 30-day sentence for willfully refusing to pay his council tax. He had claimed he had no contractual obligation to pay under Common Law because he was a "freeman".

He also refused to co-operate with magistrates' questions.

Elizabeth Watson, self-styled 'legal adviser' in the 2011 Vicky Haigh child custody case, received a nine-month suspended sentence for contempt of court. She had used FOTL techniques including writing 'no contract' on court documents, denying the lawful authority of the proceedings, and using the 'of the … family' style when referring to Ms Haigh and herself.

Norfolk odd-job man Mark Bond, AKA Mark of the Family Bond, was arrested for non-payment of council tax in 2010 – despite handing police a notice of intent stating that he was no longer a UK citizen. He told police that the notice had already been handed to the Queen and prime minister David Cameron.

He told his local paper: "Today I asked the judge to walk into the court under common law and not commercial law. If I had entered under commercial law it would prove that I accepted its law. I was denied my rights to go in there."

He was handed a suspended three-month jail sentence on condition that he pay £20 a week off the debt.

## Further information

General information/opinions on the Freemen on the Land movement:
http://rationalwiki.org/wiki/Freeman_on_the_land

http://www.legalweek.com/legal-week/blog-post/2125364/freemen-dangerous-nonsense

News stories on attempted use of the beliefs:
http://www.wexfordpeople.ie/news/bobby-of-the-family-sludds-may-be-jailed-2878029.html

http://www.eveningnews24.co.uk/news/norfolk_tax_dodger_arrested_after_writing_to_queen_1_745681

# Reducing the pressure

Guest editor John Aitken, Deputy President of the Health, Education and Social Care Chamber of the FIrst-tier Tribunal, on an innovative new scheme aimed at reducing case management work and co-operating across jurisdictions.

Whilst I always set off on a journey hoping it will turn out to be rewarding, I understand that often I may be disappointed and need to be prepared for that.

On this basis - and given that persistence seems to have served evolution well - we within the Health Education and Social Care Chamber are prepared to keep trying alternatives to how things are when considering how best to meet the needs of our users (or as my daughter would have it, "You need to kiss a lot of frogs before you meet your prince" which doesn't augur well for the boys she proposes to bring around).

It was with such a fatalistic attitude that I approached the offer of Magistrates' Court Legal Advisors to assist with case management in this area of HESC - that is in Special Educational Needs and Disability, Care Standards and Primary Health Lists jurisdictions at the Darlington administrative centre.

## The big picture

The jurisdictions are themselves diverse, with appellants from parents of children with special educational needs sometimes themselves with learning difficulties disputing educational provision; very articulate doctors that a Primary Care Trust was seeking to remove from practice in the NHS, perhaps supported by medical defence funding; to quite large enterprises owing care or educational establishments who were prepared to defend the viability of their business.

What the jurisdictions certainly have in common – and it is difficult to think of any jurisdiction which doesn't – is a mass of applications to remedy things which are not a perfect fit or have gone wrong, from late documents to illness from disclosure to extra witnesses. All of which needs to be looked at to keep the hearing running smoothly, but for which there was no single resident or duty judge. The system had been running on a rotation of a number of judges both salaried and fee paid who were prepared not only to undertake the work but also the sometimes considerable travelling requirements, and whilst electronic documents are good, it is very difficult to replicate the experience of handling a file when one needs to check a point. The suggestion was that since there was some availability of local legal advisors, who had experience of case management in family cases and the like they may be a good fit for this type of work.

What the jurisdictions certainly have in common, and it is difficult to think of any jurisdiction which doesn't, is a mass of applications to remedy things which are not a perfect fit or have gone wrong, from late documents to illness from disclosure to extra witnesses. All of which needs to be looked at to keep the hearing running smoothly, but for which there was no single resident or duty judge.

## Enter the registrars

Enter the Registrars, Paul Pearson and Alison Paddington: they have undertaken the work with skill, good humour and a great deal of persistence and enthusiasm.

In franker moments the lead judge in the SEND Jurisdiction Meleri Tudur will admit to being cautious beforehand about the pilot which commenced in SEND only, being the area of greatest need and enabling the Registrars to acclimatise to one jurisdiction at a time. From a position of caution she has turned protective, when it was suggested it was time to train them in another area, she would only agree provided it did not affect their role in SEND. They have now progressed to some Primary Health Lists work and will eventually deal with all three jurisdictions.

The economics of having the work done without several hundred pounds of travel expense each day are obvious, as is the freeing up of judicial time and of course money to do hearings rather than "boxwork". In →

→ truth few people are attracted to the judiciary on the basis that they will be able to process many hundreds of written applications after a trip right across the country. They are dedicated enough to do it, but that is not the same.

## Making progress

For Alison and Paul however it comes as a 'one week with us and one week at their usual job' allowing them to gain valuable experience in a different jurisdiction, without travelling a great distance.

They are experienced generally in dealing with the type of applications made from their role in the family proceedings court and although I hardly dare say it, they are presently producing around the same number of decisions each day as a judge.

The quality - and importantly, consistency - is such that fewer are being subjected to a request to review by the parties than previously despite each set of directions inviting the parties to have it looked at by a judge if they request within 14 days, in addition to other case management review protections.

In around six months, with almost 2,000 orders and directions made, around half a dozen have requested us to look again at the order or direction made.

In none of those cases could the order or direction be faulted. I suspect that it is the consistency which has had the greatest impact, our regular users know what they have to do, and know what orders and directions to expect and have settled into that routine.

## Planning for the future

The Registrars have indicated that the work is highly pressured, and whilst they wish to remain once the six-month pilot is completed, a rotation of one week in three would be ideal, and to ensure that this becomes "business as usual" further legal advisors are to be recruited to create a panel who take on the work in approximately a three-week rotation.

The Leggat report on Tribunals suggested that "Greater emphasis on the pre-hearing stages of some cases may mean that face-to-face support is required as well as communication by the telephone; there is a prospect that the Registrars will also help to fulfil this ideal to some extent.

They are already available more consistently than a judge to answer short queries raised by administrative staff who may be on the telephone to a user, and there is a prospect of that role being extended, with the Registrar being referred more complex calls from users.

In addition we have plans to use them for more active case management and compliance issues a few weeks before the hearing when the parties have established their positions. Quality, availability, responsiveness, saving expense and fulfilling some of the Leggat ideals, it is in truth difficult to identify the disadvantages, at this admittedly still early stage.

## Conclusion

We may have been very lucky in our Registrars, and certainly they are very keen and very good at what we ask them to do, and they have been well trained by Meleri Tudur, or perhaps our work is a particularly good fit, and that will be tested by other pilot schemes. I have never seen a scheme which has had such instant measurable success and won over critics so easily.

The user groups who have been consulted about these changes on a regular basis are also very complimentary. This genuinely seems to be an area where the merger of the courts and tribunals has been a real benefit to everyone involved, and seems to indicate that there is a common pool of experience which can be tapped for everyone's benefit.

## About John Aitken

Judge John Aitken was appointed Deputy President of the Health, Education and Social Care Chamber of the First-tier Tribunal – with responsibility for Special Educational Needs and Disability, Care Standards and the Family Health Services Appeal Authority – IN 2009.

He joined the Chamber from the Asylum and Immigration Tribunal where he had been a Designated Immigration Judge, based at North Shields since 2005 and Acting Resident Senior Immigration Judge since 2007.

# Identity and connecting communities

HHJ Robert Bartfield talks about inter-faith communication, cricket, and encouraging the judges of tomorrow

Please tell us your name, job title and the city/town/district where you are based

His Honour Judge Robert Bartfield, based at Bradford Combined Court (although I live in Leeds). I deal with family, crime and civil matters.

When did you become a DCRJ?

In 2010.

What attracted you to the role?

I am fascinated by the issue of identity, and the extent to which there are fragmented communities in the UK which have no contact with one another – and how best you can break down the barriers between us.

Do you have a background in diversity or community relations?

I'm Jewish, and there is a representative group in the Jewish community in Leeds that I have been working with since about 2000. I was asked to develop relations between the Jewish community and other ethnic groups, particularly the Muslim community.

Inevitably, particularly over the Middle East, there have been tensions between the two groups, and have given rise to a number of security issues in Leeds – we've had one or two issues between Jewish and Muslim youths, and we really wanted to put a stop to it.

Money was allocated to an Inter-faith Forum, on which I was the Jewish representative, as a place where we could exchange information and start a dialogue. It did get bogged down in very localised issues and didn't make as much progress as I would have liked, but what it enabled me to do was form a number of relationships with local churches – and at least two mosques.

In 2004 we were able to get the use of a building and hold a series of workshops, mainly to do with aspects of each others' identities and religions. It lasted a whole day and worked very well; those kind of events take a huge amount of organising and pushing, but when you do get one together it is definitely worth it.

*HH Judge Bartfield*

In 2007, the Jewish community and Muslim community joined up to organise an interfaith football day for Jewish and Muslim youths aged nine-14. We were able to use Leeds United's training ground, divided the boys into mixed faith teams and ran it as a World Cup. It worked really well, and the boys formed a number of relationships through that. After that we started an even more popular cricket project, using the nets at Headingley.

Tell us about your local community.

Bradford is very diverse, ethnically, but not mixed. There are three or four areas of the city which are predominantly Asian; when I'm driving into the city in the morning, one of the things I find very striking is that when you see a crocodile of schoolchildren they are invariably 100 per cent Asian, or 100 per cent white. It's an indicator of the way things are.

Since becoming a DCRJ, what sorts of activities have you organised?

Reaching out to the Muslim community is quite difficult, and one thing I don't want to do is only contact the elders.

My target has been particularly the schools and universities; at the last DCRJ conference we were asked to make our emphasis trying to convey to the community the availability of a legal – and ultimately a judicial – career. With judges now being appointed in their 30s, if you're talking to university students then you're not looking very far ahead at all!

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→ We have quite a lot of school visits, most of which are sixth-formers, and when I'm available I talk to them about a legal career and joining the judiciary.

## Universities

I also have links with Bradford University, and observe about 80-90 per cent of the law students are from ethnic minorities, which is interesting to see – I would also say that about two-thirds of them are female.

I went as part of a panel which is delivering talks on career choices to students, and since my talk I have had students approaching me to spend a week with me on the bench – which is open to anybody, but certainly wasn't available when I was a student!

They spend time with me, meet the local judiciary and see how a court operates. I'm hopefully that some of them will be considering a judicial career.

## Drugs awareness

I've also taken part in a drugs awareness event, with the police, local authority and kids as young as 13/14. We had a symposium about drugs issues, and the kids gave drama and musical presentations and then went and fed back information to other kids.

## Discussion and debate

Outside of work, I helped to organise a Jewish-Muslim film club in Leeds, and am hoping to bring something similar to Bradford. There are some very good films on Jewish and Muslim issues – some of them quite amusing – and we show them, followed by a discussion group. It works very well in Leeds, and I'm hoping it will for Bradford.

In Bradford we have monthly speakers for an event called Faith in the City. We've had Yasmin Alibhai-Brown, and Sarfraz Manzoor from the Guardian. Again, there's usually a discussion afterwards and it is attended by 100-120 people, about three-quarters of them Asian. The ages are mixed and it's a very good atmosphere. We had one on Israel and Palestine and it was very civilised.

> I am fascinated by the issue of identity, and the extent to which there are fragmented communities in the UK which have no contact with one another – and how best you can break down the barriers between us.

### What's the most challenging aspect of your role?

Getting people to accept and respond to you. I think there's a feeling that a judge will be very austere and inaccessible and that's something you have to get over.

On a practical note, trying to get film distributors to let us use their film, in Leeds, for that audience isn't always easy…

Momentum is also a challenge. I think of interfaith work as a fire that you constantly have to feed or it goes out. It can be dispiriting sometimes – but very rewarding when things start to happen.

### What's been the most successful activity?

The cricket scheme is not something I am involved with now, but is very successful and has its own momentum – it's really encouraging to see that happen.

And I was very pleased when the students started contacting me directly to ask for work experience; again, teachers will ask me to take someone on, but even more encouraging when they email me themselves.

# Appointments and retirements

## Appointments

17 February 2012
**Rouine:** Augustine Patrick Rouine appointed a District Judge. The Lord Chief Justice assigned him to the Northern Circuit, based at Preston Combined Court Centre with effect from 1 March 2012.

8 February 2012
**Marks QC:** Richard Leon Marks QC appointed a Senior Circuit Judge based at the Central Criminal Court.

27 January 2012
**Ball**: Mark St Clair Ball appointed a District Judge. The Lord Chief Justice assigned him to the Western Circuit, based at Barnstaple County Court and Exeter Combined Court Centre.

**McQueen**: David John McQueen appointed a District Judge. The Lord Chief Justice assigned him to the Northern Circuit, based at Burnley County Court.

## Retirements

12 February 2012
**Black**: District Judge (Magistrates' Courts) Charles Stewart Forbes Black retired.

3 February 2012
**Harris QC:** His Honour Judge David Michael Harris QC retired as a Circuit Judge.

**Paget**: His Honour Judge David Christopher John Paget QC retired as a Senior Circuit Judge.

31 January 2012
**Hepworth**: Employment Judge John Michael Qualter Hepworth retired.