The Experiences, Perceptions and Expectations of Tribunal Users

Tribunal Users' Experiences, Perceptions and Expectations: A Literature Review

Michael Adler and Jackie Gulland
University of Edinburgh

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The Authors

Michael Adler is Professor of Socio-Legal Studies and Jackie Gulland a PhD student in Social Policy in the School of Social and Political Studies, University of Edinburgh.

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“ It should never be forgotten that tribunals exist for users, and not the other way round. No matter how good tribunals may be, they do not fulfil their function unless they are accessible by the people who want to use them, and unless the users receive the help they need to prepare and present their cases. ”

(Leggatt Report, p. 6)

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1 INTRODUCTION

1.1 The Policy Context

The thinking which informed the Leggatt Report was shaped by a plurality of values, one of which was the belief that the structure and organisation of tribunals should reflect the experiences, perceptions and expectations of those members of the public who use, or are entitled to use, tribunals as a means of dispute resolution. Although the Review Team consulted widely and was undoubtedly familiar with the findings of empirical research on those who have, or could have, used tribunals to resolve their disputes with public bodies and other private parties, there are very few explicit references to this research in the Report. As a result, the reader cannot glean from the Report what is known about the experiences, perceptions and expectations of tribunal users and cannot use this knowledge to assess its diagnosis of the tribunal system's shortcomings or the policies it puts forward for dealing with them. To facilitate an assessment of the Report and to inform the process of deciding how the government should respond to it, we were asked by the Lord Chancellor's Department to review the research evidence on users' experiences, perceptions and expectations of experiences of a wide range of tribunals.[1] Our review was commissioned in September 2001 and completed in January 2002. It has now been updated and this version attempts to review all the literature that was available in October 2003.

1.2 Format of the Literature Review

The Literature Review is structured around four main headings derived from the research specification we were given by the LCD:

1. Practical barriers that prevent potential users from accessing tribunals, in particular:
   - ignorance of rights or procedures;
   - cost;
   - the complexity of the appeal process and absence of appropriate help;
   - physical barriers;
   - the impact of electronic access;
   - the impact of amalgamation.
2. What users want from the tribunal process, in particular:
   - the balance between speed, quality and cost;
   - informality of hearings;
   - the value of representation.

[1] In spite of the fact that the term 'users' is quite widely deployed, it is somewhat problematic. Although it purports to neutrality, it suggests a degree of voluntarism or choice that is sometimes lacking. The case of asylum seekers who appeal to immigration tribunals exemplifies this problem.

3. The proportion of users who have appealed (to the same or a different tribunal) before;

4. Users' views on the independence and impartiality of tribunals.

Under each of these headings reference is frequently made to specific tribunals, or types of tribunal. This is because the findings are often specific to the tribunals in question and do not necessarily apply to other tribunals. However, at the end of the Review we do attempt to set out some general findings. To enable readers to consult the sources themselves, and to check the accuracy of the inferences we have drawn from them, we have taken care to cite all the sources we have relied on.

1.3 Sources

For each of the sources which presents empirical findings on users' experiences, perceptions and/or expectations of tribunals, a brief description of the data on which the findings are based has been included (see pp. 29-35 below). A listing of all the sources we consulted appears in the bibliography at the end of this review (see pp. 36-40 below). Purely 'legal' research on tribunals and research on users' experiences that is now out-of-date have been excluded. The review focuses on recent socio-legal research and, with one or two important exceptions, refers to research conducted in the last 10-15 years.

Although this review is based on published research on the experiences, perceptions and expectations of those who do, and those who could, appeal to a tribunal, and this research covers some of the largest and most important tribunals listed in Part II of the Leggatt Report, there are some important gaps in the literature. This is because there has been a considerable amount of published research on some tribunals, e.g. those dealing with social security, employment and mental health, but very little (and sometimes none at all) on others, e.g. on those dealing with taxation, valuation and criminal injuries. Where there was little published material, we approached pressure groups and voluntary organisations with a specialist interest in the policy area in question but the amount of additional material collected was rather meagre. There was very little research which looked at the characteristics of appellants to tribunals and whether or not this had an effect on their experience of the procedures. However, forthcoming research by Hazel Genn, commissioned by the (new) Department of Constitutional Affairs, will look specifically at the experiences of black and minority ethnic groups regarding three types of tribunal. This will undoubtedly fill an important gap in our knowledge.

2 PRACTICAL BARRIERS THAT PREVENT POTENTIAL USERS FROM ACCESSING TRIBUNALS

2.1 Ignorance of Rights and Procedures

The first potential barrier that users encounter in accessing the tribunal system is knowing that they have a right of appeal (or application) in the first place. Most of the research on users' experiences looks at appellants rather than those who do not appeal – exceptions are Blandy *et al.* (2001), Bradley *et al.* (1995), Genn and Genn (1989), Harris and Eden (2000), Sainsbury, Hirst and Lawson (1995), Sheppard and Raine (1999), and Wikeley *et al.* (2001). This means that most research is based on those who were not deterred by ignorance of their rights. Nevertheless some information can be gained from those who did appeal.

There are two types of ignorance which can prevent an appellant from making an appeal – ignorance of the fact that there may be grounds for appealing against the original decision and ignorance of the procedures which need to be followed. The general conclusion, supported by much of the research evidence, is that ignorance about the grounds of appeal is often more important than ignorance of procedures, although some potential appellants may not realise that they have a right of appeal at all.

The research findings are summarised below for each of the main types of tribunal, as appeal procedures are different in each case.

The Appeals Service and its predecessors (SSATs, MATs, DATs and CSATs)

Most research indicates that people find it relatively easy to appeal[2]. Most, but not all, users receive information about their right to appeal against the adverse decision from the agency (formerly the department) that made the decision in the first place. However, because the Appeals Service deals with appeals from a number of different agencies, and from many sub-divisions within them, this information is not uniformly good. For example, there has been criticism of the lack of information about appeal rights provided by the Child Support Agency (CSA Standards Committee 2001). The effects of this are confirmed by Wikeley *et al.* (2001, pp. 93-94), who found a low level of awareness of the right to appeal against a decision of the Child Support Agency, even among those who had lodged a complaint about their assessment. Those who do not get this information from the agency in question access a variety of sources, in particular

[2] Concern has been expressed that the new arrangements introduced by the Social Security Act 1998, in particular the introduction of a two-stage procedure in which claimants may first request a revised decision from the Benefits Agency and then, if they are still not satisfied, appeal against the revised decision, will make it more difficult for claimants, in particular those who are not represented, to have their cases heard by a tribunal (Sainsbury 2000, pp. 223-4, see also Osborne 2001, p. 4). However, there has, as yet, been no research to test the validity of this concern.

Citizens Advice Bureaux and other information and advice agencies (Baldwin *et al.* 1992, Berthoud and Bryson 1997, Genn and Genn 1989, and Sainsbury 1992).

Knowing that there is a right of appeal is not the same as understanding how the appeal will be dealt with or what the outcomes of an appeal could be. Research indicates that most appellants do not really understand the appeals process or what the powers of tribunals are (Berthoud and Bryson 1997, Farelly 1989, Genn and Genn 1989, Sainsbury 1992, Sainsbury *et al.* 1995, Wikeley *et al.* 2001, Young 1999). Berthoud and Bryson (1997, p. 23) argue that this lack of understanding is related to social security claimants' low level of understanding of the benefits system. They found (p. 24) that people appeal because they think the original decision is unjust, without necessarily understanding the legal basis for the decision or appreciating what the chances of a successful appeal are. Genn and Genn (1989, p. 220) also came to the conclusion that people who appeal feel strongly about their case even if they don't understand the legal basis for it.

Farelly (1989, p. 405), in his study of people who did not attend their tribunal hearing, found that 98 per cent of people had not understood the initial decision. Berthoud and Bryson (1997, p. 25) found that most of those who did attend their hearing understood the initial decision but that some remained 'totally confused', and, of those who understood the initial decision, few really understood how the law applied to their case or that the tribunal would be required to apply the law. They suggest that those who do not appeal may be those with least understanding.

Sainsbury *et al.* (1995, p. 205) asked people, whose internal reviews for Disability Living Allowance and Attendance Allowance had been unsuccessful, why they did not intend to appeal to a tribunal. They found that, although responses were not clear cut, people appeared to be generally dissatisfied with the process up to that point rather than satisfied that the reviewed decision was correct.

In the course of their study of representation at four tribunals, Genn and Genn (1989) interviewed social security claimants who had received an adverse decision but had decided not to appeal. They found (*op. cit.*, p. 130) that, although these claimants may have been aware of their right of appeal, they did not exercise it because of a 'lack of knowledge [about the procedures and any grounds for appeal] and sense of helplessness [in the face of authority]'. They conclude (*ibid.*) that access to good advice at this stage is the key to overcoming this problem.

Criminal Injuries Compensation Appeals Panel

There does not appear to have been any research on users' experiences, perceptions or expectations of the Criminal Injuries Compensation Appeals Panels but research on the earlier, pre-1996 system (reviewed in Miers 1997, p. 53) suggests that those who did not appeal against decisions of the Criminal Injuries Compensation Board were discouraged either because they did not understand how their award had been calculated in the first place or because they felt that the *ex-gratia* nature of the award meant that they should not complain. Miers argues that the changes to the scheme in 1996, which resulted in the introduction of a tariff system, should have dealt with the problem of not understanding the calculation but we have not been able to find any recent research that substantiates this.

Employment Tribunals (formerly Industrial Tribunals)

Researchers have found that applicants access a very diverse set of information sources, including Citizens Advice Bureaux, solicitors, workmates, family and friends, and trade unions. It is significant, however, that trade unions appear to be the main source of information for a very small proportion of applicants – 6 per cent according to the Employment Tribunal Service (2001), 18 per cent according to Genn and Genn (1989).

The main source of information accessed by applicants to employment tribunals appears to vary according to the nature of the case and according to the characteristics of the appellant. For example, recent research on applications to employment tribunals found that appellants in unfair dismissal cases were most likely to consult a professional adviser while those taking Wages Act or redundancy payments cases were least likely to have received any advice (DTI 2002, p.26). Appellants in professional jobs were more likely to consult solicitors while (unsurprisingly) trade union members were more likely to consult trade unions (*ibid*.).

Genn and Genn (1989) found that applicants to industrial tribunals had a clearer idea of their rights than those who appealed to the other tribunals in their study (Immigration Adjudicators, Mental Health Review Tribunals, and Social Security Appeal Tribunals) but that they did not know what the process of appealing involved or what the powers of the tribunal were. Tremlett and Banerji (1994) and DTI (2002) found that 90 per cent of applicants had received advice before they applied to the tribunal. The increasing complexity of employment legislation and the related complexity of application

forms for tribunals, leading to a greater need for advice at the application stage, has been noted by the Employment Tribunal Taskforce (2002, pp. 52-53).

It is, of course, possible that surveys of applicants to employment tribunals constitute an unrepresentative sample of those who could apply and that many of those who could apply do not do so. In her recent studies of access to justice (Genn 1999, p. 158; Genn and Paterson 2001, p. 164) found that, among those with employment problems, those who obtain advice were much more likely to end up at a tribunal than those who do not. Meager *et al.*'s (2002) research into awareness of employment rights amongst the general population reports that, although there are many exceptions and awareness of specific employment rights varies according to individual circumstances, general awareness of employment rights is lower amongst those who experience 'employment disadvantage', for example because of educational disadvantage, low employment status, part-time or temporary work. The report notes that it may be 'those who might need that awareness/knowledge the most, who are least likely to have it.' (*op. cit.*, p. 224). However, this study concludes that ignorance of employment rights is not necessarily a barrier to taking action (*op. cit.*, p. 227).

In a study of disability discrimination cases, Meager *et al.* (1999) identify a general lack of awareness of the provisions in the Disability Discrimination Act and conclude that people only found out about their rights under the Act when pursuing cases e.g. for unfair dismissal. Applicants rely on advisers to identify disability discrimination as an issue.

Immigration Adjudicators

Genn and Genn (1989) found that most appellants obtained information about their right of appeal direct from the Immigration Authorities. However, we have been unable to locate any research on those who do not appeal. Gelsthorpe et al's (2003) research into family visitor appeals found that applicants for visas had little understanding of the process and would often re-apply rather than appeal (*op. cit.*, p. 12). The findings from this study show considerable problems with information about rights and procedures as well as difficulties with language and literacy (*op. cit.*, p. 45). It is likely that some of these barriers apply equally to other types of immigration appeal.

Leasehold Valuation Tribunals

Blandy *et al.* (2001) surveyed leaseholders who had made enquiries to the Leasehold Advisory Service (LEASE) about problems which could have been dealt with by a Leasehold Valuation Tribunal. Of those who had decided not to take their case to a tribunal, 32 per cent believed (incorrectly) that the tribunal did not have jurisdiction over their case (*op. cit.*, p. 20). Their analysis of the case files of those who had applied to a tribunal showed, conversely, that many of these cases lay outside the jurisdiction of the tribunal. This confusion over the jurisdiction of the tribunal led them to conclude that applications were 'a gamble that many people were unwilling to take'.

Mental Health Review Tribunals (MHRTs)

Research findings indicate that knowledge of the right to appeal and the procedures for exercising it depend on the previous experience of the appellant or potential appellant. Thus, Bradley *et al.* (1995) showed that people who have little or no previous experience of compulsory detention in psychiatric hospitals have little knowledge of their appeal rights, while Dolan *et al.* (1999) found that those who have been detained for some time or on a regular basis are more aware of them. However, they have little understanding of the powers of the tribunal.

Bradley *et al.* (1995) interviewed patients who had not exercised their right to appeal to a Mental Health Review Tribunal and found (*op. cit.*, p. 364) that 57 per cent could not understand the booklet explaining their rights. In addition to not being aware of their rights, the reasons given for not appealing included the difficulty of having to appeal in writing. An analysis of the case notes of a large number of patients showed that people were more likely to exercise their right of appeal if they had higher education qualifications or if they had previous experience of compulsory hospital admission. The study concluded (*op. cit.*, p. 368) that the Mental Health Act is an 'unsatisfactory way of protecting the civil liberties of patients'.

Barnes *et al.* (2000) found that few of those who are compulsorily detained in hospital know about their rights. However, they were not specifically asked about their awareness of their right to appeal to a Mental Health Review Tribunal. Goldbeck *et al.* (1997) also found a low level of awareness of their rights among compulsorily-detained patients but noted that that there was a higher level of awareness amongst those who had been detained before and those who had sought advice.

In their study of patients who were detained in a special hospital, Dolan *et al.* (1999) found that, although most had experience of appealing to a tribunal on a regular basis, they did not understand what the powers of the tribunal were. Only 9 per cent 'displayed accurate knowledge of the powers of the tribunal' (*op. cit.*, p. 267), but this did not deter them from applying. In fact, it is possible that it had the opposite effect. Both Dolan *et al.* (*op. cit.*, p. 271) and Peay (1989, p. 44) found that some appellants, particularly long-term patients in special hospitals, use the appeal process as a means of updating themselves on the authorities' view of their condition and as an opportunity to discuss their case.

Parking Adjudicators

Sheppard and Raine (1999) found that 21 per cent of those who did not appeal did not realise that they had a right of appeal. 45 per cent of those who did not appeal did not realise that they could appeal by post and most of them said they would have appealed if they had realised this.

School Admission Appeal Panels

Coldron *et al.* (2002) found that parents had little difficulty in finding out how to appeal but some were not sure which documents were required or where to send the papers (*op. cit.*, p. 57). Parents seemed to rely mainly on other parents for advice about the procedure. Although most parents felt that they had received enough information about the procedure, when they were asked about their suggestions for improvements, a strong theme emerged regarding the need for better information, advice and guidance on the procedure (*op. cit.*, p. 68).

School Exclusion Appeal Panels

Harris and Eden (2000, pp. 133-134) divide those who do not appeal into those who lack confidence in the appeals process and those who believe that their child would be better off making a fresh start in another school. However, some parents are deterred by advice from the school while others are put off by the internal review of the decision to exclude their child that precedes an appeal. Some parents are ignorant of their right to appeal (although most are not). Better off parents and those who receive advice, in particular legal advice, are more likely to appeal than poorer parents and those who do not receive advice.

Special Educational Needs Tribunal (SENT)

In a survey of appellants, Harris (1997, pp. 80-81) found that 25 per cent of parents had sought advice from a lawyer and 43 per cent from a CAB or a voluntary organisation, while 25 per cent had not sought any advice. 90 per cent of those who had sought advice were happy with the advice they received and said they could not have coped otherwise. Many also commented on the helpfulness of the information provided by the SENT and SENT staff. Harris points out that those who seek advice in the first instance seem more likely to proceed with an appeal. This research did not look at those who did not appeal.

2.2 Cost

There are five types of financial cost which can act as a deterrent for users: tribunal fees, the cost of advice and/or representation, the cost of obtaining independent assessments, the cost of attending a hearing and the risk of having costs awarded against them if they lose. Each is considered in turn. In addition, there are non-financial costs, in particular the stress involved in pursuing an appeal. Research on employment tribunals also makes frequent references to appellants' concerns about the consequences of appealing for future employment prospects, a concern which appears to be borne out in practice (DTI 2002, p. 43).

Tribunal fees

Most tribunals do not charge fees. One exception is the Leasehold Valuation Tribunal, although applicants on a low income are entitled to a fee waiver. Blandy *et al*. (2001, p. 14) found that awareness of the right to a waiver was low and that the fee was a barrier to some potential applicants. Fees were introduced in October 2000 for appeals against a refusal of a visa to visit a relative living in the UK but were subsequently abolished in May 2002. During the period in which fees were levied, research was carried out into their effect on potential appellants (Gelsthorpe *et al*. 2003). This research was not able to establish whether the fee had been a deterrent as most of the interviews were carried out with the sponsors of people who *had* appealed. It was noted, however, that, in these cases, it was normally the sponsor rather than the appellant who had paid the fee (*op. cit.*, p. 11). There was some evidence in this research that the level of fees contributed to the appellant's choice of a paper hearing, rather than an oral one. This raised concerns because appellants tend to be less successful when their appeals are based on paper hearings (*op. cit.*, p. 41)

The cost of legal advice and/or representation

These costs are particularly important in those tribunals where legal representation is the norm (see Table 1 below). Some appellants complain about the cost of legal advice but nevertheless pursue their appeals. However, these costs probably constitute a deterrent for those who do not appeal. In the case of the Leasehold Valuation Tribunal, Blandy *et al.* (2001, p. 16) note that the cost of legal representation frequently prevents people from applying. In the case of immigration appeals, Harvey (1997, p. 183) discusses the problems created by the incidental costs of representation, for example the costs of travel or telephone calls to the representative's office.

The cost of independent assessments

Harris (1997, p. 102) notes that, in appeals to the SENT, the costs involved in paying for an independent assessment of the special educational needs of a child averaged £100.

The cost of attendance

A number of studies have pointed out that people are not aware that they can often claim for their travel expenses, for loss of earnings, and for the care of dependants, and that appellants can experience difficulties if these payments are not paid in advance. This problem is most frequently referred to in social security appeals – but this is because appellants are likely to have very low incomes. In this case, the costs of attendance are met by the Appeals Service.

Coldron *et al.* (2002) asked parents who appealed to schools admission appeal panels whether or not they experienced any difficulty taking time off work for the appeal. The majority of parents in this study did not. (*op. cit.*, p 63) However, this may be a practical barrier in other appeals. Coldron also asked whether parents had experienced any difficulty finding childcare to enable them to attend the appeal. A substantial minority had experienced problems with childcare and some had to take small children along to the hearing with them (*op. cit.*, p.63). Although it is not often mentioned, this may well be a practical barrier for those who appeal to other tribunals.

The risk of having costs awarded against them

This is currently not an issue in most tribunals but it may be a concern in a few cases. However, a number of recent developments suggest that it may become more important in future.

Employment Tribunals – costs can now be awarded and the limits have recently been raised. However, most of the research on employment tribunals relates to an earlier period and does not refer to this problem. It should be noted that further changes have been introduced by the Employment Act 2002.

Leasehold Valuation Tribunals – it is possible, in certain cases, for a costs order to be made against an unsuccessful applicant and for a leaseholder to get an order preventing a freeholder from recovering costs by increasing service charges. Blandy (2001, pp. 18-19) found that the rules for these procedures are not clear and that applicants and respondents are often confused.

Parking Adjudicators – although costs can be awarded, they never have been. Nevertheless, the possibility of having to pay costs may deter some people.

SENT – costs may be awarded against a party if, *inter alia*, he or she acted frivolously or vexatiously or if his or her conduct in making, pursuing or resisting the appeal was wholly unreasonable, or for failures to attend or respond. However, it would appear that these powers are very rarely used (Harris 1997, p. 84).

2.3 The complexity of the appeal process and the absence of appropriate help

Almost all the research reviewed discusses this issue. The general conclusion is that many appellants are confused by the appeal process and have little idea of what will happen at a tribunal hearing. In some cases, they do not even realise that there will be a hearing and they are often confused by the paperwork they are sent. For example Baldwin *et al.* (1992, p. 158) found that 60 per cent of their sample of those who had appealed to a Social Security Appeal Tribunal or a Medical Appeal tribunal had experienced some difficulty in understanding the appeal papers. Berthoud and Bryson (1997, p. 26) report that 75 per cent of their sample of appellants to Social Security Appeal Tribunals said they did not fully understand the papers, while qualitative interviews indicated an even greater lack of understanding. Many appellants did not understand the legal basis of the Department's case and less than half understood the function of the appeal papers. Genn and Genn (1989, p. 220) described appellants who 'appeared at the hearings in a state of confusion' and argued that this is sometimes the result of what they call 'the appeals conveyer belt'. Because it is often relatively easy for users to lodge an appeal, appellants do not have to understand the appeals

process and Genn and Genn (*op. cit.*, p. 221) suggested that this may be a reason why some appellants do not seek advice. Baldwin *et al.* (1992, p. 161) found that 72 per cent of those who attended their appeal said that they realised there would be a hearing and argued that those who attend are likely to be those who have a better understanding of the process.

Genn and Genn (1989) found that people who did not appeal to a Social Security Appeal Tribunal were generally confused about their entitlements and/or felt that there was little point in appealing. Similarly, Blandy *et al.* (2001, p. 19) found that, of those who did not apply to a Leasehold Valuation Tribunal, 36 per cent gave the complexity of the system as the reason for not doing so and a further 15 per cent cited lack of information.

Sainsbury (1997, p. 85) reported a concern amongst representative organisations that, in the case of social security appeals, a lack of adequate pre-appeals advice will result in fewer appellants claiming their right to an oral hearing, and that this will in turn reduce their chances of success. Recent figures on success rates confirm that, where the appellant is present, appeals have a higher chance of success – 48 per cent compared with 15 per cent of hearings where the appellant is absent (Council on Tribunals 2001, Appendix A).

There are frequent references to the difficulties people find in obtaining advice about their appeals. Harris and Eden (2000, p. 152) note that there is a shortage of specialist agencies that are able to provide representation in exclusion cases and that, for this reason, representation rates are low. Coldron *et al.*'s (2002) research on school admission appeals suggests that parents are likely to rely on other parents for advice, rather than specialist or professional advisers (*op. cit.*, p. 58). Similarly, Young (1999, p. 294) noted the difficulties of obtaining advice on Child Support since there are few advisers with the requisite specialist knowledge in this area.

In addition, general research on access to justice indicates that people often experience difficulties in accessing free sources of advice (such as Citizens Advice Bureaux). Practical problems in obtaining advice, such as limited opening hours which necessitate taking time off work, waiting times for appointments, and difficulties in making telephone contact to arrange an appointment, can lead to problems, even for those with high levels of competence and determination, in obtaining advice when it is needed (Genn 1999, pp. 76-78). These barriers to advice are likely to disadvantage '[m]embers of the public with low levels of competence in terms of education, income, confidence, verbal skills, literacy skills and emotional fortitude'.

Moorhead *et al.* (2001, p. 154) found that '42 per cent of respondents in their 'model client' study experienced 'significant access problems' while 11 per cent failed to access advice services altogether. Problems cited included difficulties in accessing phone lines, unsuitable opening hours and inappropriate referrals between agencies. Similar difficulties were found by Pleasence *et al.* (2002, p. xi).

On the other hand, research also indicates that some people do not seek advice because they don't understand how complex their case will be (and regret this afterwards).

2.4 Physical barriers to access

There are a number of references (for example Berthoud and Bryson 1997, Farelly 1989, McPhee 1998, Sainsbury 1992, Sainsbury *et al.* 1995) to the difficulties faced by physically disabled appellants, i.e. to access problems within the tribunal venue, to health problems that prevent people from attending on the day of the hearing, and to the problems experienced by those who provide care for dependant relatives. Most of them refer to the Appeals Service, i.e. to social security appeals, but there have been a number of studies that have looked at appeals relating to disability benefits. Most other research on appeals has not looked specifically at appellants with disabilities, who, in most cases, constitute a relatively small proportion of appellants.

Meager *et al.* (1999) found some problems with physical access to employment tribunals in disability discrimination cases. The Employment Tribunal Service's customer survey (Employment Tribunal Service 2001) found that a small proportion of disabled applicants experienced difficulties in accessing Employment Tribunals.

On the other hand, Harris (1997, pp. 106-107) noted that no-one had to travel far to attend the SENT and commended the use of local hotels as venues because they provided easy access for appellants with disabled children. It should be noted that the Disability Discrimination Act 1995 comes into force with regard to tribunals in 2004 and that it will create a requirement that tribunal hearings are accessible to appellants with disabilities (Council on Tribunals 2002).

Harvey (1997) discusses the problems of finding suitable interpreters and the barriers that this creates for asylum seekers whose command of English is often limited. Gelsthrope 's *et al.* (2003) research on family visitor appeals also refers to difficulties with language and with literacy in English.

2.5 Would electronic access help?

There are very few references in any of the research we reviewed that address this question. One reason is that, in most cases, the research predates the likely availability of electronic access.

The exceptions are Sheppard and Raine (1999) and MORI (2000). Sheppard and Raine specifically asked users of the Parking Appeals Service about IT because it was available in these cases and found that 31 per cent thought that electronic access had helped them. The small MORI study, which was conducted for the Leggatt Review, also asked users about IT but did not identify any strong views on this issue. This is not surprising since it was based on a small number (40) of interviews with the users of eight tribunals, of which only one (the Parking Appeals Service) enables users to access it by means of IT.

Raine (2001, p. 113) has argued that information technology can help an appellant to feel more involved in the process and to perceive it as fair. In his research on parking appeals, he found that appellants' view of the fairness of the system was enhanced by the fact that they were able to see on a computer screen all the documents available to the adjudicator.

Genn (1999 p. 256) urges caution about information technology as a solution to people's problems in accessing justice. 'Although, in theory, information technology offers possibilities for easy access to information, there is still a considerable way to go before the average adult member of the public will possess the skill to access such information'. In addition to the problems of computer literacy, she also refers to problems with 'ordinary' literacy which not only act as a barrier to many people but also reduce the potential of IT in helping them access information. She cites a recent survey of 8,000 members of the public aged 16 to 60 for whom English was their first language (Basic Skills Agency 1998) which revealed that 16 per cent of the adult population is functionally illiterate and that, in some areas of the country, one in four adults are unable to read a parcel label. This study indicated that about 8 million people are so bad at reading and writing that they cannot cope with the demands of modern life.

2.6 Would users find it easier to access a single high profile institution?

Some cognate tribunals, in particular those dealing with different aspects of social security, have been brought together into a single organisation, but none of the research that has been carried out on

appellants (and potential appellants) appears to have investigated what difference, if any, this has made and whether it has made it easier for them to appeal. The Leggatt Report was very impressed by developments in Australia, and in particular by the establishment in 1975 of the generic Administrative Appeal Tribunal (AAT), which hears appeals from some specialist tribunals, in particular from the Social Security Appeals Tribunal (SSAT) and the Veterans' Appeal Board (VRB), and from administrative decisions of (Commonwealth) Government departments and agencies where specialist tribunals have not been established. Although the Australian Law Reform Commission has carried out a number of surveys of people who have appealed to the AAT, because this tribunal was established more than 20 years ago, and because proposals to unify existing tribunals and establish a single high-profile institution (the Australian Review Tribunal) are currently stalled in the Senate, we cannot learn much about the likely impact of an analogous reform on appellants (or potential appellants) in the UK from the experiences of appellants (or potential appellants) in Australia.

3 WHAT DO USERS WANT?

3.1 The balance between speed, quality and cost

There are many references in the literature to long delays before hearings are held and to the problems they cause, especially in social security appeals where people may have had their benefit stopped or reduced (e.g. *et al*. Baldwin 1992, p. 177), and in mental health reviews where civil liberties are at stake (e.g. Blumenthal and Wessely 1993, p. 24). Even where appellants may appear to benefit from a delay, for example, in social security overpayments and asylum appeals, the appellants may suffer because of the stress involved in waiting for a tribunal hearing. In the case of asylum appeals, Harvey (1997, p. 183) also points to the particular stresses and hardships caused for appellants who are required to survive on below-subsistence level vouchers and cope with the negative attitudes of some members of the public and the press towards asylum seekers. These stresses are likely to have been enhanced by recent developments in asylum policy. Delay is one of the principal causes in complaints about the SENT, especially where the outcome is to refer the case back to the LEA for further consideration, since this creates an additional delay (Harris 1997, p. 93).

Baldwin *et al.* (1992, p. 166) looked at the effect of delays on the likelihood of the appellant attending the hearing but found that there was no significant relationship, except when delays were exceptionally long.

There are a number of references in the literature under review (see, for example, Atkinson and Patterson 2001, p. 85; Blumenthal and Wessely 1993, p. 24; and Dickens 1985, p. 200), to a correlation between the length of time that an appellant has to wait for a tribunal hearing and representation. Although the outcome is more likely to be a successful one, having a representative and the extra preparation this often entails, which may include obtaining specialist reports, may increase the time the appellant has to wait before the tribunal hearing takes place. However, it is possible that appellants with more complex cases are more likely to have a representative (Dickens 1985, p. 205). Conversely, Blandy *et al.* (2001 p. 27) found that lack of representation delayed the process of Leasehold Valuation Tribunals because of inadequacies in the applications submitted by unrepresented parties.

None of the research appears to have addressed the issue of the balance between speed, quality and cost. However, Davis *et al.* (1999) express some concern that speeding up the process might have a negative effect on the quality of Child Support Agency submissions, whose quality is already problematic.

3.2 Informality of hearings

There are many references to the fact that users often find tribunals more formal than they had expected and to the problems that this may cause. However, there are clearly substantial variations in formality, not only between different types of tribunal but also between different sittings (with different chairs) of the same tribunal.

Baldwin *et al.* (1992, p. 172) note that many appellants are concerned about the level of formality. However, Genn and Genn (1989, p. 124) make the point that appellants often confuse 'formality' with the fact that tribunals are bound by legislation and do not always distinguish between them. Baldwin *et al.* (*op. cit.*, p. 174) maintain that the legislation by which tribunals are bound makes them 'essentially formal' and contend that chairmen have a major task in striking the balance between putting appellants at their ease and focusing on the disputed areas of law and fact.

Dickens (1985, p. 82) makes a distinction between informality of the hearing and the ability of applicants to make their case, since the strength of their case reflects their understanding of legal technicalities, particularly when the respondent is legally represented.

Harris and Eden (2000, p. 154) consider that the main barriers to parental participation in school exclusion appeals are the unfamiliarity of the proceedings, the relatively large number of people who are present, the overall atmosphere, and the approach taken by chairs of panels. About one third of parents who did attend felt that they had not been able to say everything they had wanted at the hearing. Similarly Coldron *et al.* (2003, p. 68) found that parents' experience of school admission appeals was that they were too formal and 'court like'.

Conversely, Blandy *et al.* (2001, p 50) reported that many participants found the process of Leasehold Valuation Tribunals too informal and suggested that the reason for this is the complexity of issues in many cases. They also found some concern that the tribunals' efforts to help unrepresented participants, by being more informal, could be seen as bias by opposing parties who are legally represented (*op. cit.*, p. 52).

More generally, it is clear that some appellants want an opportunity to air their general grievances about what has happened to them and are disappointed when the 'formality' of the hearing does not allow this (Young *et al.* 1999, p. 290).

3.3 The value of representation

Tribunals vary in the extent to which appellants are represented, and whether the representative is a solicitor or an expert lay adviser. The table below shows some examples of these variations.

Most of the research concludes that appellants find it difficult to represent themselves. Genn and Genn 1989, p. 237) summarise this by saying 'unrepresented [appellants] are disadvantaged in hearings by not being able to understand what is going on, by not knowing what they have to do, and by not understanding what the tribunal is there to do'. Although some people choose to represent themselves, they often find that the process is more complex and legalistic than they imagined and regret their decision afterwards (Baldwin *et al.* 1992, p. 174; Dickens 1985, p. 88; Genn and Genn 1989, p. 221; Gregory 1989, p. 23; Sainsbury 1992, pp. 52-53).

There is, however, some variation, depending on the tribunal concerned and we list some examples by tribunal type below.

Table 1: The Extent of Representation at Tribunals.[3]

	% represented	% of representatives legally qualified	Publicly funded legal help available?
Mental Health Review Tribunals[4]	99%	99%	Yes
Immigration Adjudicators	90%[5]	not known[6]	Yes – since 2000
Lands Tribunal[7]	90%	100%	Yes
Social Security Commissioners	63%	15% *(80% by other voluntary bodies)*	No
Criminal Injuries Compensation Appeals Panel	60%[5]	not known	No
Employment Tribunals	58%[8]	33%[9]	No[10]
Special Educational Needs Tribunal[11]	51%	17%	No
VAT and Duties Tribunal	50%	35% *(63% by accountants)*	No
Social Security and Child Support Appeals	40%	6%[12]	No
Rent Assessment Panels[13]	5%[14]	not known	No
Parking Adjudicators[15]	< 5%	< 1%	No

[3] Unless otherwise indicated, the statistics are taken from the latest Annual Report of the Council on Tribunals and relate to Great Britain (Council on Tribunals 2000, Appendix A).

[4] Although there are separate Mental Health Review Tribunals for England and Wales, these figures refer to England and Wales jointly. Appeals under the Mental Health Act in Scotland are heard in the Sheriff Court

[5] Leggatt (2001)

[6] Travers (1999) claims that 50% of representatives, at that time, were from the Immigration Advisory Service or the Refugee Legal Centre but recent research (Tony Good, personal communication) suggests that the proportion of appellants who are represented by these bodies today is much smaller.

[7] Figures refer to England and Wales only. There is a separate Lands Tribunal for Scotland

[8] DTI (2001)

[9] ibid.

[10] Public funding for representation has been available in certain cases in Scotland since 2002.

[11] Figures refer to England and Wales only. There is no equivalent tribunal in Scotland.

[12] Genn and Genn (1989) (more recent figures are not available).

[13] Figures refer to England and Wales only. Scotland has separate Rent Assessment Committees.

[14] DETR (2000)

[15] Figures refer to England and Wales only. Scotland has a separate Parking Appeals Service.

The Appeals Service

Baldwin *et al*. (1992, p. 212) conclude that, in the case of Social Security Appeal Tribunals (SSATs), '[n]either the inquisitorial efforts of chairmen at hearings nor the best intentions of presenting officers can adequately redress the scales for unrepresented appellants'.

In the case of Medical Appeal Tribunals (MATs), Sainsbury (1992, p. 52) has argued that the presence of the representative at the hearing is less crucial than the representative's role in preparing the case and collecting specialist medical evidence. However, this is because MATs rely to a large extent on written medical evidence and in this sense are not typical of most social security appeals.

In Child Support Appeal Tribunals (CSATs), Young *et al*. (1999, pp. 293-4) found that appellants had difficulty obtaining representation, largely because of the general lack of specialist knowledge of the Child Support Act among solicitors and advice agencies. Young *et al*. (1999, p. 294) argue that the availability of legal aid for advice and assistance before the hearing is 'no substitute for representation at the hearing itself'.

Genn and Genn (1989, pp. 231-2) found that many unrepresented appellants regretted not being represented and the reason for this was the difficulty in following the proceedings and the reliance of the tribunal on legislation and case law. This applied equally to those whose appeals had been successful. The main reason appellants gave for being unrepresented was that they had been unable to find a representative. However, Berthoud and Bryson (1997, p. 32) found that most of the unrepresented appellants in their sample had chosen not to have a representative and that they appeared to be more confident in their ability to present their own case than those who had chosen to have a representative.

Employment Tribunals

Representation in employment tribunals is more complicated than in many other tribunals because of the party vs. party nature of the proceedings. An unrepresented party may be disadvantaged if the other party is represented (Genn and Genn 1989, p. 97). The most recent figures available on representation in employment tribunals suggest that there is a considerable imbalance in representation – 40 per cent of applicants are unrepresented compared with 15 per cent of employers (DTI 2001, p. 8).

It is difficult to come to general conclusions regarding representation in employment tribunals because of the possibility of settling the case in advance of a hearing. The DTI's (2002) research on employment tribunals looked at the advice that appellants and employers had sought in advance of a hearing and found that employers were more likely than employees to have consulted a lawyer, although employees consulted other professional advisers, e.g. Citizens Advice Bureaux and their trade union. The likelihood of seeking advice was also affected by the type of case that the appellant was pursuing (*op. cit.*, pp. 25-26). However, represented applicants appear to be more likely to settle (Genn and Genn 1989, p. 99, DTI 2002, p. 27). It has been argued, by Moorhead *et al.* (2001, p. 188), that representation as such is not necessarily as important as good advice before the tribunal hearing.

Dickens (1985, p. 82) found that 53 per cent of applicants who represented themselves at industrial tribunals (the forerunners of employment tribunals) felt that they did not argue their case well and that this was either because they were not represented or because they had been unable to prepare or argue their case well unaided. Genn and Genn (1989, p. 222) found that most applicants to industrial tribunals had sought advice and representation and that very few chose not to be represented. They found that those who were not represented were often surprised and intimidated by the formality of the hearing and the rule-bound nature of the decision making process, particularly if the other party was represented (*op. cit.*, p. 233).

Immigration Appeals

Most appellants at immigration appeals are represented and legal aid has been available for this since 2000. There is a strong assumption on the part of the judiciary that that appellants should be represented in asylum cases because of their human rights implications (Harvey 1997, p. 111; 1998 p. 181). This is forcefully stated by Harvey (2000, p. 198) who argues that 'it is the right to life of the individual which is ultimately at stake in these cases. This not only places an onerous responsibility on decision-makers but also means that asylum seekers require effective legal advice and legal representation'. Prior to the regulation of immigration advisers under the Immigration and Asylum Act 1999, there had been some criticism of the quality of some immigration advisers (Harvey 2000, p. 199, Burgess 1997, p. 411, Travers 1999, p. 65).

Both of these points were accepted in the Leggatt Report (Leggatt 2001 p150), which states that '[t]here was general agreement that the serious consequences of IAA decisions and a complex and rapidly developing body of case law meant that few appellants could realistically be expected to prepare and present their cases themselves'. Despite this, changes are planned to restrict the amount of financial help available for publicly funded immigration and asylum work (Lord Chancellor's Department 2003).

Leasehold Valuation Tribunals

Blandy *et al*. (2001) found that there is an imbalance in representation at leasehold valuation tribunals with leaseholders and 'small' freeholders often unrepresented while larger corporate freeholders usually have professional representatives and 'large private organisations.. and local authorities accept legal representation as an integral part of the process' (*op. cit.*, p. 53). Of those who were unrepresented, the main barrier was cost (see pp. 7-8 above). The authors found that lack of representation appears to make the process very difficult for some appellants and that the job of the tribunal is also made harder as unrepresented appellants have more difficulty assembling the relevant paperwork and presenting their cases in a coherent manner.

Mental Health Review Tribunals

Most appellants to Mental Health Review Tribunals are represented and most are represented by solicitors (Blumenthal and Wessely 1993; Council on Tribunals 2000; Dolan *et al.*, 1999, p. 271; Genn and Genn 1989, p. 59; Peay 1989, p. 46). Non-means-tested public funding has been available for representation since 1989 (Eldergill 1997) and this would appear to explain the increase in reported representation rates since then. Early studies by Genn and Genn (1989) and Peay (1989) report ed representation rates of 65 per cent and 73 per cent while the most recent figures (Council on Tribunals 2000, p. 82) indicate that 99 per cent of appellants are now represented.

Dolan *et al*. (1999), on the other hand, found a high level of dissatisfaction with their legal representatives among appellants at Mental Health Review Tribunals due to the fact that some of them had no prior experience of this area of law. The Council on Tribunals (2001) discussed this in its special report and noted that legal aid for MHRTs is now only available for legal practices approved by the Legal Services Commission. Although this is intended to improve the quality of representation, it is causing problems by restricting its availability (see para. 2.21).

School Exclusion Appeals

There are clearly variations in the availability of lay representation for appeals relating to exclusion from school. Harris and Eden (2000, p. 152) note that there are substantial variations in the availability of representation between local authority areas and that representation is undoubtedly more difficult to access in rural areas. The Council on Tribunals (2003, p. 29) notes that, given the consequences for children of an unsuccessful appeal, specialist advice and representation is crucial in these cases. Research by the Scottish Consumer Council (1999, p. 34) has shown that there is a serious shortage of independent advice, and in particular advocacy, on educational matters in Scotland and a recent study (Scottish Consumer Council 2001, p. 23) indicates that parents have little knowledge of where they might go for independent advice. Although legal aid is, in general, not available, some appellants attach considerable importance to legal representation, and are prepared to pay for it if necessary. No doubt, others cannot afford to do so.

Special Educational Needs Tribunal

Legal representation is regarded as very important in appeals to the SENT. In his study of the SENT, Harris (1997, pp. 123 *et seq.*) notes that some parents place a high value on it and that, despite the lack of legal aid, legal representation is more common than at many other tribunals. Most of the parents who used legal representation valued it highly while some of those who had not done so thought it would have been helpful. Two thirds of those who are represented at the SENT are represented by voluntary organisations and parents also value this highly (Harris 1997, p. 133). However, recent research by the Scottish Consumer Council (see above) revealed a serious shortage of independent advice or advocacy on educational matters.

4 THE PROPORTION OF USERS WHO HAVE APPEALED BEFORE

There is little evidence in the literature reviewed above that addresses this issue and potentially relevant data sets, such as those relating to the recent surveys of access to justice (Genn, 1999, Genn and Paterson 2001), are not set up in such a way as to enable an estimate of these ratios to be made. Among the few attempts to address the issue, Baldwin *et al*. (1992, p. 156) found that 80 per cent of those appearing before a social security appeal tribunal had never appeared at a

tribunal before compared with 17 per cent who had done so before. Berthoud and Bryson (1997, p. 27) report that the 'great majority of appellants are using the system for the first time'. These conclusions would appear to confirm Genn and Genn's earlier (1989, p. 219) findings that the 'majority [of appellants at the four tribunals in the study].. were experiencing their first tribunal hearing'. Coldron *et al.* (2002, p. 52) found that 83 per cent of parents appeal to schools admission appeals had not appealed before, while 4 per cent had appealed three or more times. The DTI research on employment tribunals (DTI 2002) found that 5 per cent of the sample of appellants had appealed to an employment tribunal before while 44 per cent of employer interviewees had experience of the tribunal system (p. 13). The only exception to this pattern appears to be in Mental Health Review Tribunals where long term patients in special hospitals make regular appeals, many on an annual basis, as they are entitled to do under the Mental Health Act. (Dolan 1999, p. 264; Peay 1989, p. 46).

5 USERS' VIEWS ON INDEPENDENCE AND IMPARTIALITY

Research confirms that there are very clear 'outcome effects' (users' views are more favourable if they win) in all tribunals. However, Genn and Genn (1989, p. 231) found that representation increases the likelihood that appellants will perceive the process as fair.

There is little research evidence that users question the independence or impartiality of tribunal proceedings. However, there is some confusion amongst appellants about the difference between the 'independence and impartiality' of tribunals and their duty to apply the law (this is particularly evident in social security and child support appeals) and they may well not be clear that tribunals are even intended to be independent. Berthoud and Bryson (1997, p. 28) found that, in the case of social security appeals, many of those who appealed did not realise this and assumed that the tribunal was simply 'another step in the claiming process'.

Coldron *et al.* (2002 p. 65) found that parents were generally happy with the 'fairness' of admission appeal hearings although this also had a strong 'outcome' effect. The Council on Tribunals 2003 commentary on this research notes some concern about the fairness of schools

admission appeals, given that parents often lack information and experience of the procedure (*op. cit.*, p. 215).

There are some exceptions to this general finding. In Employment Tribunals, some users feel that the tribunals are biased in favour of employers. However, there is an outcome effect here because this view is particularly prevalent among those who lose their cases. A recent consultation exercise on Rent Assessment Panels found that tenants feel that there was a bias in favour of landlords (DETR 2000, p. 26). In school exclusion appeals, parents commonly thought that the Exclusion Appeal Panel had pre-judged their case and most parents did not think the hearing had been fair. However, it was clear that there is a strong outcome effect here too (Harris and Eden 2000, pp. 160 and 164). The Council on Tribunals (2003) is concerned that parents are often disadvantaged by a lack of experience and advice (*op. cit.*, p. 29) and that proposed changes to the composition of Exclusion Appeal Panels would lead to too great a dominance by educational representatives, leading to a less independent procedure (*op. cit.*, p. 24). In Mental Health Review Tribunals, some appellants feel that the tribunal is too dependent on the evidence of the RMO (Registered Medical Officer) and this is supported by the fact that MHRTs usually endorse the recommendation of the RMO. Peay (1989) found that they did so in 86 per cent of cases.

6 CONCLUSIONS

In this final section of the Review, we set out some general conclusions based on the research reviewed above. Because most of the research findings apply to specific tribunals and because there are so many differences between tribunals, these general conclusions should be treated with some caution.

Practical barriers that prevent potential users from accessing tribunals

Most of the research on users' experiences looks at appellants rather than those who do not appeal. This means that most research is based on those who were *not* deterred by barriers that can prevent users from accessing the tribunal system and makes it difficult to gauge the full extent of these potential barriers.

Ignorance of rights or procedures

There are two types of ignorance which can prevent an appellant from making an appeal – ignorance of the fact that there may be grounds for appealing against the original decision and ignorance of the procedures which need to be followed. The general conclusion, supported by much of the research evidence, is that ignorance of the possible grounds of appeal is often more important than ignorance of procedures. Most appellants appear to have little understanding of the appeals procedure or the powers of tribunals but this does not, in itself, appear to be a barrier to appealing, since the procedures for appealing to most tribunals are fairly straight forward. Many researchers found that people appeal because they think the original decision s unjust, without necessarily understanding the legal basis for the decision or what their chances of success would be. There is, however, some variation between different tribunals.

Cost

There are five types of cost which can act as a deterrent for users: tribunal fees, the cost of advice and/or representation, the cost of obtaining independent assessments, the cost of attending a hearing and the risk of having costs awarded against them if they lose. Although cost is currently not an issue in most tribunals, a number of recent developments involving fees and awards of costs suggest that it may become more of an issue in future. There is little evidence from the research about whether the cost of representation acts as a barrier because most research has studied those who did appeal rather than those who did not. Non-financial costs (for example stress and time commitment) are also a concern for some appellants.

The complexity of the appeal process and absence of appropriate help

Research on many different tribunals makes it clear that many appellants are confused by the appeal process and have little idea of what will happen at a tribunal hearing. In some cases, they do not even realise that there will be a hearing and they are often confused by the paperwork they are sent. There are frequent references to the difficulties people find in obtaining advice about their appeals – this problem is especially acute in areas like child support and special educational needs where there is a shortage of specialist agencies that are able to provide representation. In addition, there is evidence that people often experience difficulties in accessing free sources of advice (such as Citizens Advice Bureaux) due to limited opening hours which

necessitate taking time off work, waiting times for appointments, and difficulties in making telephone contact to arrange appointments. These are likely to disadvantage members of the public with 'low levels of competence in terms of education, income, confidence, verbal skills literacy skills and emotional fortitude' (Genn 1999, p. 78).

Physical barriers

There are a number of references to the difficulties faced by physically disabled appellants in accessing tribunal venues. Most of the research refers to the Appeals Service, i.e. to social security appeals but this is because there has been a good deal of research on appeals relating to disability benefits that has involved a high proportion of disabled appellants. On the other hand, there were favourable references to the use by the SENT of local hotels as venues since they can provide easy access for people with disabilities. Most other research on appeals has not looked specifically at appellants with disabilities, who, in most cases, constitute only a relatively small proportion of appellants.

The impact of electronic access

There are very few references in any research to the impact of electronic access. One reason is that, in most cases, the research predates the likelihood of electronic access being available. However, users of the Parking Appeals Service, appellants thought that IT had enhanced the fairness of the system because they were able to see on a computer screen all the documents available to the adjudicator.

The impact of amalgamation

Although some cognate tribunals have been brought together into a single organisation, there has not been any research which has attempted to investigate what difference, if any, this has made and whether it has made it easier for them to appeal. The Leggatt Report was very impressed by developments in Australia, and in particular by the establishment in 1975 of the generic Administrative Appeal Tribunal (AAT) but since this tribunal was established more than 20 years ago, and because proposals to unify existing tribunals are currently stalled in the Senate, little can be learned from the experiences of appellants (or potential appellants) in Australia.

The balance between speed, quality and cost

There are many references in the literature to long delays before hearings are held and to the problems they cause, especially in social security appeals where people may have had their benefit stopped or reduced, in educational appeals where a delay can constitute a significant proportion of a child's school education and in mental health reviews where civil liberties are at stake. Even where appellants may appear to benefit from a delay, for example, in social security overpayments and asylum appeals, they may suffer because of the stress involved in waiting for a the tribunal hearing. There does not appear to have been any research appears which has examined users' views about the optimum balance between speed, quality and cost.

Informality of hearings

There are many references to the fact that users find tribunals more formal than they had expected and to the problems that this sometimes causes. However, there are clearly substantial variations in formality, not only between different types of tribunal but also between different sittings (with different chairs) of the same tribunal. Some appellants confuse the formality of tribunal hearings with the fact that they are bound by legislation.

The value of representation

Most of the research concludes that appellants find it difficult to represent themselves. When people have the opportunity to be represented (because they are able to afford legal representation, because they are able to obtain legal aid, or because free lay representation is available) they tend to make use of it. Although some appellants choose to represent themselves, they often find that the process is more complex and legalistic than they had imagined and regret their decision afterwards. There is little research-based support for one of the central tenets of the Leggatt Report, namely that 'a combination of good quality information and advice, effective procedures and well-conducted hearings, and competent and well-trained tribunal members' would make it possible for 'the vast majority of appellants to put their cases properly themselves', i.e. without representation.

The proportion of users who have appealed before (to the same or a different tribunal)

There has been relatively little research on this issue and potentially relevant data sets are not set up in such a way as to enable an estimate of these ratios to be made. What evidence there is suggests that the great majority of appellants have not appealed before.

Users' views on the independence and impartiality of tribunals

There is little research evidence to suggest that users question the independence or impartiality of tribunal proceedings. However, there are some exceptions to this general finding. Although the existence of strong 'outcome effects' confuses the issue, research indicates that some appellants feel that Employment Tribunals are biased in favour of employers, that Rent Assessment Panels are biased in favour of landlords, That Exclusion Appeal Panels pre-judge cases and that Mental Health Review Tribunals are too dependent on the evidence of the RMO. Research also indicates that some appellants (particularly in social security and child support appeals) confuse the 'independence and impartiality' of tribunals with their duty to apply the law.

ANNEXE 1: DATA SOURCES

Baldwin, J., Wikeley, N. and Young, R. (1992), *Judging Social Security,* Oxford: Clarendon Press.

- Based on observation of 337 hearings and interviews with 181 appellants to Social Security Appeal Tribunals and Medical Appeal Tribunals. Chairmen, presenting officers and representatives were also interviewed.

Barnes, M., Davies, A. and Tew, J. (2000), *There Ought to be a Better Way: Users' experiences of compulsion under the Mental Health Act 1983,* University of Birmingham, Department of Social Policy and Social Work.

- Based on interviews with 11 people who had been who had been compulsorily admitted to hospital under the Mental Health Act. Does not include information specifically on appeals.

Berthoud, R and Bryson, A. (1997), 'Social Security Appeals: What do claimants want?', *Journal of Social Security Law,* 4 (1), pp. 17-41.

- Based on a postal questionnaire completed by 419 appellants to Social Security Appeal Tribunals who appealed regarding invalidity benefits. Study also included interviews with 29 appellants, 13 tribunal members, nine representatives and 13 appeals officers. It included those who withdrew their appeals and those who had not attended their tribunal hearing as well as those who had.

Blandy, S., Cole, I., Hunter, C. and Robinson, D. (2001), *Leasehold Valuation Tribunals: Extending the Remit,* Sheffield: Centre for Regional Economic and Social Research.

- Based on interviews with 38 freeholders and leaseholders and 11 representatives; a postal survey of 349 inquirers to LEASE about issues relevant to tribunals; an analysis of 40 cases which had been submitted to tribunals, some of which had been heard and others withdrawn; and a detailed analysis of eight cases, including interviews with those involved in the case and members of tribunals that had heard the appeal.

Blumenthal, S. and Wessely, S. (1993), *The Pattern of Delays in Mental Health Review Tribunals*, London: HMSO.

- Based on an examination of 150 applications to Mental Health Review Tribunals. Comprises a detailed study of 200 applications and interviews with people involved in these cases, including patients, representatives and social workers.

Bradley, C., Marshall, M. and Gath, D. (1995), 'Why do so few Patients appeal against Detention under the Mental Health Act?', *British Medical Journal*, 310, pp. 364-367.

- Based on interviews with 40 patients in six psychiatric hospitals who had not appealed against their detention.

Burgess, D. (1997), 'Legal Representation can Kill', *New Law Journal*, pp. 410-411.

- Case study of one application for asylum.

Coldron, J., Stephenson, K., Williams, J., Shipton, L. and Demack, S. (2002), *Admission Appeal Panels: Research Study into the Operation of Appeal Panels, Use of the Code of Practice and Training for Panel Members*, Research Report No. 344, London: Department for Education and Skills

- Based on postal survey of 1011 panel members and 317 appellants to schools admission appeals and on case studies, involving observation, interviews with panel members, parents and officers, and documentary analysis, in three LEAs and two school admission authorities.

Department of Trade and Industry (2002), *Findings from the 1998 Survey of Employment Tribunal Applications (surveys of applicants and employers)*, Research Report no. 13, London: Department of Trade and Industry (http://www.dti.gov.uk/er/emar/etsurvey98.pdf)

- Based on telephone interviews with 1,400 people who had made applications to Employment Tribunals and 1,300 employer respondents.

Dickens, L. (1985), *Dismissed: a study of unfair dismissal and the industrial tribunal system*, Oxford: Blackwell.

- Based on interviews with 1,000 applicants to Industrial Tribunals concerning unfair dismissal.

Dolan, M., Gibb, R. and Coorey, P.(1999), 'Mental Health Review Tribunals: a survey of special hospital patients' opinions', *Journal of Forensic Psychiatry*, 10, pp. 264-275.

- Based on interviews with 70 patients who had applied to a Mental Health Review Tribunal, all from one hospital.

Employment Tribunals Service (2001), *Customer Survey*.

- Based on questionnaires returned by 1,652 users of the Employment Tribunal, including 528 applicants 379 respondents and 743 representatives.

Farrelly R. (1989), *The Reasons why Appellants fail to attend their Social Security Appeal Tribunals*, unpublished PhD thesis, University of Birmingham.

- Based on 410 postal questionnaires to appellants who had not attended the hearing of their case at a Social Security Appeal Tribunal, 73 interviews with the same people and 100 'waiting room' interviews with those who did attend. Case papers were also analysed.

Gelsthorpe, V., Thomas, R., Howard, D. and Crawley, H. (2003), *Family Visitor Appeals: An Evaluation of the Decision to Appeal and Disparities In Success Rates by Appeal Type*, Online Report 26/03, London: Home Office (www.homeoffice.gov.uk/rds/onlinepubs1.html)

- Based on observation of interviews with applicants at overseas entry clearance posts and interviews with 55 applicants who had been refused. Interviews with 29 of these applicants and their sponsors after the time limit for appealing had elapsed. Separate survey of 544 sponsors of applicants who had appealed. Observation of 26 appeal hearings and case file analysis of 1224 cases.

Genn, H. and Genn, Y. (1989), *The Effectiveness of Representation at Tribunals*, London: Lord Chancellor's Department.

- Based on interviews with appellants to 190 Social Security Appeal Tribunals, 113 Industrial Tribunals and 84 hearings before Immigration Adjudicators; a postal questionnaire to 168 potential SSAT appellants; the analysis of case papers for 958 Industrial Tribunals, 1,050 Immigration Appeals, 623 Mental Health Review Tribunals and 1,115 SSATs; observation of hearings and interviews with chairs, presenting officers and representatives

Gregory, J. (1989), *Trial by Ordeal: a study of people who lost equal pay and sex discrimination cases in industrial tribunals during 1985 and 1986*, London: HMSO.

- Based on questionnaires to 106 people who had lost equal pay or sex discrimination cases at Industrial Tribunals.

Harris, N. (1997), *Special Educational Needs and Access to Justice*, Bristol: Jordan Publishing Ltd.

- Based on observations of 40 Special Educational Needs Tribunal hearings and a postal questionnaire returned by 118 parents. Postal questionnaires were also sent to local education authorities, tribunal members and representatives.

Harris, N. and Eden, K. (2000), *Challenges to School Exclusion*, London: RoutledgeFalmer.

- Based on observations of 48 school exclusion appeal hearings and a postal questionnaires sent to 289 parents (questionnaires were also sent to local education authorities, head teachers, school governors and appeal panel members). Interviews with a small number of children who had been excluded were also carried out.

Harvey, A. (1997), *Reviewing the asylum determination procedure: a casework study Part Two: procedures for challenge and review*, London: Refugee Legal Centre.

- Based on an analysis of 400 applications for asylum where the appellant was advised by the Refugee Legal Centre.

Harvey, A. (1998), Researching 'The risks of getting it wrong' in Nicholson, F. and Twomey, P.(eds.) *Current issues of UK asylum law and policy*, Aldershot: Ashgate.

- Based on an analysis of 622 determinations of Special Adjudicators of the Immigration Appellate Authority.

Leonard, A. (1987), *Pyrrhic Victories: successful sex discrimination and equal pay cases*, London: HMSO.

- Based on questionnaires returned by 70 successful applicants on sex discrimination and equal pay cases at Industrial Tribunals.

MacPhee, S. (1998), *Lay representation in courts and tribunals: the evidence of Citizens Advice Bureaux Lay Representatives in Scotland*, Edinburgh: Citizens Advice Scotland.

- Based on a survey of 133 CAB lay representatives who regularly represent at industrial tribunals (59), social security tribunals (98), medical appeal tribunals (75), disability appeal tribunals (83), child support tribunals (19), small claims courts (33), and housing courts (22).

Meager, N., Doyle, B., Evans, C., Kersley, B., Williams, M., O'Regan, S. and Tackey, N. (1999), *Monitoring the Disability Discrimination Act (1995)*, Employment Research Brief No. 119, London: Department for Education and Employment.

- Based on an analysis of 92 cases and potential cases under the Disability Discrimination Act

Meager, N., Tyers, C., Perryman, S., Rick, J. and Willison, R. (2002), *Awareness, Knowledge and Exercise of Individual Employment Rights*, London: Department of Trade and Industry.

- Based on a telephone survey with 1000 people of working age regarding their knowledge of employment rights (not specifically those who had experienced problems).

MORI Social Research (2000), *Review of Tribunals Consultation: research study conducted for the Review of Tribunals.*

- Based on 40 qualitative interviews with applicants to eight tribunals (Appeals Service; Social Security Commissioners; Employment Tribunals, Education Admissions and Exclusions Panels; Parking Adjudicators; VAT and Duties Tribunals; Leasehold Valuation Tribunals; the General Commissioners of Income Tax).

Peay, J. (1989), *Tribunals on Trial: a study of decision making under the Mental Health Act 1983*, Oxford: Clarendon Press.

- Based on interviews with 26 patients and observation of 100 MHRT hearings.

Pleasence, P., Buck, A., Balmer, N., O'Grady, A. and Genn, H. (2002), *Summary of Findings of the First LSRC Periodic Survey of Legal Need*, London: Legal Services Research Centre (www.lsrc.org.uk)

- Based on a national household survey of 5611 adults and a survey of 197 adults living in temporary 'institutional accommodation'. Surveys looked at incidence of 'justiciable problems' and how people had dealt with them, including objectives in resolving the problem, advice-seeking behaviour, and costs incurred. Not specifically concerned with tribunals but included those for whom a tribunal appeal would have been possible.

Raine, J. (2001), 'Modernising Tribunals through ICTs' in Partington, M. (ed.) *The Leggatt Review of Tribunals: Academic Seminar Papers*, Bristol: Bristol Centre for the Study of Administrative Justice.

- See Sheppard and Raine (1999) below.

Sainsbury, R. (1992), *Survey and Report into the Working of Medical Appeal Tribunals*, London, HMSO.

- Based on an analysis of 1,000 case papers, a postal survey to which 1,028 appellants replied, and interviews with 39 appellants and 16 representatives.

Sainsbury, R., Hirst, M. and Lawson, D. (1995), *Evaluation of Disability Living Allowance and Attendance Allowance*, London: HMSO.

- Based on interviews with 188 Disabled Living Allowance (DLA) and 174 Attendance Allowance (AA) appellants to Disability Appeal Tribunals. Also includes interviews with 278 DLA and 322 AA claimants who had requested an internal review but had not yet appealed beyond this stage.

Sheppard, C. and Raine, J. (1999),'Parking Adjudications: the impact of new technology' in Harris, M. and Partington, M. (eds.) *Administrative Justice in the 21st Century*, Oxford: Hart Publishing.

- Based on a postal questionnaire sent to 1,000 people who had appealed to the Parking Adjudicators – 473 responded of whom 331 had had their appeal dealt with by post and 105 had appeared in person. A postal questionnaire was also sent to 100 people who had made representations regarding their parking fines but had not appealed – the response rate was 'around 40 per cent'.

Tremlett, N. and Banerji, N. (1994), *The 1992 Survey of Industrial Tribunal Applications,* London: Department of Employment.

- Based on interviews with 537 applicants (and 1,990 employers) at Industrial tribunals. Research discusses all the cases including those which settled in advance, not just those which went to tribunal.

Wikeley, N., Barnett, S., Brown, J., Davis, G., Diamond, I., Draper, T. and Smith, P. (2001), *National Survey of Child Support Clients*, DSS Research Report No. 152, London: The Stationery Office.

- Based on a survey of Child Support Agency clients, including 1017 non-resident parents and 1392 parents with care.

Young, R., Wikeley, N. and Davis, G. (1999), 'Child Support Appeal Tribunals: the appellant's perspective' in Harris, M. and Partington, M. (eds.) *Administrative Justice in the 21st Century,* Oxford: Hart Publishing.

- Based on interviews with parents and others, plus observations of hearings and discussions with CSA staff, tribunal chairmen and members. Study comprises 123 cases and observation of 23 hearings.

ANNEXE 2: BIBLIOGRAPHY

Atkinson, J. and Patterson, L. (2000), *Review of Literature relating to Mental Health Legislation*, Edinburgh: Scottish Executive Central Research Unit.

Baldwin, J., Wikeley, N. and Young, R. (1992), *Judging Social Security*, Oxford: Clarendon Press.

Barnes, M., Davies, A. and Tew, J. (2000), *There Ought to be a Better Way: Users' experiences of compulsion under the Mental Health Act 1983*, Birmingham: University of Birmingham, Department of Social Policy and Social Work.

Basic Skills Agency (1998) *Adults' Basic Skills*, London.

Berthoud, R and Bryson, A. (1997), 'Social Security Appeals: what do claimants want?', *Journal of Social Security Law*, 4 (1), pp. 17-41.

Blandy, S., Cole, I., Hunter, C. and Robinson, D. (2001), *Leasehold Valuation Tribunals: Extending the Remit*, Sheffield: Centre for Regional Economic and Social Research.

Blumenthal, S. and Wessely, S. (1993), *The Pattern of Delays in Mental Health Review Tribunals*, London: The Stationery Office.

Bonner, D., Buck, T. and Sainsbury, R. (2001), 'Researching the Role and Work of the Social Security and Child Support Commissioners', *Journal of Social Security Law*, 8 (1), pp. 9-34.

Bradley, C., Marshall, M. and Gath, D. (1995), 'Why do so few patients appeal against detention under the Mental Health Act?', *British Medical Journal*, 310, pp 364-7.

Burgess, D. (1997), 'Legal Representation can Kill', *New Law Journal*, pp. 410-411.

Chapman, V. (1995), *Barriers to Justice: CAB clients' experience of legal services*, London: National Association to Citizens Advice Bureaux.

Child Support Agency Standards Committee (2001), *Report 2000/01*, London The Stationery Office.

Coldron, J., Stephenson, K., Williams, J., Shipton, L. and Demack, S. (2002), *Admission Appeal Panels: Research Study into the Operation of Appeal Panels, Use of the Code of Practice and Training for Panel Members*, Research Report No. 344, London: Department for Education and Skills

Council on Tribunals (2001), *Annual Report 1999/2000*, London.

Council on Tribunals (2001), *Mental Health Review Tribunals Special Report*, London.

Council on Tribunals (2002), *Annual Report 2001/2002*, London.

Council on Tribunals (2003), *School Admission and Exclusion Appeal Panels Special Report*, Cm. 5788, London.

Davis, G., Wikeley, N. and Young, R. (1998), *Child Support in Action*, Oxford: Hart Publishing.

Department of Environment Transport and the Regions (2000), *Financial Management and Policy Review of Rent Assessment Panels in England*, London.

Department of Trade and Industry (2001), *Dispute resolution in Britain: a background paper*, London.

Department of Trade and Industry (2002), *Findings from the 1998 Survey of Employment Tribunal applications (surveys of applicants and employers)*, Research Report No. 13,.London: Department of Trade and Industry (http://www.dti.gov.uk/er/emar/etsurvey98.pdf)

Dickens, L. (1985), *Dismissed: a study of unfair dismissal and the industrial tribunal system*, Oxford: Blackwell.

Dolan, M., Gibb, R. and Coorey, P.(1999), 'Mental Health Review Tribunals: a survey of special hospital patients' opinions' *Journal of Forensic Psychiatry*, 10, pp. 264-275.

Eldergill, A. (1997), *Mental Health Review Tribunals: Law and practice*, London: Sweet and Maxwell.

Employment Tribunals Service (2001), *Customer Survey*.

Employment Tribunal System Taskforce (2002), *Moving Forward: the Report of the Employment Tribunal System Taskforce*, Department of Trade and Industry (www.dti.gov.uk/er/individual/etst-report.pdf)

Farrelly R. (1989), *The Reasons why Appellants fail to attend their Social Security Appeal Tribunals*, unpublished PhD thesis, University of Birmingham.

Gelsthorpe, V., Thomas, R., Howard, D. and Crawley, H. (2003) *Family Visitor Appeals: An Evaluation of the Decision to Appeal and Disparities In Success Rates by Appeal Type*, Online Report 26/03, London: Home Office (www.homeoffice.gov.uk/rds/onlinepubs1.html)

Genn, H. (1993), 'Tribunals and Informal Justice', *Modern Law Review*, 56(3), pp. 393-401.

Genn, H. (1999), *Paths to Justice: what people do and think abut going to law*, Oxford: Hart Publishing.

Genn, H. and Genn, Y. (1989), *The Effectiveness of Representation at Tribunals*, London: Lord Chancellor's Department.

Genn, H. and Paterson, A. (2001), *Paths to Justice Scotland: what people do and think abut going to law in Scotland*, Oxford: Hart Publishing.

Goldbeck, R., MacKenzie, D. and Bennie, P. (1997), 'Detained patients' knowledge of their legal status and rights', *Journal of Forensic Psychiatry*, 8, pp. 573-582.

Gregory, J. (1989), *Trial by Ordeal: a study of people who lost equal pay and sex discrimination cases in industrial tribunals during 1985 and 1986*, London: The Stationery Office.

Harris, N. (1997), *Special Educational Needs and Access to Justice*, Bristol: Jordan Publishing Ltd

Harris, N. and Eden, K. (2000), *Challenges to School Exclusion*, London: RoutledgeFalmer.

Harvey, A. (1997), *Reviewing the Asylum Determination Procedure: a casework study. Part Two: procedures for challenge and review*, London: Refugee Legal Centre.

Harvey, A. (1998), 'Researching the Risks of Getting it Wrong' in Nicholson, F. and Twomey, P.(eds.) *Current Issues of UK Asylum Law and Policy*, Aldershot: Ashgate.

Harvey, C. (2000), *Seeking Asylum in the UK: problems and prospects*, London: Butterworths.

Leggatt, Sir A. (2001), *Tribunals for Users: One System, One Service*, London: The Stationery Office.

Leonard, A. (1987), *Pyrrhic Victories: winning sex discrimination and equal pay cases*, London: The Stationery Office.

Lord Chancellor's Department (2003), *Proposed Changes to Publicly Funded Immigration and Asylum Work*, Consultation Paper, June.

MacPhee, S. (1998), *Lay Representation in Courts and Tribunals: The evidence of Citizens Advice Bureaux Lay Representatives in Scotland*, Edinburgh: Citizens Advice Scotland.

Meager, N., Doyle, B., Evans, C., Kersley, B., Williams, M., O'Regan, S. and Tackey, N. (1999), *Monitoring the Disability Discrimination Act (1995)*, Research Brief No. 119, London: Department for Education and Employment.

Meager, N., Tyers, C., Perryman, S., Rick, J. and Willison, R. (2002), *Awareness, Knowledge and Exercise of Individual Employment Rights*, London: Department of Trade and Industry.

Miers, D. (1997), *State Compensation For Criminal Injuries*, London: Blackstone Press.

Moorhead, R., Sherr, A., Webley, L., Rogers, S., Sherr, L., Paterson, A. and Domberger, S. (2001), *Quality and Cost: final report on the contracting of civil non-family advice and assistance*, London: The Stationery Office.

MORI Social Research (2000), *Review of Tribunals Consultation: research study conducted for the Review of Tribunals.*

Osborne, S. (2001), 'Decisions and Appeals – what is going on?', *Welfare Rights Bulletin*, 164, pp. 4-5.

Peay, J. (1989), *Tribunals on Trial: A study of decision making under the Mental Health Act 1983*, Oxford: Clarendon Press.

Pleasence, P., Buck, A., Balmer, N., O'Grady, A. and Genn, H. (2002), *Summary of Findings of the First LSRC Periodic Survey of Legal Need*, London: Legal Services Research Centre (www.lsrc.org.uk)

Raine, J. (2001), 'Modernising Tribunals through ICTs' in Partington, M. (ed.) *The Leggatt Review of Tribunals: Academic Seminar Papers*, Bristol: University of Bristol, Centre for the Study of Administrative Justice.

Review of Tribunals (2000), *The Tribunal System and its Costs*, London, Lord Chancellor's Department.

Sainsbury, R. (1992), *Survey and Report into the Working of Medical Appeal Tribunals*, London, The Stationery Office.

Sainsbury, R. (1997), *Consultation on 'Improving Decision Making and Appeals in Social Security': Analysis of responses*, London: Department of Social Security.

Sainsbury, R. (2000), 'Decision Making and Appeals' in Harris, N. *Social Security Law in Context*, Oxford: Oxford University Press, pp. 207-230.

Sainsbury, R., Hirst, M. and Lawson, D. (1995), *Evaluation of Disability Living Allowance and Attendance Allowance*, London: The Stationery Office.

Scottish Consumer Council (1999), *Independent Education Advice Provision for Parents in Scotland*, Glasgow: Scottish Consumer Council.

Scottish Consumer Council (2001), *Where Do they Go for Advice? A pilot study of parents' views and experiences of independent educational advice*, Glasgow: Scottish Consumer Council.

Sheppard, C. and Raine, J. (1999), 'Parking Adjudications: the impact of new technology' in Harris, M. and Partington, M. (eds.) *Administrative Justice in the 21st Century*, Oxford: Hart Publishing.

Travers, M. (1999), *The British Immigration Courts: a study of law and politics*, Bristol: The Policy Press.

Tremlett, N. and Banerji, N. (1994), *The 1992 Survey of Industrial Tribunal Applications*, London: Department of Employment.

Wikeley, N., Barnett, S., Brown, J., Davis, G., Diamond, I., Draper, T. and Smith, P.(2001), *National Survey of Child Support Clients*, DSS Research Report No. 152, London: The Stationery Office.

Young, R. (1999), 'Child Support Appeal Tribunals: the appellant's perspective' in Harris, M. and Partington, M. (eds.) *Administrative Justice in the 21st Century*, Oxford: Hart Publishing.