

**Council
on
Tribunals**

Framework of Standards for Tribunals

November 2002

updated February 2006

Council on Tribunals

81 Chancery Lane
London WC2A 1BQ

Tel: 020 7855 5200

Fax: 020 7855 5201

Email: enquiries@cot.gsi.gov.uk

Scottish Committee of the Council on Tribunals

44 Palmerston Place
Edinburgh EH12 5BJ

Tel: 0131 220 1236

Fax: 0131 225 4271

Email: sccot@gtnet.gov.uk

www.council-on-tribunals.gov.uk

Introduction

The Council has a statutory role to “keep under review the constitution and working of tribunals”.

This framework of standards sets out for the benefit of all the tribunals under the Council’s supervision the issues the Council is concerned with in fulfilling this role. The Council hopes the framework will:

- provide a useful template for the Council to use when it is considering the constitution and working of tribunals and when providing feedback to tribunals;
- make more transparent to tribunals and Government departments the Council’s priorities and concerns;
- provide a tool for Government and tribunals themselves to assist them in reviewing their performance;
- provide guidance for new tribunals;
- promote best practice.

General principles

Since tribunals are established to provide a form of redress, mostly in disputes between citizen and State, the Council believes that the principal hallmark of any tribunal is that it must be independent, and perceived as such. The tribunal should be able to reach decisions according to law without pressure either from the body or person whose decision is being appealed, from any party to a dispute or from anyone else. Judicial decisions should be uninfluenced by resource or other external considerations.

The 1957 Franks Committee on “Administrative Tribunals and Enquiries” which led to the establishment of the Council identified certain general and closely linked characteristics that should be reflected in tribunal procedures, and which remain important today. These were openness, fairness and impartiality – procedures should be open to scrutiny if they are to retain public confidence; they should provide a fair hearing at which citizens can state their case and be informed of all the evidence; tribunals should reach their decisions demonstrably free from all personal interest and bias. A fair hearing must be available to all sections of the community in an increasingly diverse society.

In addition, the Council thinks that accessibility to, and a focus on the needs of, tribunal users are now key indicators of a tribunal's performance. Although many tribunal users will be private individuals in dispute with the state, other bodies including representative organisations and government departments will also use tribunals regularly. Tribunals need to be proactive in making their service accessible to all users and to keep their service under continual review in consultation with them.

Tribunal systems must operate efficiently, with trained and competent administration and judiciary. They must be properly resourced and organised, both judicially and administratively, offering good value for taxpayers' money. They should also offer cost effective procedures that enable fair decisions to be reached promptly.

Overseeing tribunal performance against the standards

In keeping tribunals under review the Council aims to provide advice, to promote good practice and to highlight problems. The Council hopes that these standards will help it in fulfilling these aims, and will provide tribunals with clear guidance on the Council's expectations and priorities.

The Council does not have the resources systematically to monitor the day-to-day performance of all tribunals, and in any event sees this as the responsibility of others, particularly tribunals themselves. The Council expects all tribunals to have their own performance and service standards in place, together with mechanisms to monitor these.

The Council will maintain its oversight of performance through:

- continued data collection from tribunals;
- discussions with judicial and administrative heads;
- visits to observe hearings;
- research;
- discussions with users, their advisers and representatives.

It will continue to report on the performance of individual systems or themes of particular interest or concern in its Annual Reports and Special Reports.

1 Tribunals should:

- **Be independent**
 - **Provide open, fair and impartial hearings**
- a **Tribunals should be free to reach decisions according to law without influence (actual or perceived) from the body or person whose decision is being challenged or appealed, or from anyone else.**
 - b **Judicial officers should be independent.**
 - i Procedures for the selection and appointment of Tribunal members should be fair and independent of related departments of government and other interested parties.¹
 - ii. Appointees must have appropriate security of tenure, subject to procedures for re-training or removal from office in case of poor performance, misbehaviour, incapacity or persistent failure to comply with sitting requirements.
 - iii. Procedures should be in place to ensure conflicts of interest are identified and avoided.
 - c **Appointments to judicial office² should take account of the diversity of our society, and the composition of tribunals should be monitored to inform those making appointments.**

¹ *The Commissioner for Public Appointments maintains a Code of Practice for Ministerial appointments to Public Bodies which reflects the principles formulated by the Committee on Standards in Public Life. The current code can be found at the Office of the Commissioner for Public Appointments website (www.ocpa.gov.uk).*

² *The reference to "judicial office" is intended to include all tribunal Chairs and members who exercise judicial powers. The Lord Chancellor makes many appointments to the tribunal judiciary. The Lord Chancellor's approach to equality and diversity in the judicial appointments processes, including current policies and aspirations for the future, can be found at the Department for Constitutional Affairs website (www.dca.gov.uk).*

d Tribunal hearings should be open and fair.

- i. Hearings should normally take place in public, although a private hearing should be provided in appropriate circumstances.³
- ii. At the hearing, the identity of the tribunal membership should be communicated to the parties.
- iii. Hearings should be conducted with an appropriate degree of informality, and the necessary steps taken to ensure all relevant issues are explored.
- iv. Appropriate guidance about evidence and procedures should be given at hearings especially where individuals have no legal representation.
- v. Special procedures should be provided for hearings involving children or other vulnerable groups e.g. those with severe mental health problems.
- vi. The parties should be accorded equal status (e.g. presenting officers should not be present with tribunal members in the absence of an appellant).
- vii. If the hearing proceeds in the absence of a party, or his or her representative, the tribunal should nevertheless seek to ensure that that party's case is fully considered.
- viii. Where an interpreter is required by one of the parties, the interpreter should be used throughout the hearing to ensure the proceedings are understood.
- ix. Decisions should be soundly based on the evidence and relevant law.
- x. Decisions should wherever reasonably possible be given on the day of the hearing, and if not, as soon as possible thereafter. They must be supported by reasons, explained clearly to the parties, and if given orally confirmed in writing. Reasons should identify findings of fact, apply the relevant law and explain the decision.

³ *All hearings should be in public except that the press or public may be excluded from all or part of the hearing in the interests of morals, public order, national security, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the tribunal in special circumstances where publicity would prejudice the interests of justice (Article 6, European Convention on Human Rights). See also the Council's "Guide to Drafting Tribunal Rules" which is available on the Council's website (www.council-on-tribunals.gov.uk).*

2 Tribunals should:

- **Be accessible to users**
 - **Focus on the needs of users**
- a Potential users of the tribunal should be given access to information about its services.**
- i. Information in plain language about the tribunal, translated where appropriate into other languages, should be disseminated to interested organisations, and made available in places where it is likely to be seen by potential users. It should inform users about:
 - the range of issues that can be referred to the tribunal;
 - how to contact the tribunal;
 - what information the tribunal will require;
 - where to get help and advice;
 - where previous decisions of the tribunal are recorded.
 - ii. Makers of decisions from which there is a right of appeal to a tribunal should be obliged to inform those affected by decisions of the right of appeal and how a guide to such rights and procedures can be obtained.
- b Procedural Rules should be short, clear, simple, and up to date.**
- i. The same procedures and prescribed forms (if any) should be used without local variations except where necessary for the greater convenience of local users.
 - ii. Full written copies of all the tribunal's rules, procedures and prescribed forms relevant to a party's case should be made available, free of charge, to all parties and their advisers on request.
 - iii. Requirements imposed on parties under procedural rules should be appropriately modified where a party is not legally represented.
 - iv. An up to date plain language guide to the procedures should be available for users. This should be translated where appropriate into other languages.

- v. Rules should be regularly reviewed in consultation with users and with the Council on Tribunals. The object of such review should be to improve accessibility to users, simplicity, fairness, effectiveness and speed.⁴
 - vi. Whenever amendments are necessary they should be made promptly and brought to the attention of users.
- c Forms should be short and simple.**
- i. Where there are timetables, e.g. for the submission of documents, they should be made clear.
- d The papers required by the tribunal should be proportionate and appropriate to the issues at stake.**
- i. Users should be able to understand:
 - what papers they have to provide
 - what papers the other party will provide
 - what additional papers the other party can be required to provide
 - ii. Provision should be made for users with special needs, e.g. braille, audio tape, large print, translation into languages other than English.
 - iii. There should be a clear time limit for lodging of all papers.
- e Tribunals should provide users with clear information about how their case will be handled.**
- i. Users should be clearly informed about what is expected of them, what they have to provide, what will happen at a hearing, the circumstances in which travelling expenses are payable and how to make a claim.
 - ii. Users should be provided with clear and timely information about the date and venue of any hearing.
 - iii. Users should be clearly informed where a tribunal has the power to order one party to pay the costs or expenses of another. Wherever practical that information should include an indication of the scope and extent of a likely award.
 - iv. Users should be able to find out about the progress of their case and how long they are likely to have to wait for a hearing or decision.

- v. Where it is possible to do so, users should be given a specific time for their hearing.
 - vi. Users should be informed whether they have to attend or not, and advised whether it will usually be in their interest to do so.
 - vii. Information about the venue should include parking facilities and public transport routes, refreshment and other facilities, access for people with disabilities⁵, and a map.
 - viii. The tribunal's decision should be accompanied by information about appeal rights and where independent advice may be obtained.
- f A complaints policy and procedure should be in place in relation to the performance of both judiciary and administration, and should be publicised to users.⁶**
- g Tribunals should establish and publish a clear policy on the payment of travelling expenses.**
- h Tribunals should establish and publish a clear policy on equal treatment and continuously monitor compliance.**

⁴ *The Council's guidance on Procedural Rules is set out in its "Guide to Drafting Tribunal Rules" available on the Council's website (www.council-on-tribunals.gov.uk).*

⁵ *The Council has published guidance on access to tribunals for disabled people. This was developed in consultation with the Disability Rights Commission and a working group of tribunal representatives and is available on the Council's website (www.council-on-tribunals.gov.uk).*

⁶ *This standard concerns complaints which may appropriately be dealt with through an administrative procedure, and not those which amount to an appeal against a judicial decision and to which a judicial remedy may apply.*

3 Tribunals should:

- **Offer cost effective procedures**
- **Be properly resourced and organised**
 - a **Judicial resources should be managed to provide a good service, and to ensure that individuals sit often enough to maintain knowledge and skills.**
 - b **Standards for judicial behaviour and performance should be set and monitored.**
 - i. The results of monitoring should be regularly assessed and used to raise standards.
 - ii. All chairs and members should participate in a review of their performance at appropriate intervals to identify areas of good performance and areas for improvement. Suitably experienced colleagues, specially selected and appropriately trained to be able to give constructive feedback on performance, should undertake annual reviews.
 - c **Cases should be heard, and a final decision given, within a reasonable period.**
 - i. Judicial practice should take account of the need for expedition and reasonable economy.
 - ii. Management information about the age and type of outstanding cases should be collected and monitored.
 - iii. Waiting time targets for cases should be set and monitored.
 - d **Programmes of induction and refresher training⁷ should be provided for tribunal chairs, members and administrative staff.**
 - i. Induction and training should take place before tribunal members begin sitting.
 - ii. Regular refresher training should be provided to all members, including the opportunity to discuss matters of concern with other members.

- iii. The lead members of tribunals should be trained in the skills of chairing.
 - iv. Guidance should be provided regularly to all members upon matters of law and practice.
 - v. Chairs, members and administrators should have participated in training in diversity and equal treatment issues.
- e Appropriate levels of administrative and clerical support should be provided for the proper conduct of tribunal hearings.**
- i. Tribunals should provide appropriately trained and skilled staff and administrative facilities sufficient to ensure that tribunals are properly administered and hearings are properly supported, with advice and assistance from clerks, ushers and other administrative staff.
 - ii. Roles and responsibilities of tribunal clerks and other administrative staff should be clearly determined and communicated to those concerned.
- f Standards for hearing venues and for service and performance should be set and monitored in consultation with users.**
- g Appropriate planning, budgeting and monitoring procedures should be in place.**
- i. Data about patterns in the caseload of the system (errors in first tier decision making, cost of cases going to judicial review etc.) should be collected and monitored.
 - ii. Administrative processes should be responsive to the needs of those who wish to use them.
 - iii. Targets should be reviewed regularly and improved where possible.
 - iv. Information about the performance of the tribunal should be published at least once a year.

⁷ *Training should enable chairs and members to acquire the full range of competences required for their respective roles. The Judicial Studies Board Tribunals Committee has developed a number of tribunals training frameworks: "Competence Framework for Chairmen and Members of Tribunals"; "Framework of Standards for Training and Development in Tribunals"; "Fundamental Principles and Guidance for Appraisals in Tribunals and Model Scheme", and; "Guidance on Mentoring in Tribunals". These publications are available on the Judicial Studies Board website (www.jsboard.co.uk).*

- v. Information about performance should include, where relevant:
 - key performance statistics (waiting times, outstanding caseload, age of caseload, intake and clearance);
 - performance against quality standards;
 - expenditure and investment figures;
 - details of training for judiciary and administrative staff;
 - information about complaints.

- h **Where relevant, tribunals should work with first tier decision makers and/or second tier tribunals continuously to improve the “end to end” experience for the user (e.g. to ensure the whole appeals process is completed in a reasonable time).**