1-1-1979

The Structure of Tribunals and the Appointment of Their Members in Great Britain

Charles D. Ablard

Follow this and additional works at: https://repository.uchastings.edu/hastings_international_comparative_law_review

Part of the Comparative and Foreign Law Commons, and the International Law Commons

Recommended Citation

Available at: https://repository.uchastings.edu/hastings_international_comparative_law_review/vol2/iss2/5

This Article is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings International and Comparative Law Review by an authorized editor of UC Hastings Scholarship Repository.
The Structure of Tribunals and the Appointment of Their Members in Great Britain*

By Charles D. Ablard**

INTRODUCTION

In the British system administrative tribunals are considered structurally as extensions of the court system with the same independence of decision making. The method of appointment of solicitors and barristers as members of tribunals is similar to that used for the appointment of judges. This contrasts markedly with both the philosophy and methodology of the selection of administrative agency members and administrative law judges in the United States.¹

The British tribunals system, as it now exists, began in 1911 with the enactment of the national health insurance programs of Prime Minister Lloyd George. This was thirty-five years after the creation of the Interstate Commerce Commission in the United States which is regarded as the beginning of the administrative agencies in the United States.² British tribunals continued to grow in number during the depression years between the wars. A parallel development of administrative agencies occurred during those years.

---

* This report was originally prepared for the Administrative Conference of the United States while the author was a Visiting Fellow, Center of International Studies, Cambridge University in 1974. It was further developed in subsequent visits to Great Britain between 1975 and 1978. The views expressed herein reflect only those of the author.


1. For a detailed discussion of the history and procedures of the principal British tribunals, see R. Wraith & P. Hutchesson, Administrative Tribunals (1973).

in the United States. The burgeoning of tribunals was a post-war welfare state phenomenon as services of the state increased.

Although the two systems are substantively more dissimilar than similar, the structure of the British tribunals system provides some relevant comparisons for the American lawyer familiar with administrative agencies in the United States. There are several fundamental distinctions between the functions of British tribunals and administrative agencies in the United States which should be analyzed before considering either the structure or the appointment process of tribunals.\(^3\)

First, the British system is a national system with some area-wide tribunals which in the United States would be regarded as state or local in character. All are included in the general scheme of a unitary British tribunal system.

Second, with the exception of transportation regulations, those areas of administrative agency practice in the United States which have been given the most attention by administrative lawyers—i.e., transportation, communications, energy, labor and trade regulations—are not a part of the British tribunal system since they relate to matters of fundamental government policy-making which are decided by the various ministries. Thus, they are outside the scope of the tribunal structure. In contrast with the United States, the British have a definite bias against mixing problems of the administration of government with that of the adjudication of disputes between parties by administrative tribunals. The ministries may undertake public inquiries on policy matters in which the public has an interest, but these are distinct from the operation of tribunals. However, tribunal operations and public inquiries are sometimes considered together in establishing general rules of procedural fairness.\(^4\)

Third, the range of differences in the procedures of the various tribunals is greater, and the breadth of activities over which they have jurisdiction to adjudicate is broader, than the agencies of the United States Federal government. The tribunals also adjudicate on a greater variety of government activities than even those of state and local governments in the United States. One reason for this

---

3. B. Schwartz & H. Wade, Legal Control of Government (1972). This work presents a thorough analysis of administrative practices in both Great Britain and the United States. The book is a result of the Third Anglo-American Legal Conference held at Ditchley Park, England in 1969.

4. See R. Wraith & G. Lamb, Public Inquiries As An Instrument of Government (1971) for a thorough analysis of this distinct system.
greater range and diversity is that the British central government is more pervasive in its relations with its citizens than government in the United States at any level. Additionally, there are variations among England and Wales, Scotland and Northern Ireland. Thus, comparisons are difficult to make and generalizations can be too simplistic.

There is no statutory mechanism for achieving even basic norms of procedure between various tribunals as provided by the Administrative Procedure Act\(^5\) in the United States. The use of lay persons is typical to the British tribunal system, yet is unique to the American adjudicative experience. There are some rules of general application set by the Tribunals and Inquiries Act 1971,\(^6\) such as requiring reasons for decisions to be given upon request and establishing procedures for appeals to the High Court. Similar provisions are found in the specific Acts of Parliament governing tribunals, and in the rules of procedure for particular tribunals.

This article will examine the structure and composition of British tribunals, discuss the role of lawyers and laymen within the tribunal system, and draw comparisons, where possible, to administrative law in the United States.

**STRUCTURE**

There are several structural variations in British tribunals. The categorization of tribunals as national, regional or local can best be analogized to federal, state or local distinctions in the United States.

Within the three basic categories there are six tribunals with national jurisdiction, all of which sit in London: the Civil Aviation Authority;\(^7\) the Betting Levy Appeal Tribunal;\(^8\) the Transport Tribunal;\(^9\) the Comptroller General of Patents, Designs and Trade Marks;\(^10\) and the Commons Commissioners.\(^11\) There are three tri-
bunals which are London-based but travel on circuit: the Lands Tribunal,\textsuperscript{12} the Special Commissioners of Income Tax,\textsuperscript{13} and the Pensions Appeal Tribunal.\textsuperscript{14}

The regional tribunals are quite different from one another because regions vary depending on local government structure. Lines of demarcation in organization of local government were changed by the enactment by Parliament of the Local Government Act of 1972, which took effect in 1974. A number of local tribunals derive their power from local authorities and are concerned with great numbers of cases primarily involving rights and duties of citizens. The only tribunals to which appointments are made by local authorities are the panels for the Local Valuation Courts.\textsuperscript{15}

Inasmuch as the various tribunals were created at different times and for different purposes, their organization follows no uniform plan and may differ in accordance with such external factors as case load and the nature of the tribunal's jurisdiction. Other factors, including the type of tribunal proceeding and the amount involved in the controversy, may determine the applicant's willingness to travel and thus, may affect the location of the tribunal. Many tribunals were established with the advent of the "welfare state" after World War II to decide matters arising from the government's new responsibilities for health and welfare and other services for citizens. Convenience to claimants is therefore of primary concern to the government.

There are two tribunals which are essentially "courts of appeal" from lower tribunals: the National Insurance Commissioners and the Immigration Appeals Tribunal. The National Insurance Commissioners have the unique distinction of being appointed by the Crown on the recommendation of the Lord Chancellor. The Lord Chancellor is a political appointee of the government with duties

\textsuperscript{11} The Commons Commissioners adjudicate disputes over the use of common land. The Commons Registration Act, 1965, c. 64.

\textsuperscript{12} The Lands Tribunal adjudicates appeals from local valuation courts and appeals from value determinations made by Inland Revenue and local authorities. The Lands Tribunal also has the power to modify or eliminate restrictions on land use. The Taxes Management Act, 1970, c. 9.

\textsuperscript{13} The Special Commissioners of Income Tax are specialists in law and tax who adjudicate appeals from tax assessments. The Taxes Management Act, 1970, c. 9.

\textsuperscript{14} The Pensions Appeal Tribunal adjudicates appeals from determinations on the entitlement to or the amount of military pensions. The Pensions Appeal Tribunals Act, 1943, 6 & 7 Geo. 6, c. 39; The War Pensions Act, 1919, 9 & 10 Geo. 5, c. 53.

\textsuperscript{15} The Local Valuation Courts adjudicate appeals from determinations of the rateable value of property. The term "rateable" is synonymous with the word "taxable" in the United States. In Great Britain, a taxpayer is a ratepayer. The General Rate Act, 1967, c. 9.
akin to a combination of the Attorney General and the Chief Justice in the United States, but with additional powers. He serves in the cabinet and appoints all lawyers who act as chairmen or members of tribunals except immigration adjudicators who are lawyers appointed by the Home Secretary.16

The National Insurance Commissioners17 have the final authority for determining appeals from two hundred National Insurance Local Tribunals18 and thirteen Medical Appeal Tribunals.19 This tribunal is one of the most senior of administrative tribunals and the one frequently cited as having the best developed and most systematic procedures. Judicial review20 of decisions of the Commissioners is by the Court of Appeal, the highest appellate court, while decisions of most other tribunals are reviewed by the Queen's Bench Division of the High Court of Justice, the highest trial court.21

The Immigration Appeal Tribunal hears appeals from decisions of twenty-nine legally qualified immigration adjudicators to whom decisions of the Home Secretary on entry or visa applications may be appealed.

The former National Industrial Relations Court which reviewed decisions of the Industrial Tribunals22 was in the appellate category, although technically it was not a tribunal but a court of specialized jurisdiction.23 However, its Chairman, a former justice of the High Court, Sir John Donaldson, believed it should function more as a tribunal than a court. The National Industrial Relations Court was the subject of considerable controversy and was strongly criticized by the Labour party during the February 1974 general election campaign. The Court was abolished by the Government in mid-1974,

---

16. The Home Secretary is a cabinet minister with powers similar to, but broader than, those of the Secretary of the Interior in the United States. He serves as head of the ministry known as the Home Office.
18. The National Insurance Local Tribunals hear appeals from the decisions of insurance officers on national insurance, unemployment benefits, sickness and injuries. Id. §§ 97, 114.
19. The Medical Appeal Tribunals hear appeals from departmental medical boards on industrial injuries. Id. § 97 n. iii.
21. Proposals have been made for the creation of a specialized administrative court to review tribunal actions. See A NEW BILL OF RIGHTS, (1978) issued by the Conservation Political Centre (the research arm of the British Conservative Party).
23. The Restrictive Practices Court also has a High Court justice sitting as chairman and fits into the appellate category. It is closely akin to the Federal Trade Commission in terms of subject matter, but is a court of original jurisdiction.
after Labour won the election. Appeals from Industrial Tribunals were then taken directly to the Queen’s Bench Division of the High Court of Justice, the traditional appellate forum for judicial review of tribunal actions. The Employment Protection Act was enacted by Parliament in 1975 and provides that appeals on points of law are to be taken to the employment Appeal Tribunal which is comprised of certain nominated High Court judges and law members, a structure unique among tribunals.

One of the most interesting recent structural developments has been the application of a strongly directed presidential system to those tribunals which meet in multiple locations. Thus, the pattern of operations of the Chief National Insurance Commissioner is being applied to other tribunals. For example, in 1973, the presidential system was adopted by the Value Added Tax Tribunal, one of the newest tribunals, created to adjudicate disputes concerning this new form of taxation established as a result of Britain’s entry into the Common Market. The Value Added Tax Tribunal has nine chairmen, who are lawyers appointed by the Lord Chancellor, and a full-time President who sits in London. Each chairman sits with two lay persons whom he selects for each case from a citizen panel. The Council on Tribunals, the oversight agency for tribunals in Great Britain, has supported the presidential system as that which is the best suited for tribunals sitting throughout the country. The most authoritative book on the subject, written under the sponsorship of the Royal Institute of Public Administration lists six advantages of the presidential system:

1. Independence from parent departments since the presidential tribunal operates on its own premises with its own staff.
2. Better communications between the different panels of the tribunals and between the department and head of the presidential tribunal.
3. Public relations for the tribunal in establishing its reputation

---

24. Under a presidential system, the chief officer acts as a central authority supervising the scattered local tribunal chairmen.
27. R. Wraith & P. Hutchesson, supra note 1, at 90.
28. Communications between the department and the president are generally considered as being less subject to political interference than are similar communications between the department and the local chairmen, who are thought to be more vulnerable to political pressure.
with the public and its constituents.
4. Better support for the professional civil service staff through a centralized control mechanism.
5. More effective development of tribunal case law through control of the cases selected to be reported by the tribunal.
6. Consistency of practice, procedure and decisions.

To an American lawyer, the last listed advantage would probably seem most important for the effective management of a system of administrative adjudication.

**COMPOSITION**

There are four distinct patterns in the composition of tribunals. Each pattern dictates in some measure the type of appointments which will be made to the tribunal.

The first pattern consists of an individual sitting alone. It is best exemplified by the ten National Insurance Commissioners who generally sit alone to hear appeals, although the National Insurance Act, as amended in 1946, provides that three commissioners may sit in a panel to hear cases involving "a question of law of special difficulty." These panels are convened by the Chief National Insurance Commissioner when such a question is presented.

The second pattern is that of a fixed membership panel consisting of a Chairman, Deputy Chairman, and four to six other members, all of whom may be present at any hearing, but only a quorum is required for action. Examples of tribunals employing this pattern of composition are the Transport Tribunal and the Civil Aviation Authority—the two tribunals most similar to United States federal regulatory agencies, namely the Interstate Commerce Commission and the Federal Aviation Authority.

The third pattern is a single panel whose membership is not fixed but has a chairman and one or two other members drawn from larger panels. The Medical Appeal Tribunals follow this pattern. They decide questions of medical evidence for the National Insurance Commissioners and usually have two chairmen available, both of whom are lawyers, sitting with two members who are medical practitioners drawn from panels. The Immigration Appeal Tribunal also uses the single panel system, its lay members sitting with a legally qualified chairman.

---

The fourth pattern is a representative panel system. While the members of such panels generally reflect the views of certain interest groups, the selection is designed to make certain that the panels perform a judicial function rather than to encourage contention between members representing conflicting interest groups. Tribunals employing this system are described as "balanced" tribunals. Typical interests balanced through this device are the interests of employers and employees before the National Insurance and Industrial Tribunals; landowners and farmers before the Agricultural Land Tribunals; and consumers, producers and retailers before the Milk and Dairy Tribunals. The Supplementary Benefit Appeal Tribunals adjudicate disputes arising under a welfare system designed to provide a minimum family income. Their panels generally consist of one trade union member and one member of the local community sitting with a chairman. Fewer than ten percent of the chairmen are lawyers and the Council on Tribunals advocates a substantial increase in that percentage. Some members of the Council on Tribunals support establishing a presidential system for the Supplementary Benefit Appeal Tribunals with a lawyer chairman of each tribunal. Presently, the panel membership of this tribunal is citizen-oriented. In the appointment of members, an effort is made to choose persons who know the community and its problems.

A hybrid version of these four patterns has been developed for the Industrial Tribunals. Formerly, the Industrial Tribunals used the "employer-employee" membership dichotomy within a representative panel system. However, the trade union members resigned due to the political controversy over the Industrial Relations Act of 1921 which tightened control over trade union activities. Following

31. The Agricultural Land Tribunals adjudicate disputes between landlords and tenants regarding drainage, bad husbandry, and notices to quit, as well as disputes between land owners on such matters as drainage and clearing of ditches. The Agriculture Act, 1947, 10 & 11 Geo. 6, c. 48, § 73.
32. The Milk and Dairy Tribunals hear matters, both initially and on appeal, regarding the registration of dairy farms and licences for dairies and milk producers. The Food and Drugs Act, 1955, 4 Eliz. 2, c. 16.
34. Bell, Research Study on Supplemental Appeal Tribunals (Her Majesty's Stationery Office, 1975).
35. The supplementary benefits program is the present program which began with the Poor Law of 17th century England. It has received much attention since its work touches the lives of a great number of citizens, yet it is generally thought to be the most poorly administered of all the tribunals. See Bradley, Reform of Supplementary Benefit Tribunals—The Key Issues, 27 N. Irl. L.Q. 96 (1976).
their resignation, a single panel was established consisting of "persons appearing . . . to have knowledge or experience of employment in industry or commerce" to be appointed after consultation with organizations representing those groups. This change makes clear the understanding that members of a tribunal should not regard themselves as representatives of specific interests, but as judicial officers assigned to dispense justice even-handedly.

A former Lord Chancellor, Lord Gardiner, commented that, even under the old structure reference to the members as "the employer's representative" or the "employees' representative" was inaccurate since they were appointed to represent nothing but the interests of justice. Whether this was ever in fact the case may be debated. However, despite the expressed desire on the part of some trade unions to return to the old system, specific representation of special interest groups has been eliminated.

The concept of lay justice is solidly built into the British system of the administration of justice. It is best illustrated by the membership of the magistrates' courts which is comprised exclusively of laymen. The appointment of laymen to tribunal panels is a key element in developing citizen involvement in the process of government.

The quality of the members who serve influences the character of each of the tribunals. Impartiality is a highly sought characteristic in new members. That tribunals are staffed by independent persons rather than by government officials is evidence of the importance of impartiality. A finding that a member was subject to outside influence in the course of his decisionmaking has been held to invalidate his decision. This further illustrates the view that tribunals are governed by the same principles which control the judiciary and any attempt to influence decisionmaking is not only unethical, but is against legal policy. The requirement of impartiality applies equally to those tribunals that adjudicate questions between a citizen and his government and those that adjudicate questions between citizens.

Generally, the qualifications required for lay members on tribunals are high. The presence of lay members contributes greatly to both the actual and apparent fair determination of issues. Their

presence also helps to generate confidence in the system on the part of applicants appearing before the tribunal. The willingness of educated and qualified laymen to devote time to tribunal membership speaks well of public service in Great Britain. 39

ROLE OF LAWYERS

Lawyers have a more limited role in society in Great Britain than in the United States and there is a fear in some quarters that their increased use in the administrative process will lead to undue formalization and delay. While this view has also been voiced in the United States, it is decidedly more pronounced in Great Britain. It was a topic of discussion during the debates in Parliament on the establishment of the Council on Tribunals in 1958.40 It is reflected both in the relatively infrequent appearances of lawyers and the extensive use of lay representatives in tribunal proceedings.

The bias against lawyers is illustrated by the refusal of successive Parliamentary Commissioners for Administration41 to even employ a lawyer on their staffs. The reason given was the fear that a lawyer would take too legalistic a view of administrative problems presented to him for action in his role as ombudsman. One factor which has increased the difficulty of appointing lawyers as chairmen of the Supplementary Benefit Appeals Tribunals is the expressed policy of the Home Office42 that those tribunals have the character and should take the approach of social workers rather than the character or approach of adjudicators of benefit disputes.43

The Council on Tribunals and the Law Society are attempting to increase the number of lawyers sitting on tribunals in the belief that a greater number of lawyer tribunal members will regularize tribunal operations and ultimately produce better results. This

39. The use of lay trade union members has recently come under sharp attack by the Conservative Party which believes these positions have been used by the Government to dispense political favors. Speech of Paul Johnson, former editor of NEW STATESMAN, at Brighton, England, October 11, 1978.
41. The Parliamentary Commissioner for Administration is the ombudsman who reports to the Parliament. For a general description of his role in government and society, see JUSTICE, OUR FETTERED OMBUDSMAN (1977).
42. See note 16, supra.
43. The Supplementary Benefit Appeal Tribunal system has undergone extensive scrutiny during the past twelve months from the Lord Chancellor's department and the Council of Tribunals. One result is that a new system for training chairmen has gone into effect. Another is that a procedural guide has been published which urges the giving of adequate reasons for decisions. Annual Report of Council on Tribunals, 1977-1978.
movement has met with opposition primarily from trade unions who fear the judicialization of proceedings. The difference between the roles of lawyers in British and American society also affects the representation of parties before tribunals. While few lawyers appear before tribunals, more solicitors than barristers appear, in relative proportion to their numbers. There are no solicitors or barristers who exclusively specialize in tribunal practice although some have extensive practices before the industrial tribunals. The tribunals before whom lawyers most frequently appear are the Industrial Tribunals and the Value Added Tax Tribunals—the two fora whose decisions have the strongest impact on trade and commerce. Appellants in industrial, benefit and welfare cases are often represented by legal counsel provided by the trade unions for their members or by the Citizens Advice Bureau.\(^4\)

For several years, proposals have been pending before the British government to make legal aid available to litigants appearing before tribunals in the same manner as it is available to litigants appearing before the courts. If this occurs, there undoubtedly will be more representation by lawyers, before all tribunals. The largest impact will be felt by the social service tribunals whose applicants are generally less able to pay for legal representation. There is considerable variation in the degree of formality in hearings before tribunals with the least formal being social welfare hearings on supplementary benefits, which are comparable to social security adjudications in the United States.

Often neither litigants nor counsel appear personally at hearings. This fact is the cause of some concern inasmuch as access to the forum has been a critical factor in tribunal planning, and yet it has not resulted in personal appearances. The Chairman’s responsibility to ensure complete presentation of the case to the tribunal members becomes particularly important when litigants are not represented by legal counsel. This problem is compounded when there is a lay chairman of the tribunal. The infrequency of appear-

\(^{44}\) The professions of solicitor and barrister developed from different origins to perform separate functions. The distinction is that the barrister has the exclusive right of appearance in the superior courts, while the solicitor has the exclusive right of direct contact with clients on all matters of ordinary business. Solicitors may appear in the lower courts and both may appear before tribunals.

\(^{45}\) The Citizens Advice Bureau performs a function similar to that performed by neighborhood legal assistance offices in the United States, although the Bureau’s offices are generally not staffed by lawyers. Sloviter, \textit{Let’s Look at Citizens Advice Bureaux}, 65 ABAJ 567 (April 1979).
ances and representation increases the need for lawyer chairmen at tribunal hearings.

The influential role of the tribunal clerk lends additional support to the argument favoring the appointment of lawyer chairmen. Tribunal clerks are usually career civil servants assigned by the ministry whose matters are under tribunal review. This suggests that the ministries may be in a position to undermine the independence of the tribunals. With respect to the subject matter being reviewed by the tribunal, the tribunal clerk is often more knowledgeable than many of the tribunal members. Thus, his advice can be quite influential even though he lacks a vote. The Council of Tribunals has called attention to this problem in the past. The best solution to the potentially biased influence of the tribunal clerk appears to be the appointment of a strong chairman, preferably a lawyer.

**APPOINTMENT PROCESS**

One of the results of the 1957 Report of the Committee on Administrative Tribunals and Enquiries (chaired by Sir Oliver Franks) which led to the creation of the Council on Tribunals, was a change in the mode of appointment of tribunal members.\(^46\) The Franks Committee found that most chairmen and members were being appointed by the minister whose department dealt with the subject matter of the tribunal. Although they found no evidence of undue influence, they recommended that all future chairmen be appointed by the Lord Chancellor to avoid any appearance of bias. The Franks Committee considered proposals that all members be appointed by the Lord Chancellor, but declined to make such a recommendation on the grounds that it was impractical or, at best, a transparent formality. The Franks Committee, however, did recommend that the Council on Tribunals, rather than the minister, appoint tribunal members. This recommendation was rejected by Parliament when the Council on Tribunals was created in 1958.

Although changes have been made in the appointment process of chairmen, the appointment of members still rests largely in the hands of the ministers of the various departments. The Lord Chancellor himself appoints the members to some tribunals, such as the Pensions Appeal Tribunal\(^47\) and the Immigration Appeal Tribunal.\(^48\)

---

47. See note 14, supra.
48. The Immigration Appeal Tribunal hears appeals from adjudications on entry into
In practice, however, the Lord Chancellor solicits, and is generally guided by, the recommendations of the appropriate minister.

Over 65% of all statutory tribunals now have chairmen who are appointed either directly by the Lord Chancellor or indirectly, with the actual selection made by a minister from a list submitted by the Lord Chancellor. These include the National Insurance Local Tribunals, Medical Appeal Tribunals, Supplementary Benefit Appeal Tribunals and Rent Assessment Committees. Of the remaining tribunals, many are policy tribunals, such as the Civil Aviation Authority and the Traffic Commissioners, which primarily have administrative or advisory functions with the added duty of licensing. The chairmen of these tribunals are considered to be more properly subject to ministerial appointment because they are more involved in policy formulation than in the adjudication of disputes.

There are two instances, however, where for unique reasons a tribunal chairman, whose functions are primarily adjudicative, is appointed by the minister. One is the Chief Immigration Adjudicator who is appointed by the Home Secretary. The Chief Immigration Adjudicator is thus made *primus inter pares* among his fellow adjudicators in deciding immigration disputes at the first hearing level of adjudication. This ministerial appointment is in accordance with the recommendations of a 1966 study of the immigration system which was chaired by Sir Roy Wilson, and which proposed the present structure through which immigration appeals are taken to the Home Secretary. The study cited the 1957 Franks Committee report to support its recommendations on appointments. In view, however, of the general desire of the Franks Committee to make certain that sensitive cases were handled by persons who at least appeared to be or were in fact independent, the report of that Committee would not appear to support appointment of the Chief Immigration Adjudicator by the Home Secretary. The second instance is the Chairman of the Milk and Dairie Tribunal, who is appointed by the Minister of Agriculture for largely historical reasons. Although the Milk and Dairie Tribunal is now considered to be a full-fledged tribunal, it was originally only nominally a tribunal, established during the war as an administrative body to manage agricultural problems such as wartime shortages of commodities.

The recommendation of the Franks Committee regarding the
appointment of members by the Council on Tribunals has not been approved. Many reasons, including the reluctance of the Council on Tribunals to assume the function, make it unlikely that the recommendation will be followed. One factor contributing to that reluctance is the potential difficulty in criticizing the operations of a tribunal whose members have been appointed by the Council. Such critical appraisal is currently a major function of the Council. As a general rule, the ministers continue to appoint tribunal members, but are accountable to Parliament for their appointments. Yet, despite appointment by the ministers, there seems to be little problem in maintaining the independence of tribunal members. The president of a tribunal appointed by a minister usually makes certain he achieves that independence.

SELECTION AND QUALIFICATION OF MEMBERS

Any generalization on the selection process of tribunal members is difficult since few general rules apply. The appointment of chairmen who are lawyers is a subject which lawyers may find particularly interesting. Only certain tribunals are required by statute to have lawyer chairmen. These include the principal appellate tribunals and those tribunals whose members have medical expertise—Pensions Appeal Tribunals and National Insurance Medical Appeal Tribunals. There are other tribunals where, although not required by statute, it is considered advantageous that members be lawyers because of the tribunals’ particular subject matter jurisdiction. These are the Industrial Tribunals, the Value Added Tax Tribunals, National Insurance Local Tribunals and Immigration Adjudicators. Thus, the pattern has developed for lawyers, usually barristers, to chair the tribunal with laymen from either the general public or from specified community groups serving as members.

There are various specific qualifications for membership on the different tribunals. For example, the chairman of the Independent Schools Tribunal51 must not only be a practicing member of the Bar, but also "a family man" by tradition. The qualifications required of tribunal members reflect the fact that the tribunals are regarded as specialized agencies requiring some expertise. The general requirements of professional knowledge and practical experience are imposed on members but not on the Chairman. The following result

---

51. The Independent Schools Tribunal hears appeals from requirements to close down or remedy a defect in an independent school (a school not financed by local education authorities). The Education Act, 1944, 7 & 8 Geo. 6, c. 31.
is apparent. Doctors are appointed to Medical Appeal Tribunals, value appraisers to Land Tribunals and accountants to the Betting Levy Appeal Tribunals. Not surprisingly, the Lord Chancellor consults with professional associations during the selection process. The Lord Chancellor has, for example, ninety-six advisory committees to help him in the selection of the general commissioners who deal with income tax appeals. The professional bodies suggest the names of candidates to the Lord Chancellor. Such consultation is required by some acts of Parliament.52

Tribunal members generally are not interchangeable among tribunals and this is a matter of concern to the Lord Chancellor. The number of members of a particular tribunal is, in most instances, established by the substantive statute creating the tribunal. At the time Parliament created the various tribunals it established membership requirements based on anticipated work load. The projected case load estimates have proven largely inaccurate. As a result there are too many Tax Tribunal members and too few members of the industrial tribunals. The use of some part-time Value Added Tax Tribunal members in the industrial tribunals represents the first cross-utilization of tribunal members—a trend which the Lord Chancellor hopes will develop and expand. This trend is consistent with developments in the United States which increasingly permit the transfer of administrative law judges among agencies. Selective certification procedures used by agencies in the United States tend, however, to result in the selection of judges who have had experience in the hiring agency.53

Depending on the particular structure and operation (trial or appellate) of the individual tribunal its overall function may be more akin to either that of a government agency or an administrative law judge. The appointment process for tribunal members combines some aspects of the political process for selection of federal agency members with some aspects of the process for selection of administrative law judges in the United States. Yet the political emphasis is very slight in Great Britain and there is no official in the United States whose power in the appointment of either Federal Judges or administrative law judges is comparable to that of the Lord Chancellor in England.

52. As an example, the Lands Tribunal Act of 1949 requires consultation with the President of the Royal Institute of Chartered Surveyors. The Lands Tribunal Act, 1949, 12, 13, & 14 Geo. 6, c. 42.

RECRUITING

There is no organized system for the recruitment of tribunal members such as that employed by the United States in selecting administrative law judges for administrative agencies and departments.\textsuperscript{54} Casting the net for persons to fill the chairmanships of tribunals is subject to many vagaries of chance. The Lord Chancellor's office maintains a list of suitable and available people for each particular tribunal which is supplemented with new names as required. Interviews with candidates are conducted by the appointing ministry and the Lord Chancellor's staff before an appointment is made.

The Lord Chancellor, assisted by a small staff in his office, uses essentially the same recruiting process and screening system for appointments of lawyers to tribunals that he uses for appointments to the British courts. Unlike the other ministeries which look for some specific experience in appointing chairmen, he looks not for expertise in the subject area of the particular tribunal, but for judicial temperament, demeanor and those general qualities needed for judging. The lay member may be counted on to provide the social welfare approach or specialized expertise if needed. In the selection process the Lord Chancellor canvasses a variety of sources including judges and prominent citizens of the area where the tribunal may be sitting. He works with the Senate of the Inns of the Court\textsuperscript{55} on the appointment of barristers and the Law Society\textsuperscript{56} on the appointment of solicitors. Applicants must have seven years standing in the legal profession. In the United States, the closest approximation to bar liaison is the use of lawyers with administrative practice on the selection panels used by the office of personnel management, formerly the Civil Service Commission.\textsuperscript{57}

Judges are chosen, with only rare exception, from among the ranks of barristers, of whom there are only 3600. The selection of lawyers as tribunal members, however, is more difficult because

\textsuperscript{54} Miller, \textit{The Need for Improvements in the Hearing Examiner Recruitment Program of the Civil Service Commission}, 19 AD. L. Rev. 319 (1967). The author describes the system then in effect which remains essentially unchanged today for selection of administrative law judges. \textit{See also} Miller, \textit{The Civil Service Commission's New Hearing Examiner Recruitment Program}, 17 AD. L. Rev. 104 (1965) for an earlier description.

\textsuperscript{55} The Senate of the Inns of the Court is the management body for the four Inns of Court and is the means of admission of barristers both to the bar and to the Professional Society of Barristers.

\textsuperscript{56} The Law Society is the professional society for solicitors.

\textsuperscript{57} Miller, \textit{supra} note 54 at 320.
they are selected from the full pool of 42,000 solicitors about whom much less is known by the Lord Chancellor and his staff.

The great growth in tribunals coincided with the decline of the British Empire and the consequent availability of many qualified former colonial judges whose services abroad were no longer needed. The appointment of a great number of them to tribunal panels may have been a mixed blessing. These appointments have been the subject of some criticism, particularly the appointments to industrial tribunals, where it was believed that some industrial relations experience was desirable. The use of former colonial judges also results in more formalized procedures than otherwise might have been developed, as various traditions of the colonial legal system continue to be honored.

At present there is concern over the availability of legally qualified persons to chair tribunals. The positions do not attract a sufficient number of the more qualified senior members of the bar. Some unsolicited applications for the best positions are received by the Lord Chancellor; other appointees are sought out by him upon the recommendation of his staff. In view of the high retirement age (generally seventy with possible extensions to seventy-two) a lawyer might enter the ranks of the tribunals at age fifty-two and serve twenty years, the minimum qualifying period for a government pension. The criticism frequently is voiced that service on a tribunal is too often viewed as a form of semi-retirement. Many persons interested in full-time positions are those who feel that judicial appointments may not be forthcoming and regard membership on a tribunal as second choice. Part-time appointments are often made to those who may eventually desire a judicial appointment and believe that part-time service on a tribunal would be helpful to that end. The selection process is non-political and close party affiliation may be disqualifying regardless of which party is in power. It is also a purely subjective process with no fixed standard against which background or specific experience is measured. The system is far less structured than that employed by the United States in the selection of administrative law judges. Each nation's system falls short of proposals in the United States for a unified corps of administrative law judges, an administrative court, or a specialized

58. Id. at 321.
court.\textsuperscript{61}

At the urging of the Council on Tribunals, there has been a conscious effort to appoint more women to tribunals. However, little effort has been made to obtain minority group representation. Despite the large number of East Asians in England, and their frequent appearance as parties and as counsel before immigration tribunals, there is no immigration adjudicator of East Asian origin. In the supplementary benefits field, where most of the applicants are from the lower economic spectrum of the community, the Claimants Union has pressed with some success for a broader base of membership on the tribunals to reflect a wider cross-section of the community. The desired broader base would include greater representation from lower income groups.

**TERMS AND COMPENSATION**

There are some fifty to sixty permanent, full time, salaried and pensionable appointments on the principal tribunals. In addition, there are several hundred part-time members throughout the country. The terms and conditions of service may vary considerably among tribunals, as does the retirement age. Generally, however, retirement is at age seventy, with extensions to age seventy-two. Given the retirement age, very few persons over the age of 65 are appointed to tribunals. The appointment of persons under the age of fifty is also rare, although a few members under thirty years old have been appointed. On the Rent Assessment Committees, for example, the reported average age was sixty, with one-third in the twenty-five to fifty-five age group, and two-thirds in the over fifty-five age group.\textsuperscript{62}

Where possible, the full-time members’ salaries are equated with those of judges or senior civil servants. It is this first group which represents the hard core, permanent “judiciary” on tribunals. The amount of compensation depends on the statute that establishes the tribunal body, and on negotiation between the Lord Chancellor’s office and Civil Service Commissioners. The result is an unfortunate disparity of pay scales leading to certain inequities in the compensation provided the various tribunal members.

In the second group are those part-time members who serve on

---

\textsuperscript{61} Report of the Special Committee on Legal Services and Procedure, 1956 ANNUAL REPORT OF THE ABA 491.

\textsuperscript{62} Cavenagh & Hawker, \textit{The Membership of Tribunals}, (Report to the Social Science Research Council 1972).
panels and those who are appointed *ad hoc*, with the payment of a fee for each day of sitting. Strange variations exist in the amount of the daily fees, with no apparent consistency among tribunals. Payments bear little relationship to the complexity of the work. These discrepancies again arise from the manner in which fees are negotiated between the civil service department and the Lord Chancellor's office. In general, the fees earned by members of the second group are modest. In some cases, the fee paid is only for "loss of earning," which means that a retired person gets nothing.

A third group of part-time members receives no remuneration or, at most, reimbursement of earnings lost due to service as a tribunal member.

**SUMMARY**

Parliament has never attempted to establish a nationally standardized appointment process for tribunal members. It may be simpler for Parliament to create new tribunals than to determine who should serve on the existing ones. The 1972-1973 report of the Council on Tribunals criticized the trend towards proliferation and reiterated its appeal for consolidation of tribunals operating in certain related subject areas.

The limited use of legal counsel in tribunal proceedings affects the functioning of tribunals. It also makes the use of lawyers as chairmen even more essential in terms of developing a case and record at the hearing. The lawyer member is usually the strongest member of the tribunal and some cynics say his major role is to keep the lay members from going off on "tangents" which are not pertinent to the legal issues. If an opinion is written, it is usually the legal member who writes it.

Given the small bar and the divided legal profession in Britain, with most of the legally trained chairmen coming from the limited ranks of the barristers, an informal selection process, using

---

64. Id. The Council said it still awaited "with interest" action on its 1971 proposal to implement the recommendation of the Franks Committee for a consolidated tribunal on rent. The Society of Labour Lawyers recommended consolidation of all social security tribunals to the Franks Committee in 1957.
65. The national or regional tribunal chairman decides whether opinions are published or reported.
subjective standards of evaluation, is both viable and effective. This process for selecting chairmen and the extensive use of lay members are the two principal features of tribunal composition.

The use of laymen has been described as another manifestation of the British obsession with amateurism. Yet, the use of laymen breeds a public confidence which might otherwise not be obtained in a system of administrative justice. Despite the important role of laymen in tribunal operations, lawyers serving as chairmen and as members are needed to make the system work.