PRINCIPLES AND PRACTICE
An Experience of the Residential Property Tribunal Service considered in the light of the AJTC Consultation on Principles for Administrative Justice.

Summary

We are all asked to participate now using our skills and time to make a contribution to the Big Society. This is a story of such a contribution based on the experience of being the frontman for a group of leaseholders living in a block of flats in London who challenged the service charges in a action before the Leasehold Valuation Tribunal.

I have tried to bring together different perspectives – a professional experience in service quality management seen from the user perspective, a personal experience of a case before a Tribunal and of being on the Board of a company formed to manage our block of flats. I was a first time user of the system fired up by my commitment to consumer power and a belief that we could access justice relatively cheaply and without the benefit of professional help.

Looking at Tribunals from a customer service point of view, there are different types of user – from the skilled and experienced professional intermediary e.g solicitor or managing agent to the first time unrepresented user without experience or skills. The process of justice is what I as a non-lawyer perceived as a modified adversarial system based on a considerable body of law and previous decisions. The Tribunal service has to accommodate the demands of public policy and operate within an inflexible budget where user fees have to be supplemented from the public purse.

How did I get on and what were my impressions of the service?

Impressions

Reeling out into the spring sunshine of a London day feeling drained, parched and annoyed with myself at all the pithy and witty things I should have said but forgot, I felt that I had just about survived as a consumer of the 'administrative justice system'. I was dealing with the Leasehold Valuation Tribunal part of the Residential Property Tribunal Service.

The 'for real' experience - putting a professional commitment into practice

The 'for real' experience of preparing and presenting a case on behalf of my fellow leaseholders in the block of flats in SE London has been an expression of my career-long commitment to the user/ consumer/ owner getting their voice heard when dealing with the organisations and people who offer them goods and services. Was it worth it? Did we win? I wrote most of this before I knew what the findings were because I wanted to get it down before my impressions were coloured by bitter rantings about the injustice and unfairness

of it all if we lost or excessive self-congratulations in respect of my carefully crafted case if the result went my way. Looking back at the experience, I am astonished by how little I knew about the process before embarking on it. The decision to take this route was in part – perhaps a large part – emotional and the outcome seen in those terms. How dare they treat me and my fellow leaseholders like this? Will the experience satisfy that emotional need? I am reminded of how little I knew about the process by the simple fact of not being able to make up my mind whether we had won or not. It was a rather 'curate's egg' set of findings. We did not get the large reduction in the service charge we argued for but got some satisfaction in the panel's acceptance of parts of our argument and a refund of half our costs. As a first-time user you have no idea whether your arguments are legally appropriate or correct and the weight that the tribunal panel puts on particular arguments. I had no idea whether we had done well or badly at the end of the two days of hearings.

The Process and the Principles

'Administrative Justice' has been described as a better system than the courts because of their 'cheapness, accessibility, freedom from technicality, expedition and expert knowledge of their particular subject'.In the absence of anything better, I will take these to be the principal drivers of user satisfaction. (I imagine that no one has done the work to discover if that is indeed what the user is looking for and what weight/ importance users attach to them. Is cheapness the main driver? Or is it in fact way down the list with 'accessibility in the first place?) The Council that oversees this system – known as the hub of the administrative justice system – is in the middle of collecting comments on its paper 'Principles for Administrative Justice – The AJTC's approach'. It will be interesting to see how the Principles map against the declared characteristics of practice.

How was it for me?

My first in-person encounter with the system left me feeling depressed. I wrote in an email at the time: "*I have just been to the pre-trial review and came away filled with gloom and despair. My delusion had been that this was indeed a user friendly system where the unrepresented could engage with confidence.*

However I now find myself plunged into an extended set of activities ending only with a hearing and a verdict in April. In the meantime the parties are to exchange bundles, draft statements of case, consider the role of expert witnesses etc etc. It is clear that this is not a user friendly system in any sense that I understand. While first impressions were favourable - the leaflets are clear and well written, the initial form is not that difficult to fill in - this was a snare and a delusion. When you get into it, this is a full-on legal process based on the adversarial principle. I felt very annoyed that I had been so mistaken as to suppose otherwise and now wonder whether I should have gone to the Estates Agents Ombudsman."

There is an opportunity here for leadership and advice to users in the form of a route map that will take users throught their choices when considering how best to get their problems resolved. What are the options now provided in dispute resolution? Is this something that

the AJTC can commission? A key service quality moment is always the moment when the user touches the system for the first time. It colours the rest of the process in a number of ways. The pre-trial hearing is an opportunity to make many of the principles a reality.

The Service Attributes revisited

Let us check off the five point list of attributes of the Administrative Justice system listed above starting with cheapness:

- **cheap** – I represented myself and 16 other people and the amount we had to put on table as the price of entry into the game - £250 – and the hearing fee - £150 – cannot be considered expensive. Even with a photocopying bill for the bundle and some paid clearical help the other expenses were under £250. I reckon I spent about 30+ days on this over about six months. I did not keep timesheets in case it depressed me. Much of the expense of the system for the user reflects on decisions to hire expert help. Does the Tribunal have a responsibility to encourage actions in person?
- **Accessible** – there is advice floating around and a decent web site so no problems there if you are used to getting your information this way. I have the skills associated with my social class (middle) and education plus the experience of work that has at times been associated with the making and interpretation of law. (Complaint handling is often represented as bargaining in the shadow of the law) . As my remarks after the pre-trial review I had not read the material closely enough and was ambushed by the adversarial nature of the system. Have the Ombudsmen made us lazy and expect that someone else will do all the work? Final point - the premises of the Tribunal are a gift to lovers of the retail opportunities of the Tottenham Court Road. There are worse places and ones that are much more difficult to get to for the citizens of London. Location is a major service consideration.
- **Freedom from technicality** – there were some simple rules about sharing correspondence; we were issued with directions that were comprehensible and set out some deadlines (a point of discussion in a business-like preliminary hearing exclusively focussed on process). Questions of law and precedent were not our strong suit but fortunately there was a Code of Practice associated with the relevant law in the areas under dispute which was a good guide for the non-lawyer. I felt that I had conformed to the demands of the system. My worry now awaiting the verdict is that the others will be insufficently marked down for not doing so.
- **Expedition** – it was OK once the system got going. I sent in the application form with the money on 29 October – quite an easy web-based form – and got a pre-trial review on 1st December and the hearing itself started on 8th April and finished at lunch-time on 9th April mostly. There are some othe matters to be seen to by 21 May. The case started motoring after the pre-trial review with some deadlines that were all the more pressing with two major holidays – Christmas and Easter – cluttering up the diary. I always find deadlines useful in bringing a certain urgency to the proceedings. After a hearing in April followed by more case activity in May, I got the results in late July (with an apology for the delay).

- **Expert knowledge** – well as a non-lawyers I have to hope so. The knowledge needed – knowledge of the law itself being a given (amongst the panel if not the applicants and respondents)- brings in other areas of expertise involve human and behavioural skills – obvious ones like running the proceedings in an orderly but not oppressive way being complemented by human/ emotional intelligence factors and the ability to form judgements and follow the threads of a convoluted history over a three year period.This is a polite way of asking 'Can they tell when the other party is making it up?' .

Characteristics and Principles of the Tribunal system

So let's look at the principles. In general the Tribunal when looking at principles have called on tried and tested versions that have been developed by Ombudsmen and others. Of course the Ombudsmen processes are investigative and rarely involve hearings in person. The Ombudsmen staff are often qualified solicitors working as both judge and jury. For users the system is much less demanding since it reduces confrontation and means no prior knowledge of the law is demanded. It cuts down on case presentation time since an Ombuds person takes over your papers and works from them mainly without reference to you. In the biggest scheme, the members are mainly big organisations on the whole who can take their lumps and do not take it out on their complainants later. The people who find the Ombudsmen system most burdensome are the smaller organisations like Financial Services advisors operating by themselves or in small groups or estate agents.

Tribunals deal often with the small company whether it be a small company or in property disputes with small landlords and developers as well as big councils or property companies. The smaller, the more personal and the bigger the stakes - not the absolute amount of money but in relation with the resources at the disposal of the parties. Add to that the issue of homes being involved, the stakes can be very high indeed. The traditional way of addressing the imbalance inherent in the legal system is for the user to employ skilled help at considerable expense. If this is not done, the user is very vulnerable. There is no helpful Ombuds case worker to carry the load and research the law, prepare and argue the case.

What I used as my bible – drawing on a very ancient experience of the early days of Office of Fair Trading Codes of Practice – was use the RICS Code of Practice “The Service Charge Residential Management Code” relying on the fact the code had been approved by the Secretary of State under the relevant legislation. As such it was available to be used in evidence in tribunal proceedings so I took the view that if the Code said things should happen in a particular way then departure from that could be cited as poor practice – 'unreasonable' is the work that crops up.

In this way I build a case on poor process and learnt that what the Panel were looking for was evidence of expensive outcomes. While I was arguing that things had not happened correctly, the Tribunal was really paying attention to the going rate for the job. The fact of the dubious invoice mattered less than the fact that the work had been done and at a price that seemed reasonable.

Principles – Beginning and End

I concentrated on the way things were done because that represents my experience as a consultant in customer service. I work with organisations to create and promote initiatives to adopt what can be called codes of practice, principles, manifestos, service guarantees. Senior management and PR departments love them. The people whose faces fall on hearing this happy news of a high commitment to service improvement or whatever, are those charged with turning the concepts and claims into reality. How do you boil down the sweeping statements embodied in principles into sets of processes and how do you know if it has worked? Will it be given enough money and time to work before being replaced by the new improved version? Users are not interested in the detail – they want to know that the Code says that their complaints are justified and compensation will be paid.

Service Delivery seen as Customer Journey

Here are my priorities:-

1. Key New User Moment to focus on – **the pre-trial hearing**: the moment to make both parties aware of the options eg PDR and to revisit aspects of the case. Waste of expense of calling parties to the hearing and providing a judge etc just to go through people's diaries. The portal moment – which way from here? Should I call it a day now?
2. Who does what is something the unskilled user has to know. We dealt with a judge for pre-trial hearing whom we never saw again, we had correspondence with a case manager and we also heard from that case manager's manager. Why was it escalated? A request for advice was passed to another judicial figure. Finally for the hearing we dealt with the three person panel. While there is a potential for some confusion, the organisation is small enough and the way it is organised simple enough in principle leaves relatively little room for error.
3. Is the service responsive to individual requests? My initial request that all correspondence be emailed was also agreed and indeed followed at the beginning of the case. This was important to me since I am regularly not at home for periods of up to two weeks and no post is seen or opened in that time. Emails also allow me to circulate material without photocopying or scanning – neither of these two facilities in my home office. Towards the end of the case these initial requests were forgotten and I had to ask specifically for emails. The method of emailing was to scan the material ie the original document was not sent – is this a legal thing because signatures are needed? The correspondence had the old civil service look – austere, black and white and quite a few typos in the letters. Like receiving letters from the Inland Revenue 10 years ago.
4. No service standards seen for turn around time for correspondence nor were communications routinely acknowledged. Phone calls were answered promptly – not a frequently used method of communication.
5. Original deadlines were altered to reflect developments in the case – again welcome responsiveness to the circumstances.

6. It is essential to have more instructions as to how to prepare a bundle and what should go in it, The system's principal concern was even-handedness between clients – ie whatever was sent out was sent out to all. However since both parties were unrepresented and could not agree on a single bundle, this represented a difficulty for all parties at the hearing.
7. Verdicts – up to four weeks which seems a long time for such a case. However that worked for us since there were issues that had to be actioned in the four weeks after the hearing.
8. The conduct of the hearing was informal to the point of being a little difficult to follow the process. That may well have been the result of both parties representing themselves with the panel chairman playing a more interventionist role and running a more permissive shop than might have been the case if we had been represented by people who knew what they were doing. Difficult for lay person/ single shotter to understand the quality of the hearing – the qualifications of the panel were not explained – only one person was identified as having subject specific expertise.
9. The physicial plant was quite modern – hearing room furniture was relatively new. Only three single person loos on the floor – one of which was the disabled loo. Large open waiting area leaving parties free to ignore each other or communicate as they saw fit. Water machine but no coffee machine seen or used. No routine breaks in sessions.
10. Do not be scared of money – how can people understand where to direct resource and where to save it unless they keep good records of where the money is going? What is the cost of a case? This should be published with every summary of the case. Value for money in the non-profit sector looks for productivity gains by delivering a given level of service for less. Also a command of the finances linked with robust service quality and user experience data makes both defending a level of budget against cuts and asking for more money more effective. This has to be a priority if it was not before because of present circumstances.

Big Society

Recently I had some day surgery done – a small process but one that involved some delicate work and had some short-term consequences like a bruised and swollen face like the survivor of a particularly vicious pub fight. The pre-operation processes were conscientiously done with the consent form being gone through. Nevertheless the actual experience caught me by surprise – I had not anticipated what the process entailed nor the post-op experience.- the opposite of the expert patient. I feel much the same way about the LVT – a process which I read up on and researched up to a point and then crashed on. I could handle the admin and prepared my bundle but the actual experience was deeply strange and one that was outwith my control.

As part of an enduring war between freeholders and leaseholders, it looks as though I will be back again at the Tribunal with not just one but two actions pending. This could become addictive as well as expensive.

Involvement with such cases and working on behalf of others as well as oneself becomes

an exercise in risk management – the assessment of risk, the resources available and the support of those on whose behalf I am acting. This is high stakes stuff. How can the government make it easier? Should the process be more like the small claims process in the County Court? Can Mediation be made compulsory? Can the process be adapted to the sector of the property market involved and the resources to which the parties have access? This hardly seems the time to abolish the AJTC.

Colin Adamson
Partner
The Moore Adamson Craig Partnership

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