

## Chapter 14: Administrative justice: tribunals, ombudsmen, and public inquiries

### Problem scenario

Consider the situations of Simon, Timothy, and Emeli.

Simon is fifty-five years old. Unfortunately, he has suffered a very serious stroke. While he is slowly recovering, he has a very limited use of his right arm and his mobility is limited. Simon used to work as a builder, but inevitably he has been unable to work since his stroke. Simon has applied to the Department for Work and Pensions for Employment and Support Allowance, a social security benefit which provides support when someone is unable to work or has a limited capability to work. However, the Department of Work and Pensions has refused his claim on the basis that he is capable of doing some work.

Timothy owns a large farm. The government has announced plans for a new railway line which will go through the middle of the farm. Timothy knew nothing about this announcement and is furious that he was not informed about this before the announcement was made. Timothy's anger has increased when he discovers that his neighbour Frank has had meetings with the Department for Transport about their plans before the announcement was made. Timothy has written to his MP, James Baldock, who has also heard from several other constituents that they were not informed by the Department of Transport before the new railway line was announced.

Emeli is part of a group of families whose sons and daughters were killed during British military action in the Middle East. They are concerned that their relatives' deaths were at least partly due to using equipment unsuitable for warfare in the desert. They believe that the Secretary of State for Defence at the time, Alain Baird, had ordered his civil servants to purchase machine guns from Incerta Dynamics, who were not approved by the Ministry of Defence to supply machine guns. At the time of the deaths, military experts at the time questioned why these guns were being used, as they were unsuitable for desert conditions and at least five British military personnel were killed when using these guns. Two years after resigning from the government, it has now been announced that Alain Baird has taken up a position on the board of Incerta Dynamics. Following this announcement, rumours regarding

Baird's period as Defence Secretary are now being reported in the newspapers. This includes photographs of Baird in a meeting with representatives of Incerta Dynamics at a hotel in Monaco.

## (1) Simon—tribunal

Simon should go to a tribunal. His concern is about a single decision, which does not appear to raise any broader issues. Simon has a right of appeal and the appeal would be heard by the Social Security and Child Benefit Tribunal within the Social Entitlement Chamber of the First-tier Tribunal. This is precisely the sort of decision that should be resolved through a tribunal as Simon will want the matter to be resolved quickly, with the minimum of hassle. Making the appeal would also be free of charge.

Simon would be able to request an oral hearing. This is likely to be to his advantage as the tribunal panel will be able to see the extent of his condition, in addition to the medical evidence sent. The tribunal would be likely to follow the enabling approach and allow Simon to explain his case. Should Simon struggle, the tribunal panel would be likely to become more inquisitorial and ask him questions to ensure that the relevant issues have been discussed.

## (2) Timothy—the Ombudsman

Timothy should complain to the Parliamentary Ombudsman. (Simon would not be able to make a complaint to the Ombudsman because he has not exhausted the legal process, and it would be reasonable for him to pursue his claim before the Tribunal.) It appears that the Department for Transport may be guilty of maladministration. They have treated Timothy less favourably than Frank for no apparent reason. The Department for Transport has been inconsistent in how it has approached consulting with landowners when developing the proposals for the new railway. It generally appears that they have not complied with the standards of good governance.

To complain to the Ombudsman, Simon would have to write to his MP and ask for his complaint to go to the Ombudsman. This should not be a problem in Timothy's case, however, if the reforms of the Gordon Review are implemented, as Timothy would be able to complain to the Ombudsman directly. Even if Timothy made a direct complaint, he would be well advised to inform his MP, who could give publicity to this issue. This may cause others to complain and multiple

complaints will alert the Ombudsman to the fact that there could be a systemic issue with how the Department for Transport has acted. This would make it more likely that the Ombudsman would make a full investigation.

### **(3) Emeli—public inquiry**

Emeli and the other members of her group should seek a public inquiry. This has become a high-profile issue and there is the potential for a major scandal to emerge out of these facts. Potentially Alain Baird, a former Secretary of State for Defence, when in office, forced the Ministry of Defence to purchase unsuitable equipment. The suspicion is that he may have done so for his own personal gain. This is particularly controversial as the equipment purchased may have contributed to the death of British soldiers. This is clearly a matter of public concern. The inquiry would seek to establish the facts. The inquiry would be likely to want to establish whether the guns used did, as a matter of fact contribute to British soldiers losing their lives. The inquiry could also consider whether Alain Baird forced the Ministry of Defence to purchase the faulty equipment and also, his relationship with Incerta Dynamics. The inquiry may also fulfil a policy function by considering how contact between senior ministers and arms companies should be conducted in the future to avoid allegations of impropriety. However, what the inquiry would be able to investigate would very much depend on its terms of reference.

On the face of it, it also appears that a judge would chair the inquiry. They would be able to consider the evidence reaching a conclusion as to facts. The scandal would have the potential to be seriously embarrassing for the government and the appointment of a judge would indicate that they would be taking it seriously. This potential inquiry would have to be careful to avoid determining any criminal or civil liability of Alain Baird. The judge could be assisted by experts, particularly when reaching conclusions as to the future relationships between senior ministers and the arms industry. A factor against a judicial involvement is the political controversy that the inquiry is likely to give rise to.

It is also possible that the inquiry could be both public and private. If the inquiry was established under the Inquiries Act 2005, then there is a presumption that it would be held in public, but that some elements could be ‘restricted’ and held in private. It is likely that the inquiry would raise some questions of national security and under section 19 of the 2005 Act these issues could be considered privately