

Natural Justice and Tribunals (UK)

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This chapter looks at developments in the area of natural justice as it applies to the role and procedures of tribunals in the United Kingdom (UK). It is written from the perspective of someone who is neither a lawyer, nor a tribunal member, but as one who could perhaps be seen as a 'fair-minded and informed observer' with a range of experience of tribunals gathered over many years, from acting as a lay advocate in social security appeals, developing tribunal policy and guidance for legal representatives,² and taking part in the role of the Council on Tribunals in overseeing the constitution and working of tribunals in the UK,³ particularly through the observation of tribunal hearings.

The term 'natural justice' encapsulates two key requirements. First, a person who will be affected by a decision or act should be given prior notice and an adequate hearing, achieved through the common law rules of procedural fairness, sometimes known in England and Wales as the duty to act fairly. Secondly, the person affected has the right to a decision by a tribunal which is impartial and free from conflict of interest or bias.

This chapter considers first the importance of independence for tribunals in the UK and how their independent status may affect the application of natural justice. The relevance to tribunals of the *European Convention on Human Rights* (ECHR) is considered, following its incorporation into UK law by the *Human Rights Act 1998* (UK) (Human Rights Act). The difference between independence and impartiality is explored, and some recent UK court decisions on tribunals and bias are described. The second part of the chapter looks at procedural rights and protections and, in particular, the importance of fair procedures from the perspective of tribunal users. Finally, the need for an oral hearing is

1 Member of the Administrative Justice and Tribunals Council (UK); formerly the Council on Tribunals. The Council on Tribunals has been replaced by the Administrative Justice and Tribunals Council (AJTC), created under the *Tribunals, Courts and Enforcement Act 2007* (UK), s 44, with the same membership. The AJTC came into existence on 1 November 2007.

2 See, for example, Law Society, *Representation at Mental Health Review Tribunals: Guidelines for Legal Representatives* (London, Law Society, 1998).

3 See above n 1. In addition to taking on the Council on Tribunals' previous role, the AJTC has a wider remit to keep under review the whole of the administrative justice system in the UK.

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