Firm but Fair – the Art of a Good Tribunal Hearing

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Overview

• Introduction
• Setting the Scene
• What are the key ingredients
• Issues that may arise at the hearing
Introduction

• Conducting a good hearing is an art, a skill that is developed over time
• Tribunal hearings are different to court hearings
• Tribunal proceedings must be conducted with as little formality as possible
• Proceedings must also be quick, cheap, accessible, fair, just, proportionate

AND

• Provide public trust and confidence
Setting the Scene

• Tribunals have a broad remit
• The hearing is critical – it serves two important functions
  – Gives the parties the opportunity to be heard
  – Gives the tribunal the opportunity to enquire
What are the key ingredients?

1. Preparation – “less haste, more speed”
   - Identify critical issues
   - Identify key documents
   - Plan the hearing
   - Be realistic
   - Know the substantive & procedural law
   - Consider preparing an outline
What are the key ingredients?

2. **Conduct of the hearing** – “Treat others how you would want to be treated”
   - Be inquisitive, curious, alert, courteous but establish, control and authority
   - **Three phases**
     - **Opening**
     - **Information gathering**
     - **Closing submission**
What are the key ingredients?

– The tribunal member is responsible for the conduct of the hearing – this is your role
What are the key ingredients?

3. Explaining the outcome
   - *Procedural decisions should be clearly explained in the reasons*
   - *For the parties and any appellate body*
Issues that may arise

- Recusal
- Difficult representations
- Adjournments
- Duty to enquire