

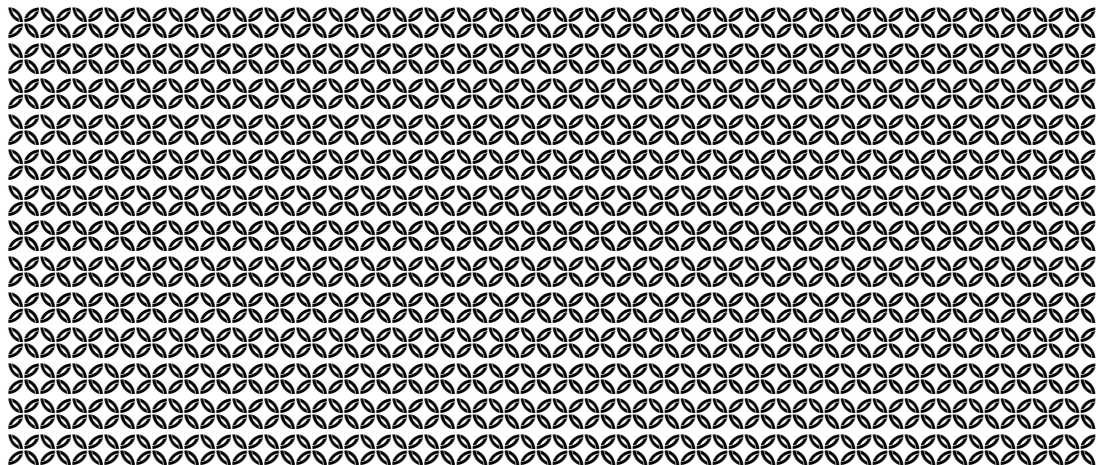


Ministry of
JUSTICE

Tribunal Procedure Committee

Report for the year ended 31 March 2012

3 April 2012



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This report covers the period between April 2011 and March 2012 inclusive.

Foreword by Mr Justice Walker

During the period of this report, the TPC has made major rule changes in a number of areas. The Upper Tribunal Rules in England and Wales have been amended by the Tribunal Procedure (Upper Tribunal) (Amendment) Rules 2011 to cater for “Fresh Claim” judicial reviews under section 53 of the Borders, Citizenship and Immigration Act 2009, along with consequent provision for amendments in judicial review claims which may affect whether the claim can or should remain in the Upper Tribunal. The rules applicable to the First-tier Immigration and Asylum Chamber have been amended United Kingdom wide by the Tribunal Procedure (Amendment) Rules 2011 to cater for the government’s introduction of fees for Immigration and Asylum cases. In addition the TPC has reviewed a number of aspects of the existing rules¹. When doing so - as with all our work - we seek, as required by section 22(4) of TCEA, to exercise our rule making powers with a view to ensuring justice, accessibility, fairness, timeliness, efficiency and simplicity (both in the way that the rules are expressed and the way in which they operate).

During the year Regional Tribunal Judge Nick Warren was appointed President of the General Regulatory Chamber of the First-tier Tribunal. On appointment he stood down from his role as First Tier Tribunal Judge on the TPC. I express my thanks to him for the considerable amount of work he has undertaken for the TPC with energy, enthusiasm and expertise. The Lord Chief Justice of England & Wales has appointed Simon Ennals to fill the vacancy which arose, and we welcome him to the TPC.

As in 2009 and 2010 our work has been subject to considerable time pressures. A degree of time pressure will of course always be present. That pressure must not, however, override the requirement to give proposed rules proper consideration. Nor can it override the requirement in paragraph 27 of Schedule 5 to TCEA to consult others where appropriate. Those parts of government responsible for proposing new rights of appeal, or alterations to existing rights of appeal, must have these requirements well in mind when they consider the timetable for their proposals.

The volume of work continues to be very substantial. On occasions it has called for specialist expertise from First-tier and Upper Tribunal judges. Particularly substantial contributions were made by Peter Lane (UT Immigration and Asylum Chamber) and Mungo Deans (F-tT Immigration and Asylum Chamber). I am very grateful to all the judges who helped us, to TPC members, and to supporting lawyers and civil servants who have given unstintingly of their time in Committee, on sub-committees set up to deal with particular matters, and generally monitoring the operation of the rules in practice. We are committed to keeping the rules under review – and for that purpose we welcome all suggestions for improvement.

¹ Including the rules concerning forfeiture cases in the Upper Tribunal in Great Britain, which have been amended by the Tribunal Procedure (Upper Tribunal) (Amendment) Rules 2011.

Background

The Tribunal Procedure Committee was established in May 2008 to make rules of procedure for the First-tier Tribunal and the Upper Tribunal. It was set up in accordance with section 22 of the Tribunals, Courts and Enforcement Act 2007 (“the Act”). The Committee is classified as an advisory Non Departmental Public Body, sponsored by the Ministry of Justice.

Under Schedule 5 to the Act, rules must be signed by a majority of members and submitted to the Lord Chancellor. Unless disallowed by the Lord Chancellor, the rules are contained in a Statutory Instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.

Terms of Reference

The Tribunal Procedure Committee exists to make rules (“Tribunal Procedure Rules”) governing the practice and procedure in the First-tier Tribunal and Upper Tribunal. Power to make Tribunal Procedure Rules is to be exercised under section 22(4) of the Act with a view to securing:

- (a) that, in proceedings before the First-tier Tribunal and Upper Tribunal, justice is done,
- (b) that the tribunal system is accessible and fair,
- (c) that proceedings before the First-tier Tribunal or Upper Tribunal are handled quickly and efficiently,
- (d) that the rules are both simple and simply expressed, and
- (e) that the rules where appropriate confer on members of the First-tier Tribunal, or Upper Tribunal, responsibility for ensuring that proceedings before the tribunal are handled quickly and efficiently.

Before the Committee makes Tribunal Procedure Rules, under paragraph 28(1) of Schedule 5 to the Act the Committee must:

- (a) consult such persons (including such of the Chamber Presidents) as it considers appropriate,
- (b) consult the Lord President of the Court of Session if the Rules contain provision relating to proceedings in Scotland, and
- (c) meet (unless it is inexpedient to do so).

The Committee also advises the Senior President and Chamber Presidents in relation to directions (commonly known as Practice Directions) under section 23 of the Act. Paragraph 17 of Schedule 5 to the Act provides that rules may refer to provision made or to be made by such directions. The power to give such directions is conferred by section 23 on the Senior President in relation to the practice and procedure of the Upper Tribunal and the First-tier Tribunal, and on Chamber Presidents, with the approval of the Senior President, in relation to the practice and procedure of the relevant chamber. In certain cases the giving of directions requires the approval of the

Lord Chancellor. The Senior President has indicated that before giving or approving directions he will consult the Committee.

Membership

The membership of the Tribunal Procedure Committee is governed by Schedule 5 to the Tribunals, Courts and Enforcement Act 2007. The Committee consists of the following members:

- The Senior President of Tribunals or a person nominated by him;
- Four members appointed by the Lord Chancellor, one of whom is nominated by the Administrative Justice and Tribunals Council;
- Three members appointed by the Lord Chief Justice of England and Wales;
- One member appointed by the Lord President of the Court of Session; and
- Up to four additional members, appointed by an appropriate senior judge at the request of the Senior President of Tribunals, with relevant experience in and knowledge of a particular issue or subject area.

As the Committee has been classified as a Non Departmental Public Body, the four appointments made by the Lord Chancellor fall within the remit of the Office of the Commissioner for Public Appointments (OCPA), and recruitment to these posts must comply with the OCPA Code of Practice.

Below is a list of all members as at 31 March 2012.

Name	Appointed by
Paul Walker (Chair)	Senior President of Tribunals
Bronwyn McKenna	Lord Chancellor on the nomination of the Administrative Justice and Tribunals Council
Michael Reed	Lord Chancellor
Philip Brook Smith QC	Lord Chancellor
Simon Cox	Lord Chancellor
Simon Ennals	Lord Chief Justice (England & Wales)
Mark Rowland	Lord Chief Justice (England & Wales)
Lesley Clare	Lord Chief Justice (England & Wales)
Douglas May	Lord President of the Court of Session

Sub-Groups

The Upper Tribunal and the First-tier Tribunal are made up of four and six chambers respectively. These chambers cover a wide variety of jurisdictions, such as social security, mental health and transport. In order to address the variety of subject matter, and to bring in individuals with specialist knowledge, four standing sub-groups were established in December 2010. The sub-groups take responsibility for progressing particular areas of work in between main Committee meetings and monitoring potential new appeal rights or potential changes in appeal rights relevant to their areas. This involves, among other things, review of material from policy teams within the Ministry of Justice and from other government departments and elsewhere, consideration of what needs to be put before the main Committee, along with the sub-group's comments and recommendations, and taking matters forward after Committee meetings. Each sub-group also has judicial and other advisory members from outside the Committee, whose expertise in particular areas can be drawn on when needed and who can ensure speedy and accurate flow of information between the Committee, judges, administrators and those with policy responsibilities. The sub-groups hold meetings as and when needed. A fifth sub-group was created in February 2012 to consider issues concerning costs.

The areas covered by Sub-Groups are:

HSW Sub-Group: This standing sub-group covers work relating to the Health, Education and Social Care Chamber (HESC), the Social Entitlement Chamber (SEC), the War Pensions and Armed Forces Compensation Chamber (WPAFCC), and the Upper Tribunal Administrative Appeals Chamber (except as regards General Regulatory Chamber appeals). It is led by Mark Rowland.

GTCL Sub-Group: This standing sub-group covers work relating to the General Regulatory Chamber (GRC), the Tax Chamber, Upper Tribunal Administrative Appeals Chamber (as regards GRC Appeals), Upper Tribunal Tax & Chancery Chamber and Upper Tribunal Lands Chamber. It is led by Philip Brook Smith.

IAC Sub-Group: This standing sub-group covers work relating to the First-tier Tribunal Immigration and Asylum Chamber, and the Upper Tribunal Immigration and Asylum Chamber. It is led by Michael Reed.

Overview Sub-Group: This standing sub-group covers proposed rule changes which affect more than one of the other sub-groups. It consists of the TPC Chair, the Chairs of the other sub groups, with advisory members. It also holds quarterly Overview Sub-Group Planning Meetings, whose purpose is to enable the sub-group to make recommendations to the main Committee as to its programme of work. These meetings are attended in an advisory capacity by senior officials.

Costs Sub-Group: This ad hoc sub-group has responsibility for consideration of issues arising out of the report *Costs in Tribunals* prepared for the Senior President of Tribunals by the Costs Review Group chaired by Mr Justice Warren. The TPC's Costs Sub-Group is led by Mark Rowland.

Meetings

Full Committee meetings are usually held every four or five weeks. For the period covered by this report there were 7 full Committee meetings. The Committee's sub-groups meet as and when the work demands it.

Consultations

As part of its process for developing new rules, and keeping existing rules under review, the Committee consults with any individuals and groups it considers appropriate. All public consultations are posted on the Committee's web page. Responses to the consultations are considered by the Committee to inform its development of new rules.

During the period of this report, the Committee consulted on the amendments mentioned earlier in this report to the Upper Tribunal Rules in England and Wales and to the rules applicable to the First-tier Immigration and Asylum Chamber. Other rule amendments for which public consultations were held include those concerning time limits for applying to be joined as a party to a reference in a charity case and those concerning hearings in mental health cases.

The Committee also consulted on Goods Vehicles Operator Licensing in Northern Ireland. This consultation sought views on changes to the Tribunal Procedure (Upper Tribunal) Rules 2008, S.I. 2008 No. 2698, as amended, in order to provide for appeals arising out of the new arrangements for licensing of operators of goods vehicles in Northern Ireland. The rule changes required for this purpose fall outside the period covered by this report.

The Committee may also include questions in other policy consultation papers, where it would be useful to ask for views on new rules that might be required as a result of implementation of the proposed new policy. Questions of this kind were included in the Ministry of Justice consultation on introducing fee charges for appeals in the Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal.

New Rules/Statutory Instruments

During the period of this report, the Committee has made the following three Statutory Instruments:

The Tribunal Procedure (Upper Tribunal) (Amendment) Rules 2011 – SI 2011/2343

The Tribunal Procedure (Amendment) (No. 2) Rules 2012 - SI 2011/2840

The Tribunal Procedure (Amendment) Rules 2012 - SI 2012/500

Contact

Any queries about the work of the Tribunal Procedure Committee may be addressed to:

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The Committee website can be found at:

www.justice.gov.uk/about/moj/advisory-groups/tribunal-procedure-committee.htm

30 April 2012

