

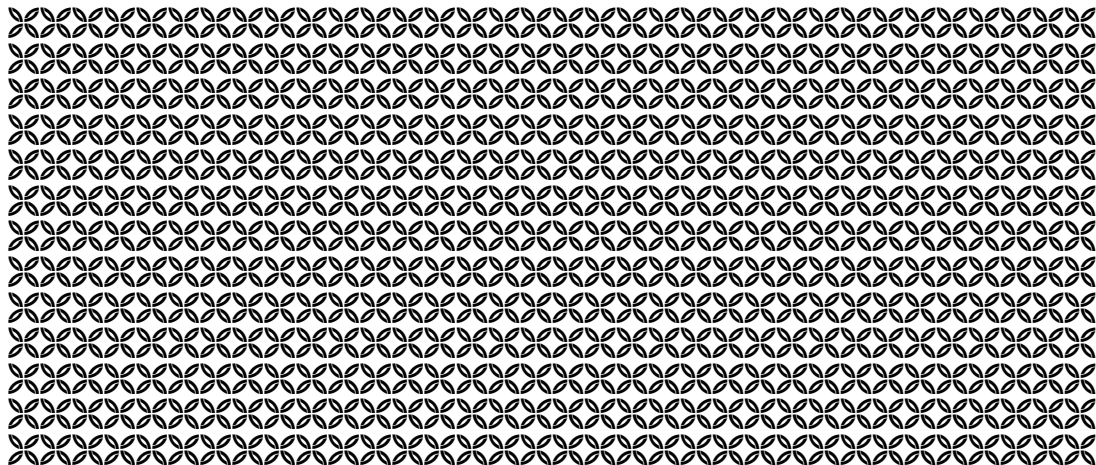


Ministry of  
**JUSTICE**

# **Tribunal Procedure Committee**

Report for the year ended 31 March 2011

14 June 2011



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This report covers the period between April 2010 and March 2011 inclusive.

## Foreword by Mr Justice Walker

In April 2010 I was nominated by the Senior President of Tribunals to take over from Lord Justice Elias as chair of the Tribunal Procedure Committee. Over the following months I have come to appreciate the achievements of the Committee in the period prior to April 2010. Its work load was huge, with rules created for a succession of new Chambers.

Since then our tasks have involved consolidating what was done earlier. We have also amended rules to provide for further new jurisdictions, and we have begun work on major rule changes in a number of areas, including “Fresh Claim” judicial reviews under section 53 of the Borders, Citizenship and Immigration Act 2009, along with proposed rule changes to cater for the government’s proposal to introduce fees for Immigration and Asylum cases.

The Committee’s work load has not reduced. I am enormously grateful to Committee members, who have put in long hours at short notice to enable us to meet our deadlines. We have depended upon willing and expert help from our Secretariat, from the Ministry of Justice legal team, from the Senior President and his office, from policy officials, and from judges, legal officers and administrators of the First-tier Tribunal and Upper Tribunal. I express deep thanks to all of them, and to others who have assisted us, not least by commenting on proposed rules.

Our work in the period from April 2011 onwards will continue to make demands on all involved. We are required to give consideration to, among other things, rules that may be needed to deal with changes which the government has in mind and which would affect the work of tribunals. Such consideration is often resource intensive. Yet at the same time there has been increased pressure on those who support our work. It is vital that restrictions on the resources available to those who support our work are not such as to prevent the Committee from fulfilling its statutory duties.

Paul Walker, 14 June 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 2011.

<b>Name</b>	<b>Appointed by</b>
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
Nicholas Warren	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
George Bartlett QC	Lord Chief Justice (England & Wales) at the request of the Senior President of Tribunals

## 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. These formal groups followed on from the successful use of informal, ad hoc sub-groups. Each group takes responsibility for progressing particular areas of work in between main Committee meetings. It reviews material from policy teams within the Ministry of Justice and from other government departments and elsewhere, considers what needs to be put before the main Committee, along with the group's comments and recommendations, and takes matters forward after Committee meetings. Each sub-group also has advisory members from outside the Committee, whose expertise in particular areas can be drawn on when needed. The sub-groups hold meetings as and when needed.

**The areas covered by Standing Sub-Groups are:**

HSW Sub-Group: This 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 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 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: The Overview Sub-Group co-ordinates proposed rule changes which affect more than one of the other sub-groups. It is led by Paul Walker.

## **Meetings**

Full Committee meetings are usually held every four or five weeks. For the period covered by this report there were 9 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 amendments to the First-tier Tribunal Tax Rules to accommodate the introduction of appeals relating to MP expenses, and also on rules for the Lands Chamber of the Upper Tribunal.

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 (Amendment No 3) Rules 2010, SI no. 2653

The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010, SI no. 2600

The Tribunal Procedure (Amendment) Rules 2011, SI no. 651.

## **Contact**

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

### **Secretary to the Tribunal Procedure Committee**

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The Committee website can be found at:

[www.justice.gov.uk/about/moj/advisory-groups/tribunal-procedure-committee.htm](http://www.justice.gov.uk/about/moj/advisory-groups/tribunal-procedure-committee.htm)

14 June 2011

