

March 2024

## **Tribunal Procedure Committee**

### **Reply to Consultation on possible amendments to the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 regarding proposed changes to whether hearings in Criminal Injuries Compensation Cases are held in public or private**

#### **Introduction**

1. The Tribunal Procedure Committee (TPC) is responsible for making Tribunal Procedure Rules for the First-tier Tribunal and the Upper Tribunal, each of which is divided into Chambers. The First-tier Tribunal, including the Social Entitlement Chamber (SEC), replaced a number of tribunals in 2008. Criminal Injuries Compensation appeals fall within the SEC. Further information on the Tribunals can be found on the HMCTS website:  
<http://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about#ourtribunals>
2. Specifically, section 22(4) of the Tribunals, Courts and Enforcement Act 2007 requires that the TPC's rule-making powers be exercised 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 the proceedings before the tribunal are handled quickly and efficiently. Further information on the TPC can be found at our website:  
<http://www.gov.uk/government/organisations/tribunal-procedure-committee>
3. The TPC also has due regard to the public-sector equality duty contained in section 149 of the Equality Act 2010 when making rules.
4. A link to the relevant Rules is at: <https://www.gov.uk/government/publications/social-entitlement-chamber-tribunal-procedure-rules>
5. A consultation (the Consultation) took place in 2023 seeking views on a proposal to change Rule 30 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 by removing sub-paragraph (2) such that the default position is that hearings are to be held in public and the appellant does not have the right to require a private hearing.

6. A link to the Consultation is at: <https://www.gov.uk/government/consultations/possible-amendments-to-the-tribunal-procedure-first-tier-tribunal-social-entitlement-chamber-rules-2008>

## **Background to the Proposed Changes**

7. The TPC received a request from the Judicial Office with the support of the Chamber President of the SEC to make the amendment. Full details of the request can be found in the Consultation (see the link above).
8. While the TPC recognises that a significant number of cases will still need to be heard in private, its preliminary view was that, in the interests of open justice, it is appropriate for the default position to be that all hearings are held in public and that any decision to hear the case in private should be that of the tribunal.
9. The TPC invited responses as to the desirability of deleting Rule 30(2) thereby making the default position in Criminal Injuries cases that hearings are held in public. The tribunal would retain the important power to order that all or part of the proceedings be heard in private and to make anonymity orders, either on application or of its own motion if it considers it in the interests of justice to do so.
10. The Consultation questions were: -

Question 1: Do you agree with the proposed change to rule 30? If not, why not?

Question 2: Do you have any further comments?

## **The Responses**

11. There were two responses: one from Baroness Newlove of Warrington, the Victims' Commissioner and the other from the Association of Personal Injury Lawyers (APIL). The first opposed the change and the second was in favour of it.
12. The Victims' Commissioner was concerned about the extreme trauma for victims having to go through another hearing which would be exacerbated by the proceedings being held in public. She described how the trauma of victims having to relive their experiences was often detrimental to their mental health. She also made the point that victims may be discouraged from making an appeal in a Criminal Injuries Compensation (CIC) case if the proceedings were to be public, thus being denied the compensation they may be entitled to (were an appeal to be successful). She referred to the Government's Victims and Prisoners Bill 2023, which "puts victims back at the centre of the justice system".

**13.** APIL was in favour of the changes, in order to preserve the principle of open justice. They added further comments:

- (i) If hearings in CIC cases become public by default, it is vital that applicants are aware of their rights relating to anonymity and the special measures available to those who are vulnerable (including allowing the party or witness to give evidence behind a screen, or via video-link). There are a number of important reasons why privacy may be necessary in cases of this nature. For example, fear of reprisals from a defendant, cases where sensitive medical evidence is involved, cases involving children, or where the alleged perpetrator has not been prosecuted or convicted. The concern was that as these appeals have been in private by default previously, tribunal judges, legal representatives, and court staff for example, may not flag the protections available to applicants, as they have not previously been necessary.
- (ii) It was suggested that when the directions notice relating to the appeal is sent to parties, it should include information on the right to request appropriate provisions, should the party feel they need them. It must be clear to those who are without a legal representative, in particular, that they can apply for protections, and how they can do that. Practice Direction 1A details the special measures that are available to vulnerable parties, and this should be at the forefront of considerations. There should be further training of tribunal judges on the issues of vulnerability.

**14.** While the Victims' Commissioner's response about the impact of public hearings on the victims of crime raises important points, the impact of hearings on vulnerable participants should be at the forefront of all judges' minds, consistent with the overriding objective to deal with cases fairly and justly, which includes taking steps to ensure that all parties participate fully in the proceedings, and making reasonable adjustments needed to accommodate the vulnerabilities of the parties. The CIC jurisdiction is the paradigm example of the need to accommodate the vulnerability of litigants.

**15.** APIL, while in favour of the rule change, also raised this point and suggested (see above) that judges hearing CIC cases should receive additional training on accommodating the vulnerabilities of litigants.

**16.** The TPC agrees that judges should be aware of the need to accommodate the vulnerabilities of litigants. However, the First-tier Tribunal is a specialist tribunal and is accustomed to accommodating the vulnerabilities of litigants.

**17.** Judicial training and deployment is not a matter for the TPC. The TPC considers that there is no basis for concerns that judges hearing CIC appeals will not be able adequately to address any additional reasonable adjustments necessary to reflect the needs of CIC litigants in public hearings. To the extent that additional training or sitting authorisations will be required, that will be a matter for the Chamber

President, to whom a copy of this response will be sent. Likewise, as regards provision of information to appellants.

**18.** The TPC is of the view that the Tribunal's existing power to order those proceedings to be held in private, either of its own initiative or on application, is sufficient as a safeguarding measure to allay the concerns of the Victims' Commissioner and remains of the view that the current system is anomalous having regard to the requirements of open justice.

**19.** The TPC has therefore decided that rule 30 be amended by deleting rule 30(2).

## **Annex A- List of respondents**

Baroness Newlove LLD (hc) DCL- Victims' Commissioner for England and Wales

Association of Personal Injury Lawyers