

## **THE ESTABLISHMENT OF THE PROPERTY CHAMBER**

### **Introduction**

The establishment of the Property Chamber will take place on 1 July by means of two legal steps. First, by amendments to schedule 6 to the *Tribunals, Courts and Enforcement Act 2007 Order 2013 SI 2013/ 1034*, Rent Assessment Committees for England and Agricultural Land Tribunals for England are added to the lists of tribunals in Parts 1, 4 and 7 of Schedule 6 to the 2007 Act. The Adjudicator to HM Land Registry was already included in that Schedule.

Second, the Amendment Order enables the Lord Chancellor to make *the Transfer of Tribunal Functions Order 2013 SI 2013/1036*. This is made under section 30 of the *Tribunals Courts and Enforcement Act 2007* and simply provides for the functions of a tribunal to be transferred to the First or Upper Tier Tribunal and for the “old tribunals” to be abolished. The Transfer Order runs to about 50 pages because its first and second schedules include consequential provisions for primary legislation and secondary legislation. The precise number of individual jurisdictions that will be dealt with by the new Chamber is unclear but it is likely to be as many as 200. The Order has amended every statutory reference to the old tribunals. This task has been made even more complex by the fact that the equivalent Welsh Tribunals, for ALT and RPTS, remain outside HMCTS.

The *Transfer Order* also makes provision for chairmen and members together with salaried judiciary to be transferred into the First-tier Tribunal as judges and other members. The orders were made on 29 April 2013 and come into force on 1 July 2013.

### **The structure of the Property Chamber**

Overall responsibility for tribunals within HMCTS lies with the Senior President, Lord Justice Sullivan. Each Chamber also has its own President. The Property Chamber will be divided into three parts reflecting the grouping of the source jurisdictions: Agricultural Land and Drainage; Land Registration; and Residential Property. Agricultural Land and Drainage and Land Registration will each have a Principal Judge and the Chamber President will also be the Principal Judge for Residential Property.

The jurisdiction of the Adjudicator extends to both England and Wales, whereas RPTS and ALT deal only with England. This will remain the case after 1 July. The regional structure of both RPTS and ALT will also be retained, but on a non-statutory basis. Each region will have a Regional Judge and a number of Deputy Regional Judges or Deputy Regional Valuers. For RPTS, the current Panel Presidents and Vice Presidents will map over into these roles.

### **Rule changes**

From 1 July, procedure for the Property Chamber will be governed by the *Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013*. The rules have been made by the Tribunal Procedure Committee, established under section 22 of and

schedule 5 to the 2007 Act. They replace the five sets of rules which currently apply to RPTS jurisdictions and the regulations applicable to ALT and ALR. The task was not an easy one. In particular this was the first occasion that the TPC had dealt with a first instance tribunal that was predominantly party v party.

A draft of the rules was sent out for consultation between June and September 2012. Nineteen responses were received and an adjusted set of rules was finally agreed in May 2013. The rules can be found on the legislation.gov.uk web site and are the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 SI 2013/1169.

Perhaps the single greatest benefit for both the Chamber and for parties is that there is one single set of regulations that will apply to all proceedings. This can only enhance both consistency and transparency. The statement in Rule 3 of the overriding objective being to enable the tribunal to deal with cases fairly and justly is also welcomed.

The rules are recommended reading for anyone involved in tribunal proceedings. It will take some time for the application of the rules to settle down. These are some of the highlights:

#### Rule 6 – Case management powers

For the RPTS, one of the main difficulties in dealing with sophisticated jurisdictions has been the lack of flexibility in the procedural rules. In particular the Leasehold Valuation Tribunal (Procedure) Rules 2003 include little to enhance case management. Rule 6(1) now provides that subject to the provisions of the 2007 Act and any other enactment “the Tribunal may regulate its own procedure” and rule 6(2) enables the tribunal to “give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction”. Rule 6(3) goes on to describe a number of case management powers, but these are expressed to be set out “without restricting the general power in paragraph (1) and (2). Together these provisions will mean that the tribunal will be able to adapt properly to the demands of a varied and challenging caseload.

#### Rule 8 – Failure to comply with rules, practice directions or tribunal directions

It is constantly a matter of frustration when parties fail to comply with rules and directions. Under this rule, the tribunal “may take such action as the Tribunal considers just” to deal with default, which may include:

- waiving the requirement;
- requiring the failure to be remedied;
- exercising a power to strike out under Rule 9;
- referring the matter to the Upper Tribunal under section 25 of the 2007 Act, which confers on it equivalent powers to that of the High Court in respect of specified matters;

- barring or restricting a party's participation in the proceedings;
- making an award of costs under Rule 13.

#### Rule 9 – Striking out a party's case

This rule applies equally to applicants and respondents. Any reference to the striking out of the proceedings or case or part of them is to be read as a reference to the barring of the respondent from taking further part in the proceedings or part of them. There is a power for automatic strike-out but it anticipated that strike out of the whole or part of proceedings is more likely to be exercised on a discretionary basis on one of the following (paraphrased) grounds:

- failure to comply with directions;
- failure to co-operate with the tribunal so that the tribunal cannot deal with the proceedings fairly and justly;
- the proceedings are between the same parties and relate to issues that have already been decided;
- the proceedings, or the manner in which they are being conducted, are considered to be frivolous, vexatious or otherwise an abuse of the process of the Tribunal;
- there is no reasonable prospect of the case, or part of it, succeeding.

#### Rule 13 – Costs

For Land Registration cases, the full cost shifting rules continue to apply. For agricultural land and residential property the tribunal may make an order in respect of costs only –

- under section 29(4) of the 2007 Act (wasted costs);
- if a person has acted unreasonably in bringing, defending or conducting proceedings.

In Residential Property cases this rule replaces both paragraph 10 of schedule 12 to the Commonhold and Leasehold Reform Act 2002 and paragraph 12 of schedule 13 to the Housing Act 2004. The power to award costs under the second limb does not apply to rent cases. In 2011, Sir Nicholas Warren's report on costs in tribunals had recommended that the current cap of £500 cost in LVT and RPT cases be removed. Accordingly, there is now no limit on the amount of costs that may be awarded.

#### Part 6 – Correcting, setting aside, reviewing and appealing tribunal decisions

The procedures for appealing in all of the Chamber's jurisdictions is harmonised in this Part. Firstly, Rule 50 provides a conventional slip-rule. Rule 51 allows a tribunal to set aside a decision (or part of such a decision) which disposes of proceedings if it is in the interests of justice to do so *and* one of a number of conditions is fulfilled,

such as a document not being received by the tribunal at an appropriate time or other procedural irregularity. Rule 52 makes provision for applications for permission to appeal. By Rule 53, on receipt of an application for permission to appeal the tribunal must first consider, taking into account the overriding objective in Rule 3, whether to review the decision on the basis that it is satisfied that a ground of appeal is likely to be successful.

## **Appeals**

From 1 July, appeals for all decisions of the First-tier Tribunal decisions will go to the Upper Tier. This represents a change for the Land Registry and Agricultural Land and Drainage jurisdictions and for a number of RPTS cases (in particular rents).

Previously, these cases could only be taken to the High Court on a point of law. For Residential Property and Agricultural Land and Drainage decisions appeal will be to the Upper Tier (Lands Chamber) and appeals in Land Registration cases will be to the Upper Tier (Tax and Chancery Chamber).

## **Transitional provisions**

Within the Tribunals we have worked to ensure that there will be as little disruption as possible for parties, but it will be helpful to be aware of the transitional provisions. These are contained in schedule 3 to the *Transfer Order* and include the following:

- All proceedings started before 1 July 2013 which are pending, will continue as proceedings before the First-tier Tribunal;
- Any case in the process of being referred to an old tribunal on 1 July 2013 will continue as a case being referred to the First-tier Tribunal
- Any decision or direction or order given or made in proceedings before 1 July 2013 remains in force as if it was a decision of the First-tier Tribunal;
- Any time period which has started to run before 1 July 2013 will continue to apply;
- Where proceedings are started before 1 July 2013 but continue after that date, an order for costs may only be made, if and to the extent that, an order could have been made before 1 July 2013.
- All cases whether started before or after 1 July 2013 will be subject to the new rules. However, the Tribunal may give any directions to ensure that proceedings are dealt with fairly and, in particular, may apply any provision in the procedural rules which applied to the proceedings before 1 July 2013; or dis-apply provisions of the new rules;
- Decisions of old tribunals, given before 1 July 2013, where the appeal right was to the High Court but this has *not been exercised before that date*, will become appeal rights to the Upper Tribunal, as if the decision had been made by the First-tier Tribunal.