

Summary of the new rules and transitional provisions

The Structure of the Property Chamber

1. The Property Chamber is divided into three parts
 - i) Agricultural Land and Drainage;
 - ii) Land Registrations; and
 - iii) Residential Property
2. Agricultural Land and Drainage and Land Registration each have a Principal Judge and the Chamber President will also be the Principal Judge for Residential Property
3. This talk is concerned with the Residential Property part of the Property Chamber.

The New Rules

4. From 1 July 2013 the applicable rules are the *Property Chamber Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013*
5. These rules were made by the Tribunal Procedure Committee established under section 22 and schedule 5 to the *Tribunals, Courts and Enforcement Act 2007* (“the 2007 Act”).

Key Changes

The Overriding Objective: (rule 3)

6. The overriding objective, to deal with cases fairly and justly, applies
 - i) To the Tribunal in exercising any powers under the Rules and interpreting any rule or practice direction; and

- ii) To the parties who must help the Tribunal to further the overriding objective and to co-operate with the Tribunal generally.
7. The overriding objective of the rules is to enable to Tribunal to deal with cases fairly and justly. This includes
- (a) dealing with the case in ways in which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;
 - (b) avoiding unnecessary formality and seeking flexibility in the proceedings
 - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
 - (d) using any special expertise of the Tribunal effectively; and
 - (e) Avoiding delay, so far as compatible with proper consideration of the issues.

Alternative Dispute Resolution: (rule 4)

8. The Rules now provide for the Tribunal to alert the parties to and, if suitable, facilitate alternative dispute resolution:

‘The Tribunal should seek- where appropriate-

- (a) To bring to the attention of the parties the availability of any appropriate alternative procedures for the resolution of the dispute; and*
- (b) If the parties wish, and provided that it is compatible with the overriding objective, to facilitate the use of the procedure’*

Case Management Powers: (rule 6)

9. Under the new rules the Tribunal has broad and potentially far reaching case management powers more akin to those in the Civil Procedure Rules. The Tribunal is

given a general power to regulate its own procedure which includes but is not limited to the actions set out below.

The general power

10. The Tribunal is permitted, subject to the 2007 Act and any other enactment, to regulate its own procedure (**rule 6(1)**)
11. The Tribunal may give a direction in relation to conduct or the disposal of proceedings at any time and may suspend or set aside an earlier direction (**rule 6(2)**)

Examples of the general power

12. The general power includes the power for the Tribunal to:
 - i) Extend or shorten the time for compliance with a rule practice direction or direction (even if the application is made after the period has expired) (**rule 6(3)(a)**);
 - ii) Consolidate or hear together two sets of proceedings raising common issues or treat a case as a lead case (**rule 6(3)(b)**)
 - iii) Permit or require a party to amend a document (**rule 6(3)(c)**);
 - iv) Permit or require a party or another person to provide documents information or submissions to the Tribunal or a party (**rule 6(3)(d)**);
 - v) Direct that enquiries be made of any person (**rule 6(3)(e)**);
 - vi) Require a party to state whether they intend to attend, be represented, call witnesses (**rule 6(3)(f)**);
 - vii) Deal with an issue as a preliminary issue (**rule 6(3)(g)**);
 - viii) Hold a hearing to consider any matter including a case management issue (**rule 6(3)(h)**);
 - ix) Decide the form of any hearing (**rule 6(3)(i)**);
 - x) Adjourn or postpone a hearing (**rule 6(3)(j)**);

- xi) Require a party to produce a bundle for a hearing (**rule 6(3)(k)**);
- xii) Require a party to provide an estimate of the length of the hearing (**rule 6(3)(l)**);
- xiii) Stay proceedings (**rule 6(3)(m)**);
- xiv) Transfer proceedings to another jurisdiction (**rule 6(3)(n)**);
- xv) Suspend the effect of its decision pending the determination of an application for permission to appeal and any appeal of review of that decision (**rule 6(3)(o)**).

Failure to comply with rules, practice directions or Tribunal Directions: (**rule 8**)

13. Under the old rules the Tribunals only real power to sanction non compliance was the very limited power in rule 11 to strike out applications which were '*frivolous, vexatious or otherwise an abuse of the process of the Tribunal*'
14. The new rules provide the Tribunal with a more flexible spectrum of powers in cases of non compliance as set out below

The general power

15. In cases of non compliance with a rule, a practice direction or a Tribunal direction the Tribunal may take such action as the Tribunal considers just (**rule 8(2)**)

Examples of the general power

16. This general power includes but is not limited to:
 - Waiving the requirement (**rule 8(2)(a)**)
 - Requiring the failure to be remedied (**rule 8(2)(b)**)
 - Striking out a parties case (**rule 8(2)(c)**)
 - Barring or restricting a party's participation in the proceedings (**rule 8(2)(e)**)

- Asking the Upper Tribunal to exercise its powers under s.25 of the 2007 Act (giving it the same powers, rights, privileges and authority as the High Court) in relation to a failure:
 - to attend to give evidence;
 - to swear an oath in connection with giving evidence;
 - to give evidence as a witness
- To produce a document or facilitate the inspection of a document or other thing (**rule 8(2)(d) and (5)**).
- The Tribunal may also add, substitute or remove parties (**rule 10**)

Striking out: (rule 9)

17. The Tribunal may now use unless orders (**rule 9(1)**)
18. The Tribunal must strike out the whole or part of a case if: (**rule 9(2)**)
 - i) It does not have jurisdiction in relation to the whole or part of proceedings; and
 - ii) It has not transferred the whole or part of the proceedings to another court or tribunal under **rule 6(3)(n)(i)**
19. The Tribunal may strike out the whole or part of a case where:
 - i) The applicant has failed to comply with a direction which stated that failure to comply could lead to a strike out (**rule 9(3)(a)**)
 - ii) The applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly (**rule 9(3)(b)**)
 - iii) The proceedings or the case are between the same parties and arise out of facts which are the same or substantially the same as those in proceedings already determined by the Tribunal (**rule 9(3)(c)**)

- iv) The Tribunal consider the proceedings (or part of them) or the manner in which they are conducted to be frivolous, vexatious or otherwise an abuse of the process of the Tribunal (**rule 9(3)(d)**)
- v) The Tribunal considers there is no reasonable prospect of the applicant's case (or part of it) succeeding (**rule 9(3)(e)**).

Notice

- 20. The Tribunal cannot strike out under rule 9(2) or (3)(b)-(e) without first giving the parties an opportunity to make representations (**rule 9(4)**)

Application for re-instatement

- 21. If proceedings or the case was struck out under rule 9(1) or (3)(a) the applicant may apply in writing within 28 days of the strike out for the proceedings or case to be reinstated (**rule 9(5) and (6)**)

Respondents

- 22. Rule 9 applies to Respondents as it does to Applicants save that pursuant to **rule 9(7)**:
 - i) A reference to striking out is to be read as the barring of the Respondent from taking further part in the proceedings
 - ii) An application for reinstatement is to be read as an application for the lifting of the bar on the Respondent taking part in the proceedings
- 23. Where a Respondent has been barred the Tribunal need not consider any further response or submissions made by him and may summarily determine any or all issues against the respondent (**rule 9(8)**).

Transfers: (rules 6 and 25)

- 24. Whereas before the Tribunal was only a receiving jurisdiction it may now also transfer cases out to another court or tribunal or directly to the Upper Tribunal .

Transfer to other courts and tribunals: (**rule 6(3)(n)**)

25. The Tribunal may transfer to another court or jurisdiction if:
- i) Because of a change in circumstances since the start of proceedings the Tribunal no longer has jurisdiction;
 - ii) Another court or tribunal is a more appropriate forum for the determination of the case.

Transfer to the Upper Tribunal: (rule 25)

26. The Tribunal may refer a case to the President of the Property Chamber with a request that it be transferred to the Upper Tribunal (rule 25(1))
27. The President of the Property Chamber with the concurrence of the President of the Lands Chamber transfer the case to the Upper Tribunal (rule 25(2)) if:
- i) The issues are likely to be further appealed to the Upper Tribunal and will involve:
 - a) lengthy or complex evidence or a lengthy hearing;
 - b) complex or important principle or issue;
 - c) a large financial sum (rule 25(3)).

Expert evidence: (rule 19)

28. Rule 18(1)(e) introduces the concept of a single joint expert and gives the Tribunal the power to direct that a single joint expert is instructed (see also rule 19(6)(c))
29. Rule 19 gives the Tribunal much greater control over expert evidence including:
- i) Imposing a duty on experts to ‘help the Tribunal on matters within the expert’s expertise’ which overrides any obligation to the instructing party (rule 19(1))
 - ii) No expert evidence may be adduced without the Tribunal’s permission (rule 19(2)) which must, unless directed otherwise, be in a written report (rule 19(3))

- iii) A copy of the expert report must be given to the Tribunal and other parties at least 7 days before the hearing (**rule 19(4)**)
- iv) The contents of the report must comply with **rule 19(5)**
- v) The Tribunal may direct:
 - a) The expert evidence to be limited to certain issues;
 - b) The expert to give oral evidence;
 - c) The expert to be jointly instructed.

Lead Cases: (rule 23)

- 30. Where two cases before the Tribunal have yet to be disposed off and give rise to common or related issues the Tribunal may direct that one or more cases be the lead case and the other cases be stayed (“the related cases”) (**rule 23(1) and (2)**)
- 31. A party in a related case may apply to be substituted for or added as the lead case within 28 days of notification of the lead case (**rule 23(4)**)
- 32. Unless a party objects within 28 days a decision taken in a lead case in respect of the common or related issues will be binding on all related cases (**rule 23(5) and (6)**)

Correcting, Setting Aside, Reviewing and Appealing Tribunal Decisions: (Part 6)

Slip rule: rule 50

- 33. The Tribunal may correct any clerical mistake or accidental slip or omission under the new slip rule

Set aside: rule 51

- 34. The Tribunal may set aside a decision or part of a decision and re-make the decision if:
 - i) It considers that it is in the interests of justice to do so; and
 - ii) One of the following conditions are met:

- a) A document relating to the proceedings was not sent or received by a part or their representative at an appropriate time;
 - b) A document relating to the proceedings was not sent or received by the Tribunal at an appropriate time;
 - c) A party or their representative was not present at a hearing;
 - d) Some other procedural irregularity in the proceedings (**rule 51(1) and (2)**)
35. An application to set aside must be made via a written application within 28 days of the date the Tribunal sent notice of the decision (**rule 51(3)**)

Application for permission to appeal: (rule 52)

36. An application for permission to appeal must be made in writing to the Tribunal (**rule 52(1)**)
37. Where an appeal is on a point of law under section 11 of the 2007 Act it does not apply to ‘excluded decisions’ (**section 11(1) and (5) 2007 Act**)
38. Must be received by the Tribunal within 28 days after the latest of the dates the Tribunal sent:
- i) Written reasons for the decision;
 - ii) Notification of amended reasons;
 - iii) Notification that an application to set-aside the decision was unsuccessful (only where such an application was itself made in time) (**rule 52(2)**)
39. If an application for permission is late it must include a request for an extension of time and the reasons why it was not received in time (**rule 52(4)**)

Tribunal’s consideration of application for permission to appeal: (rule 53)

40. The Tribunal must first consider, taking into account the overriding objective whether to review the decision (**rule 53(1)**)
41. If the Tribunal does not review the decision or decides to take no action following a review the Tribunal must then consider whether to grant permission to appeal (**rule 53(2)**)
42. If the Tribunal decides not to grant permission to appeal it must send with its decision:
 - i) A statement of its reasons for refusal; and
 - ii) Notification of the right to appeal to the Upper Tribunal (**rule 53(4)**)

Review of Decisions: (rule 55)

43. Review means a review of a decision by the Tribunal under section 9 of the 2007 Act (**rule 49**)
44. The Tribunal may only review a decision
 - i) On an application for permission to appeal pursuant to **rule 53(1)** and
 - ii) If it is satisfied that a ground of appeal is likely to be successful; and
45. If the parties do not have an opportunity to make representations they may apply for such action to be set aside and the decision reviewed again (**rule 55(3)**);
46. The Tribunal must notify the parties in writing of the outcome of any review and the right of appeal in relation to the outcome (**rule 55(2)**)
47. Where the Tribunal reviews a decision it may:
 - i) Correct accidental errors in the decision or in a record of the decision;
 - ii) Amend reasons given for the decision;
 - iii) Set the decision aside (**section 9(4) 2007 Act**)
48. Where the decision is set aside the Tribunal must either:

- i) Re-decide the matter concerned; or
 - ii) Refer that matter to the Upper Tribunal (**section 11(5) 2007 Act**)
49. Most decisions of the Tribunal under section 9 of the 2007 Act are excluded decisions for the purposes of an appeal on point of law to the Upper Tribunal (**sections 11(5)(d) and (e) 2007 Act**)

Transitional Provisions: (schedule 3 to the Transfer of Tribunal Functions Order 2013/1036)

50. Somewhat unhelpfully these are within schedule 3 to the Transfer of Functions Order 2013 and not the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013
51. In outline the new rules will apply to all case whether started before or after 1 July 2013. However for proceedings pending immediately before 1 July 2013 the Tribunal is given wide powers to give directions to ensure that cases are dealt with fairly by, for example, applying the old rules. Importantly, for such cases an order for costs may only be made under the old rules.

The starting point

52. All cases whether started before or after 1 July 2013 will be subject to the new rules
53. All proceedings which are pending immediately before 1 July 2013 will continue as proceedings before the First-tier Tribunal (**paragraph 1**)

However

54. where proceedings where pending immediately before 1 July 2013:
- i) If a hearing began before 1 July 2013 but was not completed by that date the First-tier Tribunal must be comprised of the same person or persons who began it (**paragraph 3(2)**)
 - ii) The First-tier Tribunal may give any directions to ensure that proceedings are dealt with fairly, in particular it may:

- a) Apply any provision regulating practice or procedure which applied pre 1 July 2013; or
- b) Disapply provisions of the new rules (**paragraph 3(3)**)
- c) Any decision, direction or order given or made in proceedings before 1 July 2013 continues in force as if it were a decision direction or order of the First-tier Tribunal (**paragraph 3(5)**);
- d) A time period which has started to run before 1 July 2013 and which has not expired shall continue to apply (**paragraph 3(6)**);
- e) An order for costs may only be made if, and to the extent that, an order could have been made before 1 July 2013 (**paragraph 3(7)**).

To clarify

55. 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 (**paragraph 2**)

Appeals

56. Where there is a right of appeal to the High Court from any decision made by an old tribunal before 1 July 2013 which has not been exercised (and the time for exercising that right has not expired) the right of appeal will be to the Upper Tribunal as if the decision had been made by the First-tier Tribunal (**paragraph 4**)

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