

**Committee: STANDARDS**

**Agenda Item**

**Date: 22 March 2010**

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**Title: THE FIRST TIER TRIBUNAL (LOCAL GOVERNMENT STANDARDS IN ENGLAND)**

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Item for information

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## Summary

1. This report is to inform members of the transfer of the work of the Adjudication Panel for England into the unified tribunal structure.

## Background Papers

2. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

Adjudication Panel website at [www.adjudicationpanel.tribunals.gov.uk](http://www.adjudicationpanel.tribunals.gov.uk)

## Impact

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Communication/Consultation	None.
Community Safety	None.
Equalities	None.
Finance	None.
Health and Safety	None.
Human Rights	None.
Legal implications	As set out in the report.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

## Situation

4. Prior to the 18 January 2010 the responsibility for hearing cases referred for adjudication by Standards Committees or Ethical Standards Officers and for

dealing with appeals from decisions of Standards Committees rested with the Adjudication Panel for England.

5. The Government has decided to reform the tribunal system. A number of tribunals have been brought together as The First Tier Tribunal. The tribunal is divided into a number of chambers covering immigration and asylum, tax, war pensions and armed forces compensation, health, education and social care, social entitlement and a General Regulatory Chamber. The functions of the Adjudication Panel fall within the remit of the General Regulatory Chamber which also covers charities, claims management services, consumer credit, estate agents, gambling, information, immigration services and some traffic matters.
6. The Adjudication Panel did not have any procedural rules. However, the Tribunal Procedure (First Tier Tribunal) (General Regulatory Chamber) Rules 2009 gives the tribunal a range of powers.
7. The rules set out an overriding objective which is to enable the tribunal to deal with cases fairly and justly. This includes dealing with a case in ways which are proportionate to its importance, to the complexity of the issues, to the anticipated costs and to the resources of the parties; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as is practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the tribunal effectively and avoiding delay so far as is compatible with the proper consideration of the issues. The parties are required to assist the tribunal further the overriding objective and must cooperate with the tribunal generally.
8. The tribunal is to seek where appropriate to bring to the attention of the parties the availability of alternative dispute resolution procedures and to facilitate the use of those procedures if the parties so wish. However, I find it difficult to see how this can apply in cases of appeals from decisions of Standards Committees.
9. The tribunal has power to give directions relating to the conduct of disposal of proceedings. It has power to vary time limits, to consolidate or hear two or more sets of proceedings together or to treat a case as a lead case. (A lead case may be appropriate where there are a number of appeals dealing with the same points of law, consolidation would be appropriate where there are a number of cases based on the same facts). The tribunal may permit or require a party to amend a document and may permit or require a party or another person to provide documents, information or submissions to the tribunal or another party. The tribunal may determine issues as being preliminary issues and may hold hearings which would include case management hearings. The tribunal may require a party to produce a bundle for a hearing.
10. The tribunal has power to waive procedural irregularities on the part of the parties or to require such failures to be remedied. It also has power to strike out the party's case or to prevent or restrict a party participating in the proceedings.

11. The tribunal does not have power to impose sanctions for failure to comply with a requirement but where a person refuses to attend to give evidence or refuses to swear an oath in connection with the giving of evidence, refuses to give evidence as a witness, refuses to produce a document or refuses to facilitate the inspection of a document or any other thing the tribunal may refer the matter to the upper tribunal who may effectively deal with the matter as if it was contempt of court.
12. For the first time the tribunal has power to make orders in respect of costs. These can only be awarded however if the tribunal considers that a party has acted unreasonably in bringing, defending or conducting the proceedings. The tribunal can make such a costs order of its own initiative or on an application. If a party is seeking to make an application for an order the written application must be sent to the tribunal and the person against whom the order is sought together with a schedule of the costs claimed. The latest time for applying for a cost order is 14 days after the date the tribunal's decision disposing of the matter is posted to the parties. No such order can be made without giving the paying party the opportunity of making representations and, if the paying party is an individual, considering that person's financial resources.
13. In addition to the general powers of case management, the tribunal may give directions as to exchange of documents, the provision of statements of agreed matters, issues on which the tribunal requires evidence or submissions, the nature of the evidence or submissions it requires, dealing with expert evidence, limiting the number of witnesses which either party may call and the manner in which evidence or submissions are to be given (e.g. orally or by written submissions).
14. The tribunal has a wide discretion with regard to the evidence it admits.
15. Evidence not available to the Standards Committee may be admitted as may evidence that would not normally be admissible in civil trials in the UK. The tribunal may consent to a witness giving or require a witness to give evidence on oath. However, I would anticipate that this is a power it will exercise sparingly.
16. The rules relating to appeals appear somewhat confused. There is a procedure for the tribunal to be requested to review its decision before an application for permission to appeal is considered. An appeal with permission is to the Upper Tribunal. If the First Tier Tribunal refused permission, the application for permission can be renewed to the Upper Tribunal.
17. One cosmetic change is that the chairman of the Adjudication Panels will in the First Tier Tribunal be referred to as judges.

## **Risk Analysis**

18. There are no risks attached to this report.