Judge Siobhan McGrath is the President of the new Property Chamber within the First-tier Tribunal which was launched in July 2013. Prior to this she had been the Senior President of the Residential Property Tribunal Service for 13 years. Before joining the Tribunal she was a barrister specialising in Housing and Landlord and Tenant law. She sits as a Recorder in civil jurisdictions.
All Change! The New Tribunals

Introduction

1. The 1st July, 2013 saw the creation of the new Property Chamber of the First-tier Tribunal and the consequent abolition of Rent Assessment Committees, Rent Tribunals, Leasehold Valuation Tribunals, Residential Property Tribunals, Agricultural Land Tribunals and the Adjudicator to HM Land Registry.

2. The notes that follow in this paper include an outline of the relevant legislation, the new procedural rules and transitional provisions. The change is, of course, very significant. However, in making preparations for the new Chamber the aim has been to preserve as much as possible of the good practice that has been built up in the various former tribunals.

3. The new Chamber has been a long time coming. In 2003, the Law Commission published its report, *Land, Valuation and Housing Tribunals: The Future*. It recommended that property tribunals should be grouped together into a generic Property and Valuation Tribunal with the right of appeal to a reformed Lands Tribunal. But the report did not reflect developments in the wider tribunal world and probably for that reason the recommendations were not taken forward.

4. In 2004, the Law Commission was again asked to undertake an extensive review of the way in which residential property disputes are resolved. So far as formal dispute resolution was concerned, it was asked to consider the case for establishing a housing court or housing tribunal with jurisdiction to determine all major disputes, including possession. Martin Partington’s 2008 paper *Housing: Proportionate Dispute Resolution* was the result of that review. Work on the recommendation for the establishment of a new Property Chamber finally started in 2011 and the project required two years of work to be realised.

5. At the outset, several important points need to be noted:

(a) The transitional provisions provide, in summary, that all cases, whether started before or after 1 July 2013, will be proceedings before the First-tier Tribunal;

(b) The new procedural rules (except for costs) will apply to the vast majority of cases, whether started before or after 1 July 2013;

(c) Appeal rights have been rationalised and now all cases will be appealed to the Upper Tribunal and not to the High Court;

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1 Law Com 281
2 Housing Proportionate Dispute Resolution Law Com No 309
The New Structure

6. RPTS and the Rent Assessment Panels, the Agricultural Land Tribunal and the Adjudicator to HM Land Registry ceased to exist after 30 June 2013. Instead, they have all become part of a single tribunal service and included in the new “Property Chamber” of the First-tier Tribunal, which was created on 1 July 2013.

7. The RPTS jurisdictions are now known as “Residential Property”; ALT is known as “Agricultural Land and Drainage”; and the Adjudicator to HM Land Registry has become “Land Registration”.

8. The Senior President of Tribunals is Lord Justice Sullivan. Siobhan McGrath is the Chamber President and Principal Judge for Residential Property. Edward Cousins is the Principal Judge for Land Registration and Nigel Thomas is the Principal Judge for Agricultural Land and Drainage.

9. In Residential Property and Agricultural Land and Drainage, the same regions in England as before will apply. For Residential Property cases, all applications must be lodged in the region within which the property is situated (as before). The Land Registration jurisdiction extends to England and Wales and does not have a regional structure.

10. All five of the Residential Property offices continue to deal with cases in the same areas as previously. In each area, the Presidents have become “Regional Judges”, the Vice Presidents, “Deputy Regional Judges” and the valuer Vice Presidents are now “Deputy Regional Valuers”. The administration of Agricultural Land and Drainage cases is now dealt with in the Manchester Residential Property office. Land Registration staff and judiciary have moved into and share the premises at the London Residential Property office, at 10 Alfred Place, WC1E.

11. The Regional Judges and their Deputies continue in the same judicial management roles as previously and have the same responsibility for their regions as before. As part of this work they continue to appoint judges and members to tribunals.

12. One other important change to mention at this point is that from 1 July 2013 it is possible for judges and valuer chairmen to make decisions alone and without wing members. This is a change for RPT and ALT. It is up to each Regional Judge to decide if a case (or a category of case) is suitable for this to happen.

13. By statute, there can only be “judges” and “other members” in the First-tier Tribunal. All of the lawyer chairmen are now Tribunal Judges and the valuer chairmen are Valuer Chairmen. The Tribunal will also continue to refer to valuer members, expert members and lay members as such. Although the lawyer chairmen are now judges, they are likely to refer to themselves as Chairmen when sitting on tribunals, as this is the function they are performing.

14. After 30 June 2013, the types of case will no longer be RACs, LVTs, RPTs and ALTs. Instead everything will be dealt with by “the Tribunal”. All of the letters, guidance notes and application forms have been amended and the Tribunal has drafted a short explanatory note for parties, which is sent out with correspondence, explaining the changes.
The New Rules and Practice Directions

15. The most important point to note here is that all of the old procedural and fees regulations have been replaced from 1 July 2013.

16. Therefore, it is not possible/necessary to refer to either the Rent Assessment Committee regulations from 1971, the Leasehold Valuation Tribunal regulations from 2003 or the Residential Property Tribunal regulations from 2011.

17. The regulations have all been replaced by one set of procedural rules (see below) for the whole Chamber – i.e. Residential Property, Agricultural Land and Drainage and Land Adjudication. The fees regulations have been replaced by a single set of regulations for Residential Property.

18. In addition to the two new sets of rules, Chambers of the First-tier Tribunal may have practice directions. These are in effect instructions to parties and information about how the Tribunal will operate. A party who is in breach of a practice direction can be penalised in the same way as if they have breached a rule or a case management direction.

19. The Property Chamber currently has four practice directions:
   (a) Setting out the regions;
   (b) Detailing Land Registration procedure;
   (c) Giving details of documents to be included with applications; and
   (d) Dealing with the new amendments to mobile homes cases.

20. In addition AL & D has a practice statement, again setting out the practice and procedure to be applied in its cases.

21. All of the guidance booklets and forms for parties have been revised and work is ongoing on the web site.

The Transfer Order and Transitional Provisions

22. The legal transfer of the old tribunals to the First-tier Tribunal was achieved by the combined effect of a number of statutory instruments. Firstly, by The 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.

23. 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-tier or Upper Tribunal and for the “old tribunals” to be abolished.
24. However, 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 the Tribunal Service and hence the old provisions are retained.

Transitional Provisions

25. The transitional provisions are contained in schedule 3 to the Transfer Order, which affects all cases which have not been determined before 1 July 2013.

26. In summary, the transitional provisions are as follows:

The Proceedings

(a) All cases started on or after the 1 July 2013 will be proceedings before the First-tier Tribunal;
(b) All proceedings started before 1 July 2013 which are pending, will continue as proceedings before the First-tier Tribunal;
(c) 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.

The Procedural Rules

(a) 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;
(b) 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;
(c) Any time period which has started to run before 1 July 2013 will continue to apply;
(d) 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.

Appeals

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.
Appeals

27. From 1 July 2013, appeals for all decisions of the First-tier Tribunal will go to the Upper Tribunal. For cases brought to the Tribunal under the Rent Act 1977 and the Housing Act 1988, this will be the first time that there will be a right of appeal: previously, 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 Tribunal (Lands Chamber) and appeals in Land Registration cases will be to the Upper Tribunal (Tax and Chancery Chamber).

28. It is also important to note that in Residential Property cases in England, the Transfer Order disapplies Schedule 12 of the Commonhold and Leasehold Reform Act 2002 and Schedule 13 of the Housing Act 2004 The provisions contained in those schedules are now contained either in the new rules (see below) or in the body of the 2002 and 2004 Acts.

The New Rules

29. From 1 July 2013, the procedure for the Property Chamber will be governed by The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169). The rules have been made by the Tribunal Procedure Committee, established under section 22 of and schedule 5 to the Tribunals, Courts and Enforcement Act 2007. The new rules replace the five sets of rules which currently apply to RPTS jurisdictions and the regulations applicable to ALT and ALR.

30. 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.

31. In addition to the procedural rules, there are new fees rules for the Residential Property jurisdiction. These are The First-tier Tribunal (Property Chamber) Fees Order (SI 2013/1179). It should be noted that there are no new fees, but that the old fees have been up-rated in accordance with inflation. Therefore, for example, hearing fees for service charge cases are now £190 instead of £150.

32. Perhaps the single greatest benefit for both the Chamber and for parties is that there is one single set of procedural rules that will apply to all proceedings. This can only enhance both consistency and transparency. The overriding objective of the rules is also very welcome.

33. 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. Training has been or will be provided to both chairmen and other Tribunal members. All of the rules are of importance – the following is intended simply to highlight particular issues.
Rule 3 – Overriding objective

34. There is I think general agreement that the overriding objective is an important guide and tool for managing tribunal proceedings and is encompassed in rule 3(1) as follows:

“The overriding objective of the Rules is to enable the Tribunal to deal with cases fairly and justly”.

Rule 5 – Delegation to staff

35. Over time, parties should expect to see an increasing number of routine decisions being made by Tribunal staff, with the ability of the parties to apply for the decision to be considered afresh by a judge.

Rule 6 – Case management powers

36. 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 old Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003 included 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”.

37. 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 paragraphs (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. Note the (non-exhaustive) list of powers in rule 6(3) and, in particular, the power to extend or shorten the time for complying with any rule, practice direction or direction.

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

38. 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:

(a) waiving the requirement;

(b) requiring the failure to be remedied;

(c) exercising a power to strike out under Rule 9;

(d) 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;

(e) barring or restricting a party’s participation in the proceedings;

Additionally, the Tribunal may consider making an award of costs under Rule 13.
Rule 9 – Striking out a party’s case

39. 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:

(a) failure to comply with directions;
(b) failure to co-operate with the Tribunal so that the Tribunal cannot deal with the proceedings fairly and justly;
(c) the proceedings are between the same parties and relate to issues that have already been decided;
(d) 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;
(e) there is no reasonable prospect of the case, or part of it, succeeding.

40. Please note the procedural requirements for strike out and that it is not a requirement that a strike out matter be dealt with at a hearing. Also note the power of the Tribunal to reinstate a case that has been struck out.

Rule 13 – Costs

41. 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 –

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

42. 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. There is no power to award costs in a rent case. In 2011, Sir Nicholas Warren’s report on costs in tribunals recommended that the previous cap of £500 costs in LVT and RPT cases be removed. Accordingly, there is now no limit on the amount of costs that may be awarded.

Rule 15 – Calculating time

43. Note that actions must be done before 5.00pm and that the time specified for doing an act only includes “working days”.
Rule 22 - Withdrawal

44. In all cases the Tribunal must consent to a withdrawal before it becomes effective – see 22(3). Also note the power of the Tribunal to reinstate a case that has been withdrawn

Rule 23 – Lead cases.

45. The new rules represent a significant improvement over the representative application procedure for LVTs and are likely to be considered in all cases where there are multiple parties. In this context, please see the comments in Millharbour Management Ltd v Weston Homes Ltd [2011] EWHC 661 (TCC) (concerning the court’s discretion to appoint representative parties with the same interest in a claim).

Rule 25 – Transfer of case to the Upper Tribunal.

46. The President of the Property Chamber may direct that a case be transferred and determined by the Upper Tribunal. She may only do so if the issues in dispute are likely to be further appealed to the Upper Tribunal and there is some complexity, important principle at stake or the case involves a large financial sum. This will be of particular use, where guidance to the First-tier Tribunal is likely to be given as a result of the Upper Tribunal's determination.

Rule 26 and 28 – Starting Proceedings; Referred and transferred cases

47. These rules make provision for starting proceedings in all Property Chamber cases. For Residential Property cases this is supplemented by a practice direction (provided after 1 July 2013), which incorporates the schedules of documents and other information previously found in the 2003 and 2011 regulations.

Rule 29 - Notice to respondents, interested persons and other persons

48. This should be read in conjunction with rule 16(2)(b), which makes it clear that the Tribunal may provide any document by itself sending or delivering the document, or by requiring a party to do so.

Rules 31 and 32 – Decision with or without a hearing and notice of hearings

49. The rules include a much greater flexibility in the giving of notice of hearing or paper determination. For case management hearings and interim hearings, no time is specified but clearly reasonable notice must be given. For a hearing to dispose of proceedings (other than strike-out) 14 days notice must be given, unless the parties consent to shorter notice or in urgent or exceptional circumstances. For determination on consideration of documents alone, the Tribunal must give not less than 28 days notice that it intends to deal with the matter in this way and, if no objection is received within this time, consent is to be inferred. It is now also possible to give shorter notice of a paper determination in urgent or exceptional circumstances.
Rule 36 - Decisions

50. The position remains here as previously that all decisions are to be supported by reasons, save in rent cases when they will be provided on request.

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

51. The procedures for appealing in all of the Chamber’s jurisdictions is harmonised in this Part.

52. 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.

53. Rule 52 makes provision for applications for permission to appeal and Rule 54 allows the Tribunal to stay the implementation of a decision pending the outcome of an appeal.

54. 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. The Tribunal’s powers on review are set out in section 9(4) of the Tribunal, Courts and Enforcement Act 2007 and are to: correct accidental errors, amend reasons and to set the decision aside and remake it or send it to the Upper Tribunal for determination.

55. By Rule 55 the Tribunal may only undertake a review of a decision:

   (a) Pursuant to Rule 53 (review on application for permission to appeal); and

   (b) If it is satisfied that a ground of appeal is likely to be successful.

56. The creation of the Property Chamber may be a first step in the rationalisation of housing dispute resolution. In such a specialist area, great care must be taken to ensure the proper application of expertise in law, valuation and housing conditions. So far as is compatible with the proper administration of justice, protection must be given to the more vulnerable parties who access those jurisdictions, and here the tribunals in the Property Chamber have a good track record. Careful thought must be applied to the incidence of costs and the use of the new default powers.

57. Whilst it is undoubtedly correct that users in particular will benefit from a rationalisation of dispute resolution, that advantage will only be achieved with careful preparation and consensus. We should pursue too the need identified in those Law Commission reports to triage the appropriate form of dispute resolution at an early stage, and to use where appropriate mediation and other ADR techniques.

58. The old tribunals worked pretty well for a long time and it is sad to see them go, but it is time now to welcome in the new, and the opportunities for the more effective administration of the law that the new Chamber will bring.