

Transforming tribunals: Implementing part 1 of the Tribunals, Courts and Enforcement Act 2000: Response by the members of the Care Standards Tribunal

The Care Standards Tribunal has nineteen legal members and sixty nine specialist members all appointed by the Lord Chancellor. The members have had an opportunity to read the Consultation document, and the General Purposes Committee has discussed the document in detail. The Response prepared by that Committee has been circulated to all the members of the CST who have been provided with an opportunity to submit any further comments. Accordingly, this Response represents the collective views of all of the members, both legal and specialist, of the Care Standards Tribunal.

The Tribunal is an amalgamation of three Tribunals; the Registered Homes Tribunal, the Protection of Children Act Tribunal, and the Independent Schools Tribunal. The President is a Senior Circuit Judge, and the Deputy President is paid at a Circuit Judge level. They are full time. The other legal members are part time members of the Tribunal, although they include one Social Security Commissioner and the current President of SENDIST. Two previous legal members of the CST have been Circuit Judges, one of whom has retired and the other resigned because of pressure of work on the circuit bench.

The specialist members (the lay panel) must satisfy one or more of the requirements as set out in the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, Part 11 Regulation 3. This sets out a detailed list of specialisms. The President, when selecting members from the "lay panel" to sit on any tribunal case, must take account of these specialisms. Regulation 5 (5) states that the President shall nominate members of the lay panel who appear to him to have experience and qualifications relevant to the subject matter of the case.

The members of the Care Standards Tribunal welcome the reforms envisaged in the Consultation document, in particular the proposals for First-tier and Upper-tier Tribunals created by the 2007 Act and how these chambers will be structured. It believes strongly that the emphasis must be placed on Users, and that it must necessarily follow that the expertise that has been built up over the last six years in the CST must not be lost.

Training is another key component of all of these reforms, and the CST members hope that the resources will be provided to ensure that the members are appropriately trained in the new structures (including any new generic Rules) as early as possible. The CST's commitment to training is evidenced by its extensive programme for all members over the last 6 years, the publication of the digest of cases, and the production of a DVD. The CST would not wish to see any dilution of this provision.

Our Responses follow the questions set out in the Consultation document.

Chapter 7: Overview of Tribunal Structure

Assignment

Question 1. **Do the proposals on assignment of judges and members strike the correct balance between maintaining judicial expertise and encouraging judicial career development?**

The members of the CST believe that the proposals strike the correct balance, but subject to the comments below:

Comments: Paragraph 162 appears to suggest that 'assignment' will only be available for future appointments made by the JAC. We doubt whether this is the intention, but if it is the intention to exclude existing Tribunal members from the possibility of being assigned into another Chamber, it would be unfortunate.

The members of the CST support 'ticketing' in principle. They believe that it should be used to provide a career track for both salaried and fee paid legal members, and fee paid specialist members. Having multi-ticketed members is good in principle, but any minimum/maximum sitting requirement for fee paid members may mean that it becomes academic in reality. The CST members wonder whether the minimum and maximum limits on the number of days sitting will be removed?

The members believe that very detailed thought must be given to training. There needs to be a consistent approach to training to avoid duplication, and it is essential that the Judicial Studies Board is involved in the provision of generic skills based training, and is provided with the resources to increase its current programme of courses. Jurisdiction based training should be provided by the Chambers, although it is hoped that the JSB will continue its valuable role in providing support and evaluation of the jurisdiction based training.

Proposed Chambers Structure

Question 2. **Do you agree with this general approach for Chambers?**

Comments: Yes.

Question 3. **Is the allocation of jurisdictions to Chambers the right one?**

Comments: Yes, although it could be argued that the Gender Recognition Panel fits into the Health and Social Care Chamber rather than the Social Entitlement Chamber, which deals with questions of entitlement to financial assistance.

Chapter 8: The Upper Tribunal

Structure of the Upper Tribunal

Question 4. **Do you agree with the proposed three-chamber structure for the Upper Tribunal?**

Comments: Yes.

However, it is necessary to ensure across every Upper Tribunal chamber that appeals are heard by panels that have the knowledge and background of the area covered by the first-instance tribunal. Every first-instance tribunal has considerable expertise developed over time which should not be abandoned and cannot easily be reproduced.

Location

Question 5. **Do you agree with this approach to where the Upper Tribunal is located?**

Comments: Yes

It is important to have a presence in Cardiff. CST has an understanding with the National Assembly to hear cases in Wales. The regulations are different between England and Wales.

The Upper Tribunal MUST have an ability to conduct hearings in Welsh. It is noteworthy that the CST has the ability amongst its current membership to provide a panel that can conduct a hearing in Welsh.

Jurisdictions of the Upper Tribunal

Question 6. **Do you agree with the proposals for transferring existing appeal rights?**

Comments: Yes

Question 7. **Are there other appeal rights not listed?**

Comments: Not obviously

Proposed Changes to and Exclusions from Appeals

Question 8. **MHRT. Do you agree?**

Comments: No comment.

Question 9. **SENDIST. Do you agree?**

Comments: No comment

Question 10. **PAT. Do you agree?**

Comments: No comment.

Question 11. **CST. Do you agree?**

Comments: At the present time, appeals from decisions taken by the Secretary of State to confirm a person's name on the list preventing him or her from working with vulnerable adults or children represents roughly 50% of the CST caseload. The Safeguarding Vulnerable Groups Act 2006 has introduced a new procedure for barring from working with children and vulnerable adults those who are unsuitable. Decisions will be taken by an Independent Safeguarding Authority. Appeals are governed by section 4 of the Safeguarding Vulnerable Groups Act 2006. An appeal may be made only with the permission of the

Tribunal. It may be made only on the grounds that the decision making body (referred to by Statute as the Independent Barring Board but to be known as the Independent Safeguarding Authority) has made a mistake on any point of law, or any finding of fact which it has made and on which the decision was based. Section 4(3) states that “the decision whether or not it is appropriate for an individual to be included in a barred list is not a question of law or fact.” The Care Standards Tribunal has indicated that section 4(3) may not be human rights compliant, removing as it does a merits appeal. It is not clear at the present time when section 4 will be implemented, and indeed whether section 4(3) will be implemented, removing as it does the full merits review that exists under current legislation. If implemented, although issues of suitability would have been removed by section 4(3), there will still arguably be a requirement for an assessment of risk to be made, not least because such an assessment is often interlinked with findings of fact.

We agree that appeals from the Independent Safeguarding Authority should go straight to the Upper Tribunal, for the reasons as set out in paragraph 199 of the Consultation document. However, given the assessment of risk required (as identified in Paragraph 173 of the consultation document) it is important to ensure that these cases be heard by members of the current CST with knowledge and background acquired over many years. There is a need for these hearings to be listed and determined quickly, and accordingly the Upper Tribunal must be resourced to enable this to happen.

If section 4(3) of the SVG Act is not implemented, merits appeals regarding suitability will continue to be matters to be considered on appeal, and there is an argument that these would be better dealt with in the HESC chamber. Appeals would then go to the Upper Chamber, and it would be necessary to ensure that they are dealt with by Upper Chamber members with knowledge of care standards

Question 12. **Lands. Do you agree?**

Comments: No comment

Question 13. **Transport. Do you agree?**

Comments: No comment

First Instance Jurisdiction of the Upper Tribunal

Question 14. **Which would be the appropriate option for the Information Tribunal’s work?**

Comments: No comment

Chapter 9: Review of the Role of Non-Legal Members

Appointments and Tribunal Composition

Question 15. **Do you agree that this is the right approach to tribunal composition?**

Comments: The CST members agree with the general approach as set out in paragraphs 230 and 231, but they wish to make the following comments:

In CST, non-legal members are of the utmost importance. The current legislation provides for the CST President to appoint panels with expertise in various fields, and this expertise must in no way be diluted by the new structures.

We understand that both MHRT and SENDIST also benefit from the expertise of their specialist/lay members.

In none of the three proposed jurisdictions of HESC would it be appropriate for the Tribunal to sit as a single lawyer member.

Given that our jurisdiction requires a written reasoned decision it is inappropriate for any one other than a lawyer to chair the hearing.

In our jurisdiction we cannot envisage the use of non-legal members outside the formal hearing. It may be different in MHRT

It will be necessary to provide for training for members of the existing jurisdictions prior to them being ticketed to sit in another jurisdiction within the new Chamber. In the future, when the JAC appoints to the Chamber, there will be a need to train in each of the Chamber's jurisdictions, not just one as at present. The resource implications need to be addressed as a matter of priority.

Question 16. Should there be different principles for certain Chambers or appeal rights, and if so, why?

Comments: Yes, for different appeal rights. MHRT is different in that the psychiatrist sees the patient before the hearing, and different principles apply in this context.

Categories of Non-Legal Member

Question 17. Do you agree that these are the appropriate categories for members?

Comments: It may be that the title is less important than the need for specialists to sit on the panels, although the CST welcomes the category "healthcare, social care and education qualified professional" rather than the detailed provisions at present in the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002 (as amended). The category "other experts" is not a particularly attractive term, and the CST does not support its use for the HESC Chamber.

Titles

Question 18. What should the description be?

Comments: It may depend on different jurisdictions. In CST and SENDIST 'specialist' is appropriate. However, in MHRT the non-legal members are the psychiatrist and a 'lay' person.

Question 19. **Would the term ‘member’ suffice?**

Comments: No. ‘Specialist member’ is more appropriate.

Chapter 10: Tribunal Procedure

Improving the Service to Tribunal Users

Question 20. **Do you agree that where a function of a tribunal is carried out by staff there should always be right of access to a judge?**

Comments: The members of the CST are of the view that there is NO judicial activity that should be delegated within the jurisdictions that will form the HESC chamber, so this question is irrelevant. The CST expresses no view on the role of staff within other Chambers. It however sees that legally trained staff would have a role to play in conducting research functions both in relation to individual cases and more generally for the wider benefit of the Chamber members.

Question 21. **Are there any functions of a tribunal which should never be performed by staff, whatever the safeguards?**

Comments: Yes. Every judicial function!

Costs

Question 22. **Are these the right criteria against which a costs regime should be judged? Is there good reason for inclusion of other principles?**

Comments: The CST members agree with a costs structure as set out in the consultation document. There needs to be consistency across the Chamber. It does not believe that there is a need for a fee.

Chapter 11: Tax Appeals Modernisation

Tax Appeals Modernisation

Question 23. **What features of the present system should be retained in the new one?**

Comments: No comment

Question 24. **What are your views on the type of cases that could be heard by non-legal members?**

Comments: No comment

Question 25. **What types of case should go straight to the Upper Tribunal?**

Comments: No comment

Question 26. **What types of case will require early case management?**

Comments: No comment

Question 27. **What are the types or features of cases that you think should be subject to an award of costs?**

Comments: No comment

Question 28. **How do you think the award of costs should operate in practice?**

Comments: No comment

Chapter 12: Land, Property and Housing

Land, Property and Housing

Question 29. **Do you agree that this is the right long-term vision for tribunals dealing with land, property and housing? If not, do you have an alternative?**

Comments: No comment

Question 30. **Do you agree that the jurisdictions of the RPTS and the ALR should be transferred to the First-tier Tribunal and their administration to the Tribunals Service?**

Comments: No comment

In conclusion, the members of the Care Standards Tribunal see the implementation of the TCE 2007 as an opportunity to provide an appeal structure that is fair and transparent. The members are committed to working with the administration to ensure that the transfer to the new system is implemented with a minimum of disruption to the users; and to ensuring that the members of the new Chamber are provided with the training that is required. Above all, it

will strive to maintain the standards of expertise and care that it hopes the Tribunal has acquired over the six years of its existence.

His Honour Judge David Pearl
President
18th February 2008.