

## INFORMATION TRIBUNAL USER GROUP MEETING

### NOTES OF MEETING HELD ON 20<sup>th</sup> May 2008

#### Attendees:

John Angel – Chairman of the Information Tribunal  
Alison McKenna – Charity Tribunal  
Glenn Dalton – Tribunals Service  
Graham Cresswell, Information Tribunal Manager  
Vidya Wadher – Information Tribunal Team Leader  
Preet Dhiraj – Information Tribunal Proper Officer  
Henry Fitzhugh – FOI Lay Member, Information Tribunal  
Mark Thorogood – ICO  
Steve Wood – ICO  
Aaminah Khan – ICO  
Cathy Kennedy – TSOL  
Robert Dedman – FSA  
Clive Porro – DEFRA  
Mark Farrow – Information Rights Division, Ministry of Justice  
Paula Ogun – Tribunals Service Press Officer  
Phil Michaels – Friends of the Earth  
Martin Rosenbaum – BBC  
Ann Feltham – Campaign Against Arms Trade  
Kelly Johnson – Health Professionals Council  
Julian Lewis – National Institute for Health & Clinical Excellence (NICE)  
Eleanor Tunnicliffe – Solicitor, Beachcroft LLP (solicitors to NICE)  
Georgina Closs – Bar Pro Bono  
Maurice Frankel – Campaign for Freedom of Information  
Tim Pitt Payne – 11KBW

#### 1. Introduction

John Angel, the Tribunal's Chairman welcomed all to the User Group meeting. He stated that the minutes would be posted on the Information Tribunal website and gained permission from those present to the disclosure of their names with these minutes. He gave a brief overview of the current position and performance of the Information Tribunals. The slides he used are attached.

The Tribunal estimated that between 25 and 33% of the Information Commissioner's notices are appealed to the Tribunal. This was confirmed by the Commissioner's representative. In the ICO's annual report for 2007 – 2008 it stated that 70% of appeals [complaints?] were lodged by litigants in person (LIPs) and 30% by public authorities.

Information Tribunal's forecast of 132 appeals for 2008-2009 correlates to the ICO expected issuing of around 400 notices.

It was requested that these statistics should be made available on the Information Tribunal website together with the percentage of appeals being lodged by public authorities and LIPs and their respective success rates.

## 2. Transforming Tribunals

The meeting was informed that the Information Tribunal was likely to be hybrid tribunal hearing cases in both the Upper Tribunal and in the first-tier as part of the General Regulatory Chamber (GRC). John Angel had been appointed as the interim judicial leader of the GRC which would commence operations in April 2009.

More details of the other tribunals who will be part of General Regulatory Chamber. can be found on the MoJ website: <http://www.justice.gov.uk/news/news.htm>

Rather than having tribunal specific rules of procedure there will be a set of GRC rules which will apply to the Information Tribunal possibly with Practice Directions covering the special processes of the Tribunal. These rules would be going out to public consultation.

## 3 User Group Question & Answers

A number of questions were sent into Tribunal before the meeting. These are set out in tabular format as part of these minutes with the answers provided at the meeting.

1	Information Tribunal Rules – update on progress	See section 1 above.
2	Transforming Tribunals – update on progress and IT's position	See section 2 above.
3	Web – Update on progress	The decision page is being redesigned so that cases will be easier to search for. Also we are considering providing case summaries for precedent setting decisions. These changes should be introduced by the end of 2008.
4	Litigants in person (assistance schemes etc)	Please see section <b>5 Litigants in Person</b> below.
5	Timescales for appeals – update on progress	The Tribunal has a target to promulgate 75% of decisions within 30 weeks from receipt of the notice of appeal.  March 08: 73% within 30 weeks
6	Use of Special Advocate	A practice note will be provided. It is very rare and the costs need to be funded by the parties.
7	Need for advance timetabling of hearing	Initial directions set a timetable to result in the full hearing taking place within 3 months of the directions' hearing.  The aim is for the directions hearing to be held before 10 <sup>th</sup> week of the date of receipt of the appeal and the full hearing by 27 <sup>th</sup> week from the date of receipt of the appeal. We hope to hear all cases well

		within these periods.
8	Additional assistance for unrepresented parties (eg with photocopying)	We do not provide administrative services for any party represented or non-represented.
9	The presence of the Information Commissioner's counsel	The Tribunal considers this very desirable to do justice to the appeal.
10	The website a) precedents and b) precise of Decision Notices	Please see section <b>4 Information Tribunal's Website.</b>
11	Listing issues relating to Counsel availability <ul style="list-style-type: none"> <li>not always given enough time to check availability of counsel/witnesses</li> </ul>	Usually have 4 to 5 months from receipt of the Initial Directions.
12	Listing issues relating to Counsel availability <ul style="list-style-type: none"> <li>or after giving availability dates there can be delay in fixing which causes difficulties for counsel having to keep a number of dates potentially free in the interim</li> </ul>	This is very rare and we will do our best to ensure delays are minimal.
13	Listing issues relating to Counsel availability <ul style="list-style-type: none"> <li>not always taking into account the complexity of the case or additional costs to be incurred if decision taken not to accommodate a party's existing counsel availability</li> </ul>	These should be raised at the Directions Hearing.
14	Issuing Directions of own motion <ul style="list-style-type: none"> <li>sometimes giving very short deadlines on directions made which were not the subject of an application by either party</li> </ul>	Always right to apply for a variation of the directions.
15	Issuing Directions of own motion <ul style="list-style-type: none"> <li>not always giving a period of time for parties to make representations to vary</li> </ul>	This is rare but should be the subject of an application to the Chair.
16	Issuing Directions of own motion <ul style="list-style-type: none"> <li>or varying directions made in response to one side's representations to vary</li> </ul>	Again this is rare but should be raised with the Chair.

	without obtaining/waiting for other party's response, necessitating further subsequent variations	
17	Issues arising from discovery of further relevant material <ul style="list-style-type: none"> <li>• need for directions to take account of the fact that legal team and those instructing them for the departmental client have often not seen the material before.</li> </ul>	Will need to raise this possibility at directions hearing.
18	TCE Act – Impact on the Information Tribunal	Please see section <b>2. Transforming Tribunals</b> above

#### 4 Information Tribunals Website

The website is the Tribunal's public face. It attempts to cover the processes for appealing, lists pending appeals and their current status, and is where our decisions are published. It also contains directly relevant statutory materials, relevant cases from other courts and links to related sites. The Tribunal is aware that due to the growing number of decisions, it has to provide an easier search function.

It is planned to introduce case summaries for precedent setting decisions hopefully before the end of 2008. Work will commence over the summer to establish a suitable format and taxonomy.

A refined search facility will also be introduced, whereby decisions can be sorted by a number of criteria including jurisdiction and subject matter.

There was a request that it should be possible to search by the Public Authority. We are unable to link the site with the ICO's site as the Tribunal must remain independent and impartial.

It was requested that decisions that are being appealed to higher courts should be marked as such. This is already being provided to some extent by a red dot but the Tribunal will look into providing a more appropriate indicator and publishing the decisions of the higher courts.

Although the procedure is explained on the web site some terms will be unintelligible to LIPs such as skeleton arguments. It was agreed that it would be preferable if the Tribunal could provide a lay person's guide to using the Information Tribunal.

#### 5 Litigants in Person

Again there was discussion around providing better guidance for LIPs and the Tribunal undertook to provide such guidance in the near future on the web site and hopefully in leaflet format.

Although legal assistance had been arranged following the first user group meeting no appeals have yet been supported by these agencies, although Friends of the

Earth had received two requests but they were not eligible for support because one was outside FOE's remit and the other was out of time.

## **6 Bundles**

The Chair agreed that Bundles of authorities could now be produced double sided although the agreed bundle of documents would still be expected to be prepared single sided.

A number of issues were raised in relation to bundles particularly because it was not always possible to the Tribunal's bundle to be provided at the hearing because of limited resources. The Tribunal will take this matter into account when issuing directions.

Who is responsible for the bundles? ICO take on the role at present where the appellant is a litigant in person although the ICO would normally expect represented Appellants to prepare the bundles themselves. At present parties are to submit 4 bundles to the tribunal, one of which is a witness bundle, but parties are now asked to provide witness bundle at the hearing. Request to change Precedent Directions; this is under review and will be simplified. Initial directions could be dispensed where a litigant in person is not involved.

## **7 Embargo Decisions:**

There was a concern about the limited availability of embargoed decisions. It was suggested that parties should indicate who they would like to see such a decision as part of final submissions so these names could be included in the terms of the embargo.

It was suggested that the embargo wording used in the Practice Directions is not as restrictive as the wording often used by the Tribunal in practice.