

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT COMPETITION APPEAL TRIBUNAL
(RECORDING AND BROADCASTING) ORDER 2022

Monday 24 January 2022

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The Committee consisted of the following Members:

Chair: ANDREW ROSINDELL

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| † Cartlidge, James (<i>Parliamentary Under-Secretary of State for Justice</i>) | † Hollern, Kate (<i>Blackburn</i>) (Lab) |
| † Cunningham, Alex (<i>Stockton North</i>) (Lab) | † Kruger, Danny (<i>Devizes</i>) (Con) |
| † Evennett, Sir David (<i>Bexleyheath and Crayford</i>) (Con) | † Mann, Scott (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † French, Mr Louie (<i>Old Bexley and Sidcup</i>) (Con) | † Marson, Julie (<i>Hertford and Stortford</i>) (Con) |
| † Goodwill, Sir Robert (<i>Scarborough and Whitby</i>) (Con) | Osborne, Kate (<i>Jarrow</i>) (Lab) |
| † Hammond, Stephen (<i>Wimbledon</i>) (Con) | † Owen, Sarah (<i>Luton North</i>) (Lab) |
| † Hart, Sally-Ann (<i>Hastings and Rye</i>) (Con) | † Spellar, John (<i>Warley</i>) (Lab) |
| Hayes, Sir John (<i>South Holland and The Deepings</i>) (Con) | Stringer, Graham (<i>Blackley and Broughton</i>) (Lab) |
| Hillier, Dame Meg (<i>Hackney South and Shoreditch</i>) (Lab/Co-op) | Huw Yardley, <i>Committee Clerk</i> |
| | † attended the Committee |

Second Delegated Legislation Committee

Monday 24 January 2022

[ANDREW ROSINDELL *in the Chair*]

Draft Competition Appeal Tribunal (Recording and Broadcasting) Order 2022

6pm

The Parliamentary Under-Secretary of State for Justice (James Cartlidge): I beg to move,

That the Committee has considered the draft Competition Appeal Tribunal (Recording and Broadcasting) Order 2022.

As ever, it is a pleasure to serve under your chairmanship, Mr Rosindell, and to start so punctually. The draft order grants the Competition Appeal Tribunal a permanent power to broadcast its hearings to the public by either audio or video technology. This draft order is to be made under section 32 of the Crime and Courts Act 2013 with the concurrence of the Lord Chief Justice and Lord Chancellor. This order will replace the temporary order, which will expire on 25 March 2022. The decision to broadcast is subject to judicial discretion, should the judge have a reason not to allow a hearing to be broadcast.

For Members who are not familiar with it, the Competition Appeal Tribunal, more generally known as the CAT, is a specialist tribunal whose principal functions are to hear and decide cases involving competition or economic regulatory issues, including appeals of decisions by the Competition and Markets Authority and other economic regulators. The CAT is sponsored by the Department for Business, Energy and Industrial Strategy, but, as the power to make this order is conferred on the Lord Chancellor, it has therefore been drafted and laid before Parliament by the Ministry of Justice.

As hon. Members will be aware, during the pandemic courts and tribunals moved to hold hearings remotely using audio and video technology. To ensure open justice was maintained in these circumstances, a temporary provision in the Coronavirus Act 2020 allowed most courts and tribunals to transmit their proceedings to remote observers who had specifically requested access.

The CAT was not included in the Coronavirus Act 2020. To ensure that the CAT could continue to hold its hearings, a temporary statutory instrument under section 32 of the Crime and Courts Act 2013 enabled the CAT to broadcast its proceedings via a link on its website. This has worked very successfully; in a recent case concerning Newcastle United football club, around 33,000 individuals from over 50 countries were interested in watching the hearing, with around 4,000 observers doing so at any one time. The current temporary SI—I suggest that it may not have had quite the same viewing figures—will expire on 25 March 2022, when the Coronavirus Act is also due to expire. Given the success of broadcasting in this tribunal, we are seeking to make permanent the CAT's ability to broadcast its proceedings.

This statutory instrument reproduces the existing temporary order, and it has two additional provisions. One is provision to revoke the temporary order. The other

mirrors provisions in other statutory instruments under this power in relation to the Court of Appeal and Crown court, and requires any use of CAT footage to be fair and accurate. The footage cannot be used for party political broadcast, advertisement or promotion, light entertainment or satire. Additionally, the CAT has guidance to accompany each hearing listed for broadcast containing a warning that it is not permitted for any person to record a livestream hearing, and that breaching this requirement will constitute contempt of court.

This order will strengthen the principle of open justice. It will ensure that those who are interested are able to watch the CAT's proceedings from the comfort of their homes or offices, when it is appropriate to do so and at the judge's discretion.

6.3 pm

Alex Cunningham (Stockton North) (Lab): It is a pleasure to serve under your chairmanship yet again, Mr Rosindell. I thank the Minister for outlining the purpose of this order so clearly and concisely. Like him, I will not delay the Committee very long. He mentioned the Newcastle United case. It is a shame that the Competition and Markets Authority did not share the views of many Newcastle supporters, but we will leave that to one side. I am not particularly a Newcastle fan. It is a north-east team and I would support it, but I certainly support the Middlesbrough team.

Labour Members pride ourselves on campaigning and working for open justice and access for broadcasters to show the world what we and the courts are up to. It is now 32 years since broadcasting of the Commons began. Although many of us might say at times that we would like to see more publicity, there is no doubt that television, radio and online commentators have driven a huge increase in the coverage of our proceedings. Perhaps we will even see more of it with today's great news that ITN and ITV will extend their evening news programme from 30 minutes to an hour.

I think we have been too slow in opening up the courts and tribunals to such scrutiny, so I welcome another step forward with today's order, which will offer the public an insight into yet another tribunal taking decisions that affect them. The Opposition believe firmly in the principles of open justice. We believe that the public should have a right to witness proceedings unless it is in the interests of justice for them not to do so. That is why we supported clause 166 of the Police, Crime, Sentencing and Courts Bill in Committee, although we expressed concern about the fact that regulations could be made only if the Lord Chancellor agreed, and that no external stakeholder would be consulted in that process.

One particularly sensitive aspect of the decision-making process is how regulations will impact on the privacy of court users. During proceedings on the Bill, the Legal Education Foundation explained that if regulations were introduced without input from external experts, they could have serious unintended consequences. Can the Minister outline what risk he foresees for those who take part in proceedings in the Competition Appeal Tribunal, what consideration he has given to unintended consequences and how they might be mitigated? With that, I confirm that we will not be opposing the order.

6.6 pm

James Cartlidge: It is always good fun to participate in proceedings with the hon. Gentleman, who has revealed where his loyalties lie in north-eastern football. I remember the glory days of Middlesbrough when Juninho and others were playing. Perhaps now the players know they have such powerful political backing, they will once again to seek to scale great heights in the football world.

My main substantive point is to reiterate that a quirk has led to these measures not being included in the Coronavirus Act, and it is necessary to extend them. We have been very successfully holding proceedings in the Competition Appeal Tribunal in this way, so I do not foresee any particular adverse consequences; we would have heard of any such consequences already. I believe the draft order is necessary as it will allow the CAT to broadcast its hearings, and that will strengthen the principle of open justice in relation to this particular

tribunal. I commend the hon. Gentleman; with his journalistic background, he has been stalwart on the principle of open justice in our exchanges to date.

I have outlined the safeguards we have in place to ensure that broadcasting in the manner prescribed in the order does not hinder the proper administration of justice. That, alongside judicial discretion, should reassure the Committee that broadcasting will take place only when the judge considers it appropriate. This order replaces and builds on the success of the temporary order, which has been in place for more than 18 months and has been well received by the CAT and its stakeholders. I therefore commend the draft order to the Committee.

Question put and agreed to.

6.8 pm

Committee rose.

