

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT COMPETITION APPEAL TRIBUNAL
(CORONAVIRUS) (RECORDING AND
BROADCASTING) ORDER 2020

Monday 13 July 2020

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Friday 17 July 2020

© Parliamentary Copyright House of Commons 2020

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: † Ms ANGELA EAGLE

Ali, Rushanara (<i>Bethnal Green and Bow</i>) (Lab)	† O'Brien, Neil (<i>Harborough</i>) (Con)
† Baldwin, Harriett (<i>West Worcestershire</i>) (Con)	† Philp, Chris (<i>Parliamentary Under-Secretary of State for Justice</i>)
Butler, Dawn (<i>Brent Central</i>) (Lab)	† Pursglove, Tom (<i>Corby</i>) (Con)
Byrne, Liam (<i>Birmingham, Hodge Hill</i>) (Lab)	† Saxby, Selaine (<i>North Devon</i>) (Con)
Cadbury, Ruth (<i>Brentford and Isleworth</i>) (Lab)	† Spencer, Dr Ben (<i>Runnymede and Weybridge</i>) (Con)
† Carter, Andy (<i>Warrington South</i>) (Con)	Timms, Stephen (<i>East Ham</i>) (Lab)
† Charalambous, Bambos (<i>Enfield, Southgate</i>) (Lab)	
Coutinho, Claire (<i>East Surrey</i>) (Con)	Ben Street, <i>Committee Clerk</i>
† Cunningham, Alex (<i>Stockton North</i>) (Lab)	
† Edwards, Ruth (<i>Rushcliffe</i>) (Con)	† attended the Committee
Higginbotham, Antony (<i>Burnley</i>) (Con)	

Third Delegated Legislation Committee

Monday 13 July 2020

[MS ANGELA EAGLE *in the Chair*]

Draft Competition Appeal Tribunal (Coronavirus) (Recording and Broadcasting) Order 2020

4.30 pm

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

That the Committee has considered the draft Competition Appeal Tribunal (Coronavirus) (Recording and Broadcasting) Order 2020.

It is a pleasure to serve under your chairmanship, Ms Eagle, I think for the very first time—the first of many, I hope. The draft order grants the Competition Appeal Tribunal a temporary exception to section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981, allowing it to broadcast its hearings to the public either by audio or video link. The exception will apply until March 2022—it is time-limited and subject, as always, to judicial discretion, should the judge have a reason not to allow broadcast.

As I am sure Committee members know, the Competition Appeal Tribunal, more commonly known as the CAT, is a specialist tribunal whose main function is to hear and decide appeals on decisions from the Competition and Markets Authority and some other regulators. As Members are aware, the covid pandemic means that courts and tribunals throughout the country must adhere to public health measures. However, in order to allow justice to be seen to be done, we legislated in the Coronavirus Act 2020 to allow tribunals to conduct hearings via electronic means. However, owing to the speed with which that Act was passed, and because the CAT sits outside the unified tribunal structure, there was an oversight by which the CAT—I apologise, Ms Eagle, I can see your disapproval—was inadvertently omitted from the broadcasting exemption. We are taking the opportunity now to correct that, so that the proceedings of that tribunal can be publicly broadcast until the expiry of the regular Act, which is, as I said, 25 March 2022.

The draft order is relatively uncontentious and simply rectifies an oversight that occurred in the haste with which the Coronavirus Act was prepared three or four months ago.

4.32 pm

Alex Cunningham (Stockton North) (Lab): Thank you very much, Ms Eagle. This is also the first time that I have served under your chairmanship. It will be a brief service on this occasion.

I thank the Minister for summarising the purpose of the statutory instrument, which in the Opposition's view makes perfect sense and brings the procedures of the Competition Appeal Tribunal—the CAT—into line with other courts and tribunals, and corrects the

Government oversight that he mentioned. We support the important provisions contained within the Coronavirus Act 2020 to allow the use of video and audio technology in courts and tribunals. That allowed for cases to be heard remotely, as well as for certain proceedings to be broadcast, and in so doing upheld the vital principle of open justice.

As we know, although those provisions extend to the High Court and other tribunals, they did not extend to the CAT. As a result, CAT proceedings currently take place effectively on a closed basis. If someone wishes to observe the proceedings, they must register their interest with all parties to the proceedings, and that request must then be approved. That is, in effect, an obstacle to open justice.

As a result of that problem, there is a real risk that the legitimacy of proceedings before the CAT could be challenged, on the basis that they have not been conducted in accordance with the rules of the tribunal. That real risk must be avoided, and for that reason, Labour supports the draft order, which will enable the tribunal to continue to carry out its statutory functions in accordance with its own rules, and in public. It is vital that the concept of open justice be defended, and that all proceedings in all courts and tribunals that were available to the public before coronavirus are still open to the public today.

I have, however, a few questions for the Minister. First, how will he ensure that there is full access to justice, with an ability to participate fully for all those involved, and particularly those who take part remotely? Secondly, what plans does he have to monitor the effects of the provisions of the draft order to ensure that they operate as they should and that there are no unintended consequences? Finally, will he update the Committee on the current backlog of work facing the Competition Appeal Tribunal and his plans to deal with it?

4.35 pm

Chris Philp: I will briefly address those questions. On the issue about justice not being seen to be done, I entirely concur with the shadow Minister, and that is why we moved quickly to approve the draft order today. During the pandemic, four hearings have taken place under the circumstances he described. As he says, people who wished to view those proceedings could apply to the judge to do so, but that is not the best way of doing it. We would rather that proceedings were broadcast openly, which is what will now happen as a consequence of the draft order. The judge will of course oversee how that happens, to make sure that proceedings take place in the right way and that the relevant participants can participate fully. That answers the first question posed by the hon. Gentleman.

We will of course be in close contact with the judiciary to receive feedback from them as they observe how proceedings unfold. However, the use of broadcast in the unified tribunal system and, indeed, of remote hearings more generally, has been a great success in the last few weeks and months. Every day, about 4,000 hearings take place by audio and video across the entire justice system, which is getting on for 10 times higher than the number that were heard before. In fact, that equates to about half of all hearings that happened in person

previously, so there has been an enormous move towards audio and video participation. The draft order refers to broadcast, which is different, but I just make that point since the shadow Minister raised it himself.

On the shadow Minister's final question on the backlog, as he will gather from the fact that only four such hearings have taken place in the last three months, this is a very low-volume tribunal. Not that many decisions are made by the Competition and Markets Authority, so the CAT does not have issues with high caseloads that some parts of the system experience. However, we will of course monitor performance carefully.

More generally, the shadow Minister will have read the courts recovery plan, which was published recently and which aims to get the entire court system—not only tribunals—up and running as quickly as possible, reopening all physical locations by the end of this month and opening 10 brand-new locations as well and exploring the possibility of extended opening hours. I am sure that we share the objective of making sure that justice is done not only openly but rapidly.

Question put and agreed to.

4.37 pm

Committee rose.

