



SENIOR PRESIDENT
OF TRIBUNALS

SIR ROBERT CARNWATH CVO
SENIOR PRESIDENT OF TRIBUNALS

ASSIGNMENT

SENIOR PRESIDENT'S POLICY STATEMENT

1. This document is made under the Tribunals, Courts and Enforcement Act 2007, Schedule 4, paragraph 13. It replaces my policy statement in relation to the First-Tier Tribunal Tax Chamber.
2. It should be borne in mind throughout that all assignment decisions require the agreement of the individual and (except for first appointments and High Court judge deployments) the agreement of the receiving Chamber or Tribunal President. An assigned judge or member can expect to undertake any training required (whether the standard induction training for the chamber, or bespoke arrangements) and to be part of any ticketing and appraisal arrangements in the new chamber or tribunal.

GENERAL PRINCIPLES

3. The power to assign between chambers and tribunals exists primarily to allow the work of the tribunals to be dealt with in the most efficient and effective manner possible. The starting point for this policy, and decisions made under it, is therefore business need – that is, the power to assign is to be used where the chamber or tribunal would benefit from the extra help which assignment can bring.
4. Assignment is not automatic but is selective. The choices about individuals may be based on existing expertise, performance in existing judicial office(s), track record, potential and/or appraisal.

5. Assignment is not to be regarded as permanent. It may be for a fixed period or involve a probationary period. If the business need declines, or an individual's performance does not meet the standards required (which may vary over time), their assignment may be revoked.
6. In devising this policy statement I have had particular regard to:
 - My duties under s2(3) of the Tribunals, Courts and Enforcement Act 2007
 - The importance of encouraging diversity in the judges and members of tribunals
 - The resource implications of assignment (eg training) but also of judges and members travelling long distances to provide national coverage;
 - The feasibility of establishing fair but proportionate processes to implement my policies.

THE BALANCE BETWEEN ASSIGNMENT AND RECRUITMENT

7. Assignment now makes it possible, in theory, for almost all tribunals' needs to be met through assignment. However, a steady flow of new judges and members into the tribunal system is desirable, to bring in fresh thinking, to maintain a reasonable age profile and to enhance diversity. These policies should therefore always be balanced against the benefits which recruitment can bring.

UPPER TRIBUNAL

8. The Upper Tribunal currently has three chambers - the Administrative Appeals Chamber created in November 2008, a Chamber dealing with Finance and Tax cases created in April 2009, which may later expand to become a more general Chancery Chamber, and a Lands Chamber created in June 2009.
9. The largest group of judiciary are the former Social Security Commissioners. There are also the former Special Commissioners of Income Tax, two High Court Judges, First-Tier Tribunal Chamber Presidents and a small number of other judges. The overall numbers are small, especially as compared to the

First-Tier Tribunal. A flexible approach to deployment is necessary in order to dispose of the Upper Tribunal's work with sufficient expertise. Some of its business requirements, being novel, are unpredictable at this stage.

10. The former Social Security Commissioners have already been assigned to the Administrative Appeals Chamber. The former Special Commissioners have been assigned to the Finance and Tax Chamber. They have also been assigned to the Administrative Appeals Chamber to be available for tax-related judicial reviews. If an individual as a result of a transfer order holds different offices in the Tribunal (eg as judge in the first chamber and a deputy judge in the second) I will assign him/her to the second chamber so that he/she holds the same office in both chambers.
11. Some of areas of law dealt with by the Upper Tribunal overlap or raise common issues across the chambers so I will be prepared to assign individual judges to one or other of the Chambers where in the view of the Chamber President the expertise from that Chamber would be particularly appropriate for the case or where it would be desirable that a panel sits with judges from both chambers.
12. Different considerations apply to the Lands Chamber. This chamber will in effect take over the existing jurisdiction of the Lands Tribunal. There is only one permanent judge and a small number of surveyor members. The need to draw on the courts for legal expertise for the Lands Chamber has already been identified and it will therefore be my policy to assign selected Circuit or other Upper Tribunal Judges with the relevant specialist expertise to this chamber.
13. The particular expertise of the surveyor members of the Lands Chamber and the expert members in other chambers may be useful outside their home chamber and it will be my policy to assign them to other chambers of the Upper Tribunal as and when the need arises.

14. A second basis for assignment is professional development. I will assign judges to other chambers for the purposes of professional development, even when there is no immediate business need, provided that there is sufficient reciprocity so that one chamber or tribunal does not have its judicial resources unreasonably depleted.
15. Finally, it may be desirable for judges of the Upper Tribunal to sit in the First-tier Tribunal so as to become familiar with areas of work with which they are unfamiliar but which they may have to deal with on appeals or judicial reviews. In those circumstances I will assign them to the appropriate chamber of the First-tier Tribunal. They may be required by the chamber president to undertake standard or bespoke training before they deal with cases.

FIRST-TIER TRIBUNAL

16. For the purposes of this policy document I treat the all chambers and the Asylum and Immigration Tribunal in the same way.
17. My primary consideration in assignment is business need, as defined in paragraph 2 above. I will assign judges to different chambers where it is clear that that chamber needs additional judges because:-
 1. There are insufficient judges in the chamber for the workload or
 2. There are insufficient judges who are able to take on a particular area of a chamber's work; or
 3. There are difficulties in finding sufficient judges for particular locations; or
 4. The work of the chamber can be met only by increasing the number of days sat by fee-paid judges to an unreasonable level; or
 5. There has been a sudden increase in work and temporary assistance is required from judges in other chambers with existing expertise while sufficient judges are recruited or trained.
18. Business need includes anticipated business need so where an increase in workload is expected but has not yet materialised I will be prepared to

assign judges from other chambers in order that there is sufficient expertise in place when the workload does increase.

19. A second basis for assignment is professional development. I will assign judges to other chambers for the purposes of professional development, even when there is no immediate business need, provided that there is sufficient reciprocity so that one chamber or tribunal does not have its judicial resources unreasonably depleted.
20. Subject to business need, a judge assigned to another chamber will be expected to sit for enough days to sustain a reasonable level of expertise. This will vary from chamber to chamber. There will be no upper limit to the proportion of time which an assignee spends in each chamber provided that the chamber presidents agree.
21. Judges who wish or are prepared to be assigned to an additional chamber or tribunal must expect to be assessed in some way as to their suitability so that the Chamber or Tribunal President concerned can form a view as to whether he or she should accept them. If there is a surplus of suitable candidates I will have regard to location. All other things being equal salaried judges can expect to be preferred over fee-paid judges.

NON-LEGAL MEMBERS

22. The policies set out above for judges, including those relating to professional development, will also apply to members. Non-legal members bring professional and other expertise much of which is not specific to one jurisdiction, particularly among some types of medical members. However, there are still resource implications in assigning non-legal members. I will therefore not assign non-legal members *en bloc* to other chambers. Instead I will have regard to the particular needs of a chamber or tribunal in terms of location and/or specialist expertise.

COURTS JUDGES

23. Courts Judges will normally only come into the tribunals system if they bring some particular expertise not otherwise available, or which is not available at the right level. Their potential contribution to the tribunal system will therefore have been identified before they have been invited. My policy will be to assign them only to the chamber or tribunal for which their expertise has been identified as relevant.

PROCESS

24. All judges and members will have a regular opportunity to identify any wishes to be assigned to an additional chamber or tribunal. Where a selection is needed a fair process will be followed. The outline process will be published separately and will not form part of this statement of policy.

The Rt Hon Sir Robert Carnwath CVO

Senior President of Tribunals

2 June 2009

Bridget Prentice MP, on behalf of the Lord Chancellor, the Rt Hon Jack Straw

MP

24 June 2009