

Proposal to amend the Tribunal Composition Statement of the First-tier Tribunal (General Regulatory Chamber)

Stakeholder consultation by
Sir Jeremy Sullivan, Senior President of Tribunals

14th August 2014

Introduction

1. This consultation, on behalf of the Senior President of Tribunals (SPT) Sir Jeremy Sullivan, seeks your views on amending the Senior President's practice statement regarding the composition of panels in the First-tier Tribunal (General Regulatory Chamber).
2. The aim of both the SPT and the Chamber President is to ensure the jurisdiction can provide the most effective service to its users.
3. Views are requested from individuals and organisations. They should be sent to the email address sean.cuthbert@judiciary.gsi.gov.uk by 5pm on **Friday 3rd October 2014**.

Background to panel composition

4. The SPT's power to determine the composition of a tribunal derives from The First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008: <http://www.legislation.gov.uk/ukSI/2008/2835/contents/made>
5. It states:

Number of members of the First-tier Tribunal

2.—(1) The number of members of the tribunal who are to decide any matter that falls to be decided by the First-tier Tribunal must be determined by the Senior President of Tribunals in accordance with paragraph (2).

(2) The Senior President of Tribunals must have regard to—

(a) where the matter which falls to be decided by the tribunal fell to a tribunal in a list in Schedule 6 to the Tribunals, Courts and Enforcement Act 2007 before its functions were transferred by order under section 30(1) of that Act, any provision made by or under any enactment for determining the number of members of that tribunal; and
(b) the need for members of tribunals to have particular expertise, skills or knowledge.

6. The SPT is considering a change to the composition of panels within the Chamber dealing with information rights cases, and wishes to consult stakeholders on the proposed change of practice before coming to a final decision.
7. The SPT's decision on composition for each tribunal chamber is recorded in a composition statement. The Chamber President (CP), under delegated powers, determines the composition of an individual tribunal within the framework of that statement.
8. The former SPT, Lord Carnwath, set out his approach to composition in his First Implementation Review in 2008:
<http://www.judiciary.gov.uk/publications-and-reports/reports/Tribunals/spt-first-implementation-review>
9. He said at paragraph 66:

“The composition of the tribunal for individual hearings will be governed by an order made by the Lord Chancellor under paragraph 15 of Schedule 4 of the TCE Act [Tribunal, Courts & Enforcement Act 2007]. Where that order provides me with discretion as to the composition of a tribunal, it is my intention to start in general with a policy of maintaining established principles for different categories of case, unless and until there is shown to be good reason for change. I will expect Chamber Presidents in due course to review the current arrangements, in consultation with their judges, members and users. The general objective should be to ensure that the best use is made of judges and members, following the principles originally derived from the Leggatt review, and developed in the Consultation Paper Transforming Tribunals.”

10. The Chamber President Judge Nicholas Warren has reviewed the current arrangements concerning the use of non-legal members. An earlier draft of this document has been considered by the Tribunal’s user group and by tribunal judges and members. The SPT now wishes to consult a wider stake holder community before coming to a conclusion on this issue.

The present practice statement

11. The present practice statement requires that, when a final decision is given, the Tribunal should be composed of one judge and two other members with two exceptions; those are where a case is struck out under rule 8 and where a case is disposed of by means of a consent order.
12. Other jurisdictions within the chamber such as charities, claims management and environment have greater flexibility and are able to vary the composition of the Tribunal to suit the subject matter of the appeal.

Proposal

13. The proposal is to vary the practice statement so as to give the Chamber President the flexibility to allow some cases to be decided by a Judge sitting alone.
14. For the vast majority of cases, the Chamber President proposes that members with substantial experience of data protection or the freedom of information should continue to sit on Tribunals which give final decisions. Nor does he propose any reduction in the number of members forming a Tribunal panel.
15. It does appear, however, that there are a small number of appeals which could be decided swiftly and proportionately by a Judge sitting alone. It is proposed that a final decision could be taken by a Judge sitting alone where:-
 - a. The issue before the Tribunal is whether the public authority holds the information.
 - b. The issue before the Tribunal is whether the public authority is in breach of the time limit.
 - c. The issue before the Tribunal is whether the cost of compliance with the request exceeds the costs limit.
 - d. The issue before the Tribunal is whether information is readily accessible by other means.
 - e. A public authority appeals against an information notice or enforcement notice issued under the Freedom of Information Act

- f. Cases where a single judge is already familiar with the evidence because of previous involvement with the case and all parties are content that a decision should be taken without a hearing.

Equality and diversity

16. In making his final decision, the SPT will consider the likely equality and diversity impact of the proposal. He would therefore welcome any views and evidence consultees may wish to provide on this issue.

Consultation questions

17. Views are invited on the following questions:

- Q1. Do you agree with the Chamber President's proposals to implement changes to panel composition as outlined? If not, please give reasons.
- Q2. Do you consider that these proposals will have an impact on equality and diversity issues? If so, please explain.
- Q3. Do you have any other comments regarding the proposal?

How to respond

18. Please send your consultation responses by 5pm on **Friday 3rd October 2014** to sean.cuthbert@judiciary.gsi.gov.uk

19. or by post to:

Sean Cuthbert
Senior President of Tribunals' Office
Room E218
Royal Courts of Justice
London
WC2A 2LL

20. Please state whether you are responding as an individual or on behalf of an organisation.

Confidentiality

21. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
22. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding.
23. Your personal data will be processed in accordance with the DPA and in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties.