

Consultation on Information Rights Tribunal Composition – Response of the Senior President of Tribunals

A. Introduction

1. In 2008 the then Senior President stated that in due course he expected Chamber Presidents to review arrangements for the composition of the tribunal. 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. In a consultation paper issued in August 2014, as his successor as Senior President, I proposed to vary the present GRC practice statement so as to give the Chamber President the flexibility to allow some cases to be decided by a Judge alone. No reduction in the number of members forming a tribunal panel was proposed. The vast majority of cases would still be decided by a judge sitting with members with substantial experience of data protection or freedom of information. Six categories were proposed as potentially suitable for decision by a judge sitting alone. Three responses from stakeholders have been received. Some judges and members in the jurisdiction have made their views known through the Chamber President.

B. Some General Comments

2. It is convenient, before turning to the specific proposals to consider first some general comments that have been made.
3. There was broad support for the proposal that more cases might be suitable for decision by a Judge alone but some general objections were raised.
4. One stakeholder would not support any change in procedure based on the assumption that the cases identified could normally be dealt with more simply than others. One member considered that there would be no advantage to be gained because it would be necessary for a judge to check every case to see if it fell into the new categories. Another member considered that there should be three members on the tribunal whenever a hearing was held.
5. Reply The reasoning behind the proposal is not so much a task of identifying those cases which are “simple”; rather it is to take into account those cases in which the

members experience is most valuable and then decide whether there are some cases in which it is proportionate to extend the jurisdiction of a judge sitting alone.

Given the nature of the proposed categories, it is not considered that disproportionate time would be spent identifying appeals which are suitable for a judge sitting alone.

6. It is not considered that the request for an oral hearing is itself a reason why members should be allocated to hear the case.

C. The Specific Proposals

7. Whether information is held by or on behalf of a public authority. This was the specific proposal which generated most opposition. It was suggested that members remained of great value in this type of case because of their experience of working in large organisations and their ability to scrutinise the effectiveness of a public authority's search for information. Other stakeholders, judges and members supported the proposal.
8. Reply The expertise and experience of members is such that the judges rightly value their contributions in all cases at the moment. It is inevitable that three persons will have a broader range of experience than one. Nevertheless, on balance, it is considered that this is a category of cases in which it would be proportionate for the tribunal to consist of a judge sitting alone.
9. Time Limits. Most respondents supported this proposal with one member suggesting that these are cases which would benefit from the insight of members.
10. Reply. It is considered that these cases are suitable for decision by a judge alone.
11. The costs limit. This proposal elicited a mixed response from judges and members. One of the stakeholders pointed out that although there is a fixed monetary limit under the Freedom of Information Act (FOIA), this issue when it arises under the Environment Information Regulations (EIR) is dealt with according to whether the request is regarded as "manifestly unreasonable" and queried whether a different approach should apply to cases under EIR.
12. Reply Cases under FOIA involving the costs limit are considered to be suitable for a decision by a judge sitting alone. The test to be applied under the EIR is less clear cut and often overlaps with other questions involving the request similar to those dealt with under the "vexatious requests" provision in FOIA. For these reasons, it is considered that questions under the EIR as to whether a request is "manifestly unreasonable"

should continue to be decided by a three person panel. The new composition statement will be drafted to ensure clarity as to the extent to which cases under EIR are affected.

13. Information Readily Accessible by Other Means. Most respondents agreed with this proposal.
14. Reply Whilst it is accepted that members have had an input into these cases in the past, it is considered proportionate for these cases to be decided by a judge sitting alone.
15. Information Notices and Enforcement Notices. With the exception of one or two members, respondents generally agreed with the proposal that cases involving information notices should be decided by a single judge. Indeed this was the practice of the former information tribunal. Appeals against enforcement notices are described by stakeholders who query this part of the proposal as “rare” and “unknown”.
16. Reply Information notices are suitable for decision by a judge alone. It appears to have been an oversight not to carry over this practice from the old information tribunal. The tribunal has so little experience of enforcement notice appeals that the status quo should prevail and they will continue to be regarded as suitable to be heard by a three person panel.
17. Paper decisions where a judge is already familiar with the evidence. This category was, with one or two exceptions, generally supported as suitable for decision by a judge sitting alone but there were some queries as to the use it was intended to make of the proposal.
18. Reply This category is suitable for decision by a judge sitting alone. It will apply wherever the parties have consented to a determination without a hearing. They will not be asked to give additional consent to the composition of the Tribunal. It is not proposed that, where a three person panel has adjourned a case, that the case thereafter should be dealt with by a judge sitting alone. Rather, if a case is ready for decision on the papers and, for case management or other reasons a judge is familiar with it, the judge will take the decision so as to avoid delay for tribunal users.

D. Diversity

19. One member pointed out that a three person panel is likely to be more diverse in all sorts of ways than a single person. This is obviously the case but it is not considered that the proposals will have a material impact on equality and diversity issues.

E. Other Comments

20. One stake holder enquired whether there would be a practice direction or guidance from the Chamber President. It is expected that all the required information will be given in amendments to the Tribunal Composition Statement.
21. One stakeholder asked whether the consent of the parties should be required. Generally speaking, the composition of a tribunal does not require the consent of tribunal users and it is not proposed to introduce a system of individual consent to these proposals. One member proposed that after 12 months, the new proposals should be reviewed by reading through all the bundles for the cases affected. The Chamber President will, as part of his general oversight of the chamber, be alert to the workings of the new proposals and will always be ready to listen to comments. It is not, however, intended to conduct a formal review such as is proposed.
22. Some respondents proposed adding other types of appeal which might be suitable to be heard by a judge sitting alone:-
 - (a) Vexatious requests
 - (b) Information directly or indirectly supplied by bodies dealing with security matters.
 - (c) Information intended for future publication.

As Senior President, I am grateful for these suggestions. In my view, the first two of them are of a nature which would require a separate consultation so it would be unfair to act upon them at this stage. The third category is sufficiently close in nature to those types of case already consulted upon and will be added to the list.