

Proposal to amend the Composition Statements of the following Chambers of the First-tier Tribunal:

- **General Regulatory Chamber;**
- **Social Entitlement Chamber;**
- **Property Chamber; and**
- **Health, Education and Social Care Chamber**

Consultation by

Rt. Hon. Sir Ernest Ryder, Senior President of Tribunals

18 February 2020

Introduction

1. This consultation, on behalf of the Senior President of Tribunals (SPT) seeks your views on amending the composition statements for the following Chambers of the First-tier Tribunal:
 - a. General Regulatory Chamber;
 - b. Social Entitlement Chamber;
 - c. Property Chamber;
 - d. Health, Education and Social Care Chamber.
2. The aim of the Presidents of those Chambers is to ensure that each jurisdiction can provide the most effective service to its users. The SPT will decide whether in each case the President's proposals are likely to achieve this.
3. Views are requested from individuals and organisations. They should be sent to the email address SeniorPresidentTribunalsOffice@judiciary.uk by 5pm on 31 March 2020.

Background to panel composition

4. The SPT is responsible for determining panel composition by virtue of The First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008, which was made by the Lord Chancellor under section 145(1) of, and paragraph 15 of Schedule 4 of, the Tribunals, Courts and Enforcement Act 2007.
5. The Order contains the following provisions:

'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 a practice direction in accordance with paragraphs (2) and (3) below.

(2) The Senior President of Tribunals must determine whether the tribunal consists of one, two or three members.

(3) The Senior President of Tribunals must have regard to—
 - (a) the nature of the matter that falls to be decided and the means by which it is to be decided; and***
 - (b) the need for members of tribunals to have particular expertise, skills or knowledge.'***
6. The SPT is considering the composition changes set out in detail below, and wishes to consult on the proposed changes of practice before coming to a final decision.
7. On 1 November 2019, the SPT issued a Practice Direction in relation to composition requirements for new appeal and application rights in the First-tier Tribunal, General Regulatory Chamber. He did this on a pilot basis, for a period of six-months. As part of this Consultation, he wishes to consult on the panel composition requirements for those new

appeal and application rights, before deciding whether the pilot arrangements should be altered or made permanent.

8. The SPT's decision on composition for each tribunal chamber is recorded in a Practice Direction, which must be approved by the Lord Chancellor. The President of each Chamber, under delegated powers, determines the composition of a particular panel within the framework of that statement.
9. A former SPT, Sir Robert 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>

10. 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."

11. The Presidents of the General Regulatory Chamber, Social Entitlement Chamber, Property Chamber and Health, Education and Social Care Chambers have reviewed the composition statements for their Chambers and made various proposals that they consider would improve their Chambers' arrangements. The President of the General Regulatory Chamber has also reviewed the pilot Practice Direction mentioned above. The SPT now wishes to consult more widely before making any decisions on possible changes to composition.
12. The SPT adopts the approach set out at paragraph 10 above and is conscious that practices may need to change to reflect changing need over time.

The present composition statements and GRC pilot Practice Direction

13. The present composition statements, and the Practice Direction dated 1 November 2019 in relation to composition requirements for new appeal and application rights in the First-tier Tribunal, General Regulatory Chamber, are attached at Appendix A to this Consultation.

Proposals

General Regulatory Chamber

14. The Chamber President proposes that the pilot arrangements set out in the Practice Direction issued on 1 November 2019 continue, and that they are incorporated (without being time-limited) into the composition statement for all cases within the Chamber.

15. The Chamber President considers that there are some decisions that can be taken swiftly and proportionately by a Judge sitting alone, but which currently require a panel because the composition statement sets out requirements based on whether a decision 'disposes of proceedings or determines a preliminary issue'. She proposes that the arrangements are altered so that the following decisions in all General Regulatory Chamber jurisdictions are taken by a Judge sitting alone:

- a. a decision under rule 17 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (the 'GRC Rules') where there is consent to a withdrawal;
- b. a decision under rule 8 (striking out a party's case) of the GRC Rules;
- c. a decision under rule 37 (consent order) of the GRC Rules;
- d. a costs application determination under rule 10 of the GRC Rules;
- e. the giving of directions (including the determination of a preliminary issue) under rule 5 of the GRC Rules;
- f. the fresh consideration of a matter under rule 4(3) (decisions made by authorised members of staff) of the GRC Rules;
- g. the determination of an application under rule 14 (disclosure/publication of documents) of the GRC Rules;

16. The Chamber President considers that either two or three-person panels should be permitted under paragraph 8 (Estate Agents Appeal cases), paragraph 11(1) (Information Rights cases) and paragraph 12 (Immigration Services cases) of the composition statement. The flexibility to allow two-person panels is already available for other jurisdictions within the Chamber, so its extension would provide consistency. She considers it would also make it easier for panels to proceed when a non-legal member is taken ill or is otherwise unavailable, thus avoiding delay and inconvenience for the parties.

17. The Chamber President would like the following categories of cases to be added to paragraph 11(3) of the composition statement, to enable such matters to be heard by a Judge alone where she considers it appropriate:

- a. **Cases where the issue is whether the public authority is entitled to rely on an absolute exemption** - The engagement of an absolute exemption is a pure matter of law, so she considers that the specialist experience of non-legal members is not needed and using a panel is therefore not proportionate. This is to be distinguished from 'qualified exemption' cases, where non-legal members would continue to be involved, as their experience and input is relevant to the application of the public interest balancing test.
- b. **Enforcement appeals** – This encompasses cases where the appeal is against an information notice, an assessment notice, an enforcement notice, a Penalty, a Penalty Variation, or a "special purposes" determination served under the Freedom of Information Act 2000 ('FOIA') or the Data Protection Act 2018 ('DPA 2018') by the Information Commissioner, or served under other legislation by any other authority. The Chamber President believes these matters are suitable for determination by a Judge alone, as they do not engage the specialisms of non-legal members. The current composition statement permits a Judge alone to hear FOIA enforcement cases, but requires a full panel for DPA 2018 enforcement. The

Chamber President considers that this proposal would allow more flexibility and provide consistency.

Social Entitlement Chamber

Social Security and Child Support Cases

18. The Chamber President's view is that in some cases (for example, where additional persuasive evidence has been submitted since a decision was first considered), it is very clear what the outcome of the case will be. In such cases, the skills and experience of medical and disability tribunal members may be unnecessary. The Chamber President therefore proposes that the composition statement should be varied to give him the flexibility to allow the following types of cases to be decided by a Judge alone:
- a. Where all the parties have agreed to a decision;
 - b. Where it is clear that an appellant is going to be successful, or partly successful;
 - c. Where an appellant has no reasonable prospects of success.
19. In cases where there has been no Personal Independence Payment consultation (e.g. appeals involving the failure to attend a consultation or provide information without good reason), the Chamber President proposes that the composition requirements be made more flexible, to allow him to decide whether it is appropriate to use a three-person panel (as per the current arrangements); a Judge and one Tribunal Member; or a Judge sitting alone. In his view, cases which do not involve the assessment of daily living and mobility activities do not always require the expertise of non-legal members and it would make better use of the Chamber's resources if there was more flexibility and would provide a speedier disposal and thus an enhanced service to users. A similar process is in effect for Employment Support appeals and runs efficiently and without adverse comment, the need for a full panel in Personal Independence cases is anomalous.
20. The Chamber President considers that paragraph 12 of the composition statement should remain in its current form. Under paragraph 12, where a panel consists of a Judge and one other member, the Judge is the presiding member. Under article 8 of The First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008, where a decision of a panel is not unanimous, the presiding member has the casting vote. The Chamber President considers this to be a sensible way for the outcome to be decided in this situation.

Criminal Injuries Compensation Cases

21. The Chamber President considers that he should have the flexibility to list cases for hearing before a Judge sitting alone where:
- a. only the Appellant's eligibility under the Criminal Injuries Compensation Scheme is at issue, or;
 - b. the Criminal Injuries Compensation Authority alleges that there are grounds for withholding or reducing an award.
22. These cases generally involve questions of fact, and the Chamber President's view is that they could generally be determined justly and proficiently without the requirement for a medical/lay member's expertise. Amending the Composition Statement in this way would save resources and make it possible to list and resolve appeals more quickly.

23. The Chamber President considers that current arrangements should remain in force for all cases involving assessment/quantum.

Property Chamber

24. The Chamber President would like the composition arrangements for Land Registration cases to be clarified. The composition statement currently defaults to the arrangements at paragraph 3, with the Chamber President deciding whether a matter ought to be dealt with by one, two or three members. The Chamber President proposes that this ought to be amended to state that such cases will be heard by a Judge sitting alone.
25. In Agriculture and Land Drainage cases, the Chamber President proposes the amendment of the composition statement to allow a Judge alone to decide issues of law, even if such a decision disposes of proceedings without consent. Her rationale is that non-legal members are not qualified to add insight into questions of law, so it is disproportionate to use a panel on purely legal matters.
26. The Chamber President proposes the amendment of paragraphs 11 and 12 of the composition statement to allow her, or her nominee, to direct that a matter must be dealt with by a salaried Judge. The reason for this proposal is to make it possible for a more experienced Judge to take over conduct of a particularly challenging issue, even if the original Judge who was involved in the case is still available. It is anticipated that this will occur rarely, but the Chamber President wishes to have the flexibility to ensure that parties receive the best possible service.
27. The Chamber President proposes the amendment of paragraph 13 of the composition statement so that a Regional Surveyor can also select the presiding member on a panel.

Health, Education and Social Care Chamber

28. In Special Educational Needs and Disability cases, the Chamber President proposes the removal of the requirement in paragraph 6 for the Judge and specialist member on a two-person panel to have sat on at least 25 hearings within the jurisdiction. This would allow the Chamber President to assess the capability of the panel members and select members for panels based on skill rather than because they have completed an arbitrary number of sittings. This process would be informed by reports from judicial mentoring, supervising judges and appraisal outcomes.
29. The Chamber President also proposes the amendment of paragraph 6 of the composition statement to allow a two-Judge panel sitting with a specialist member to hear particularly complex cases and in order to offer training and support to judicial office holders. The opportunity to offer supported sitting for newly appointed judges and those in need of further training is regarded as positive action to ensure good practice.
30. In Primary Health Lists cases and Care Standards cases, the Chamber President proposes that two-person panels should be permitted in appropriate cases. This would allow the Chamber President to tailor more effectively the composition of the panel to the complexity and subject matter of the case and use judicial resources more efficiently and provide a speedier and more efficient service to users.

Equality and diversity

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

Consultation questions

32. Views are invited on the following questions:

- Q1. Do you agree with the Chamber Presidents' proposals outlined above? 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 proposals?

How to respond

33. Please send your consultation responses by 5pm on 31 March 2020 to:

SeniorPresidentTribunalsOffice@judiciary.uk

or by post to:

Catherine Yallop
Senior President of Tribunals Office
Room C120
Royal Courts of Justice
The Strand
London
WC2A 2LL

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

Confidentiality

35. 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 FOIA, The General Data Protection Regulation (GDPR) and the DPA 2018).

36. 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.

37. Your personal data will be processed in accordance with the GDPR and DPA 2018. In the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

APPENDIX A



**TRIBUNALS
JUDICIARY**

**PRACTICE STATEMENT
COMPOSITION OF TRIBUNALS IN RELATION TO MATTERS THAT FALL TO BE
DECIDED BY THE GENERAL REGULATORY CHAMBER
ON OR AFTER 6 MARCH 2015**

1. In this Practice Statement;
 - (a) "the 2008 Order" means the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008;
 - (b) "the 2009 Rules" means the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009;
 - (c) "the Qualifications Order" means the Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008;
 - (d) "decision that disposes of proceedings" does not include a decision under rule 8 (striking out a party's case) or rule 37 (consent order) of the 2009 Rules;
 - (e) "preliminary issue" means an issue that the First-tier Tribunal has directed should be dealt with as a preliminary issue further to rule 5(3)(e) of the 2009 Rules.
2. In the exercise of powers conferred by the 2008 Order the Senior President of Tribunals makes the following determinations and supplementary provision:-
3. A decision that disposes of proceedings or determines a preliminary issue must be made as set out in the following paragraphs:

CHARITIES CASE

4. One, two, or three members as determined by the Chamber President and where each member is either a judge or other member who has substantial experience in a charity or not-for-profit organisation.

CLAIMS MANAGEMENT CASE

5. One judge and one or two other members or, where the Chamber President considers it appropriate, one judge.

CONSUMER CREDIT APPEALS CASE

6. One judge and two other members where each other member has the qualifications set out in article 2(4)(e), (f) or (g) of the Qualifications Order.

ENVIRONMENT CASE

7. One judge or one judge and one or two other members where each other member has substantial experience of environmental matters.

ESTATE AGENTS APPEALS CASE

8. One judge and two other members where each other member has the qualifications set out in article 2(4)(e), (f) or (g) of the Qualifications Order.

GAMBLING APPEALS CASE

9. One, two or three judges as determined by the Chamber President.

LOCAL AUTHORITY STANDARDS CASE

10. One judge and one or two other members or, where the Chamber President considers it appropriate, one judge.

INFORMATION RIGHTS CASE

11. (1) Except where sub-paragraph (2) applies, one judge and two other members, where each other member has substantial experience of data protection or of freedom of information (including environmental information) rights.

(2) A decision may be made by one judge, where the Chamber President considers it appropriate in a case which appears to the Chamber President to fall within sub-paragraph (3).

(3) A case falls within this sub-paragraph if:

(a) the issue in the appeal is whether:

(i) the public authority holds the information in question;

(ii) the public authority is in breach of a time limit specified in section 10 (time for compliance with request) of the Freedom of Information Act 2000 ("FOIA") or any regulations made under that section;

(iii) the information in question is exempt information by reason of section 21 (information accessible to applicant by other means) or section 22 (information intended for future publication) of FOIA; or

(iv) the cost of complying with the request for the information in question exceeds the appropriate limit within the meaning of section 12 (exemption where cost of compliance exceeds appropriate limit) of FOIA;

(b) the appeal is against an information notice or an enforcement notice served under FOIA by the Information Commissioner on the public authority; or

(c) each party has consented to the matter being decided without a hearing and a judge is already familiar with the evidence because of previous involvement.

IMMIGRATION SERVICES CASE

12. One judge and two other members where each other member has substantial experience in immigration services or the law and procedure relating to immigration; save for applications under Schedule 6, paragraph 4B, of the Immigration and Asylum Act 1999.

TRANSPORT CASE

13. One judge or one judge and one or two other members where each other member has substantial experience in transport operations and its law and practice.

OTHER CASES

14. In any other case the Tribunal must consist of one judge.

ALL CASES

15. Where the Tribunal has given a decision that disposes of proceedings ("the substantive decision"), any matter decided under, or in accordance with, rule 5(3)(l) or Part 4 of the 2009 Rules or section 9 of the Tribunals, Courts and Enforcement Act 2007 must be decided by one judge, unless the Chamber President considers it appropriate that it is decided either by:-
- (a) the same members of the Tribunal as gave the substantive decision; or
 - (b) a Tribunal, constituted in accordance with paragraphs 4 to 14 comprised of different members of the Tribunal to that which gave the substantive decision.
16. Any other decision, including striking out a case under rule 8, making an order by consent under rule 37 or giving directions under rule 5 of the 2009 Rules (whether or not at a hearing), must be made by one judge.
17. Where the Tribunal consists of two or more members the "presiding member" for the purposes of article 7 of the 2008 Order will be the judge. Where more than one judge is to decide the matter the "presiding member" will be chosen by the Chamber President.

SENIOR PRESIDENT OF TRIBUNALS **27 February 2015**

1. SI 2009/1976 as amended



**SENIOR PRESIDENT
OF TRIBUNALS**

**PRACTICE DIRECTION: PANEL COMPOSITION FOR NEW APPEAL RIGHTS IN THE FIRST-TIER
TRIBUNAL (GENERAL REGULATORY CHAMBER)**

Background

1. The Senior President of Tribunals is responsible for determining panel composition by virtue of an order made by the Lord Chancellor under section 145(1) of, and paragraph 15 of Schedule 4 of, the Tribunals, Courts and Enforcement Act 2007.
2. Previous panel composition arrangements were made by way of Practice Statement. Amendments¹ to the First-tier and Upper Tribunal (Composition of Tribunal) Order 2008² mean that new arrangements must be made by a Practice Direction. The existing Practice Statements remain in force until superseded by a Practice Direction. It is my intention to consult publicly before issuing a Practice Direction reviewing the arrangements generally.
3. There are new appeal and application rights in the First-tier Tribunal (General Regulatory Chamber) and so it is necessary for me to consider the arrangements for those appeals now. I have therefore decided to issue this Practice Direction on a pilot basis for a period of six months. The panel composition requirements will be consulted upon while the pilot is running and may be changed in the future.
4. I have consulted the Lord Chancellor before issuing this Practice Direction.

Scope

5. This Practice Direction applies to the following appeals and applications:
 - (a) Section 162(1)(d) of the Data Protection Act 2018 (appeals against penalty notices);
 - (b) Section 166(2) of the Data Protection Act 2018 (orders to progress complaints);
 - (c) Section 202(2) of the Data Protection Act 2018 (certifying an offence to the Upper Tribunal).

¹ First-tier and Upper Tribunal (Composition of Tribunal) (Amendment) Order 2018, SI 2018/606

² SI 2008/2835

Number of members who will decide cases

- 6. A decision that disposes of proceedings or determines a preliminary issue in must be made by one judge, or where the Chamber President considers it appropriate, one judge and one or two other members.**
- 7. Where the Tribunal has given a decision that disposes of proceedings ("the substantive decision"), any matter decided under, or in accordance with, rule 5(3)(l) or Part 4 of the 2009 Rules or section 9 of the Tribunals, Courts and Enforcement Act 2007 must be decided by one judge, unless the Chamber President considers it appropriate that it is decided either by:-**
 - a. the same members of the Tribunal as gave the substantive decision; or**
 - b. a Tribunal, constituted in accordance with paragraphs 4 to 14 comprised of different members of the Tribunal to that which gave the substantive decision.**
- 8. Any other decision, including striking out a case under rule 8, making an order by consent under rule 37 or giving directions under rule 5 of the 2009 Rules (whether or not at a hearing), must be made by one judge.**
- 9. Where the Tribunal consists of two or more members the "presiding member" for the purposes of article 7 of the 2008 Order will be the judge.**

Sir Ernest Ryder

Senior President of Tribunals

1 November 2019



**TRIBUNALS
JUDICIARY**

PRACTICE STATEMENT

**COMPOSITION OF TRIBUNALS
IN SOCIAL SECURITY AND CHILD SUPPORT CASES IN THE SOCIAL
ENTITLEMENT CHAMBER
ON OR AFTER 01 AUGUST 2013**

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1. In this Practice Statement;
 - a. "the 2008 Order" means the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008;
 - b. "the Qualifications Order" means the Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008;
 - c. "the 2008 Rules" means the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008;
 - d. "social security and child support case" has the meaning given in rule 1(3) of the 2008 Rules.
 2. In exercise of the powers conferred by the 2008 Order the Senior President of Tribunals makes the following determinations and supplementary provision:-
 3. The number of members of the Tribunal must not exceed three.
 4. Where the appeal relates to an attendance allowance or a disability living allowance under Part III of the Social Security Contributions and Benefits Act 1992, or to personal independence payment under Part 4 of the Welfare Reform Act 2012, the Tribunal must, subject to paragraphs 8 to 13, consist of a Tribunal Judge, a Tribunal Member who is a registered medical practitioner, and a Tribunal Member who has a disability qualification as set out in article 2(3) of the Qualifications Order.
 5. Where –
 - a. the appeal involves the personal capability assessment, as defined in regulation 2(1) of the Social Security (Incapacity for Work)(General) Regulations 1995;
 - b. the appeal involves the limited capability for work assessment under Part 5 of the Employment and Support Allowance Regulations 2008, under Part 5 of the Universal Credit Regulations 2013 or under Part 4 of the Employment and Support Allowance Regulations 2013;
 - c. the appeal involves the limited capability for work-related activity assessment under Part 6 of the Employment and Support Allowance Regulations 2008, under Part 5 of the Universal Credit Regulations 2013

- or under Part 5 of the Employment and Support Allowance Regulations 2013;
- d. the appeal is made under section 11(1)(b) of the Social Security (Recovery of Benefits) Act 1997;
 - e. the appeal raises issues relating to severe disablement allowance under section 68 of the Social Security Contributions and Benefits Act 1992 or industrial injuries benefit under Part V of that Act (except for an appeal where the only issue is whether there should be a declaration of an industrial accident under section 29(2) of the Social Security Act 1998);
 - f. the appeal is made under section 4 of the Vaccine Damage Payments Act 1979;
 - g. the appeal is against a certificate of NHS charges under section 157(1) of the Health and Social Care (Community Health and Standards) Act 2003;
 - h. the appeal arises under Part IV of the Child Maintenance and Other Payments Act 2008;

the Tribunal must, subject to paragraphs 7 to 14, consist of a Tribunal Judge and a Tribunal Member who is a registered medical practitioner.

6. In any other case the Tribunal must consist of a Tribunal Judge.
7. The Chamber President may determine that the Tribunal constituted under paragraph 5 or 6 must also include –
 - a. a Tribunal Member who is an accountant within the meaning of Article 2(i) of the Qualifications Order, where the appeal may require the examination of financial accounts;
 - b. an additional Member who is a registered medical practitioner, where the complexity of the medical issues in the appeal so demands;
 - c. such an additional Tribunal Judge or Member as he considers appropriate for the purposes of providing further experience for that additional Judge or Member or for assisting the Chamber President in the monitoring of standards of decision-making.
8. Where the Chamber President considers, in a particular case, that a matter that would otherwise be decided in accordance with paragraphs 4 or 5 only raises questions of law and the expertise of any of the other members is not necessary to decide the matter, the Chamber President may direct that the Tribunal must consist of a Tribunal Judge, or a Tribunal Judge and any Tribunal Member whose experience and qualifications are necessary to decide the matter.
9. The powers of the Chamber President referred to in paragraphs 7, 8, 10 and 12 may be delegated to a Regional Tribunal Judge and those referred to in paragraphs 7, 8 and 12 may be delegated to a District Tribunal Judge.
10. A decision, including a decision to give a direction or make an order, made under, or in accordance with, rules 5 to 9, 11, 14 to 19, 25(3), 30, 32, 36, 37 or 41 of the 2008 Rules may be made by a Tribunal Judge, except that a decision made under, or in accordance with, rule 7(3) or rule 5(3)(b) to treat a case as a lead case (whether in accordance with rule 18 (lead cases) or otherwise) of the 2008 Rules must be made by the Chamber President.
11. The determination of an application for permission to appeal under rule 38 of the 2008 Rules and the exercise of the power of review under section 9 of the Tribunals, Courts and Enforcement Act 2007 must be carried out –

- a. where the Judge who constituted or was a member of the Tribunal that made the decision was a fee-paid Judge, by a Judge who holds or has held salaried judicial office; or
 - b. where the Judge who constituted or was a member of the Tribunal that made the decision was a salaried Judge, by that Judge or, if it would be impracticable or cause undue delay, by another salaried Tribunal Judge, save that, where the decision is set aside under section 9(4)(c) of the Act, the matter may only be re-decided under section 9(5)(a) by a Tribunal composed in accordance with paragraph 4, 5 or 6 above.
12. Where the Tribunal consists of a Tribunal Judge and one or two Tribunal Members, the Tribunal Judge shall be the presiding member. Where the Tribunal comprises more than one Tribunal Judge, the Chamber President must select the presiding member. The presiding member may regulate the procedure of the Tribunal.
13. Under rule 34(2) of the 2008 Rules it will be for the presiding member to give any written statement of reasons.
14. In rule 25(2) (Medical and physical examination in appeals under section 12 of the Social Security Act 1998) of the 2008 Rules "an appropriate member" of the Tribunal is a Tribunal Member who is a registered medical practitioner.

SIR JEREMY SULLIVAN
SENIOR PRESIDENT OF TRIBUNALS
31 July 2013



TRIBUNALS JUDICIARY

PRACTICE STATEMENT

COMPOSITION OF TRIBUNALS IN THE PROPERTY CHAMBER ON OR AFTER 15 NOVEMBER 2013

1. In this Practice Statement;
 - a. "the 2007 Act" means the Tribunals, Courts and Enforcement act 2007;
 - b. "the 2008 Order" means the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008;
 - c. "the 2013 Rules" means the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013;
 - d. "the Qualifications Order" means the Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008;
 - e. "Member" means judge or other member;
 - f. "Other member" means a member who is not a judge
2. In exercise of the powers conferred by the 2008 Order the Senior President of Tribunals makes the following determinations and supplementary provision in relation to matters that fail to be decided by the Property Chamber of the First-tier Tribunal:-
3. Subject to paragraphs 4 – 13 a matter may be decided by one, two or three members as determined by the Chamber President.

Land Registration Cases

4. The powers of the Chamber President referred to in this statement may be exercised by the Principal Judge or in his or her absence or incapacity, another judge nominated by the Principal Judge or in default by the Chamber President.

Residential Property Cases

5. The powers of the Chamber President referred to in this statement may be exercised by a Regional Judge, or in his or her absence or incapacity, a Deputy Regional Judge or Deputy Regional Valuer.
6. Any matter that does not dispose of the proceedings may be decided by one judge of the First-tier Tribunal or one other member of the First-tier Tribunal who has been authorised to chair proceedings unless the Chamber President directs that the matter is to be determined by two or three members.

7. A decision that disposes of proceedings must be made by a Judge of the First-tier Tribunal or another member of the First-tier Tribunal who has been authorised to chair proceedings sitting alone but in the following circumstances may be decided by a Judge or a Chairman sitting with one or two other members
 - a. Where the matter includes a dispute of fact or opinion;
 - b. Where the matter requires the application of special expertise; and/or
 - c. Any other case where, in the view of the Regional Judge, the overriding objective requires there to be more than one member.

Agricultural Land and Drainage Cases

8. The powers of the Chamber President referred to in this statement may be exercised by the Principal Judge or in his or her absence or incapacity, another judge nominated by the Chamber President.
9. Any matter that does not dispose of the proceedings may be decided by one judge of the First-tier Tribunal.
10. A decision to dispose of proceedings by consent may be made by a Judge of the First-tier Tribunal sitting alone otherwise in all other matters a decision to dispose of proceedings the Tribunal must be made by a judge, one member from the panel of persons who are agricultural landowners or who have experience of owning or managing agricultural land ("the landowners panel") and one from the panel of farmers or in Land Drainage cases, one member from the panel of drainage experts and one from either the landowners panel or one from the farmers panel.

All cases

11. Where the First-tier Tribunal has given a decision that disposes of proceedings ("the substantive decision"), any matter decided under, or in accordance with Part 6 of the 2013 Rules must be decided by the same member or members of the First-tier Tribunal, as gave the substantive decision.
12. Paragraph 11 does not apply where complying with it would be impractical or would cause undue delay and, in such a case, the matter decided under, or in accordance with, Part 6 of the 2013 Rules must be decided by –
 - a. if the substantive decision was given by more than one member of the First-tier Tribunal and the presiding member or any other judge from that constitution is unavailable, the members of the First-tier Tribunal who gave the substantive decision and are available to decide the matter;
 - b. otherwise, another judge of the First-tier Tribunal nominated by the Chamber President.
13. Where more than one member of the First-tier Tribunal is to decide a matter, the "presiding member" for the purposes of article 7 of the 2008 Order is the judge or other member appointed as chairman of the Tribunal. Where the Tribunal comprises more than one Tribunal judge or other member appointed as a chairman, the Chamber President or in Residential Property cases the Regional Judge or Deputy Regional Judge may select the presiding member.

SIR JEREMY SULLIVAN
SENIOR PRESIDENT OF TRIBUNALS
15 November 2013



**TRIBUNALS
JUDICIARY**

PRACTICE STATEMENT

**COMPOSITION OF TRIBUNALS IN RELATION TO MATTERS THAT FALL TO BE
DECIDED BY THE HEALTH, EDUCATION AND SOCIAL CARE
CHAMBER ON OR AFTER 16 DECEMBER 2015**

1. In this Practice Statement;

- a. "the 2008 Order" means the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008;
- b. "the 2008 Rules" means the Tribunal Procedure (First-tier Tribunal)(Health, Education and Social Care Chamber) Rules 2008;
- c. "primary health lists case" means a case brought under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006;
- d. "registered medical practitioner" has the meaning given in paragraph 1(2) of the Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008 as amended by the Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal (Amendment) Order 2009
- e. "mental health case," "special educational needs case," and "disability discrimination in schools case," have the meaning given in rule 1(3) of the 2008 Rules.

2. In the exercise of powers conferred by the 2008 Order, the Senior President of Tribunals makes the following determinations and supplementary provisions.

PRIMARY HEALTH LISTS CASE

3. A decision that disposes of proceedings or determines a preliminary issue made at, or following, a hearing must be made by:

- a. one judge; and
 - i. one other member who is a registered medical practitioner, registered dentist, registered optometrist, or a pharmacologist; and
 - ii. one other member who has substantial experience of health matters or;;
- b. where the Chamber President considers it appropriate, two judges and one other member who is a registered medical practitioner, registered dentist, registered optometrist, or a pharmacologist.

MENTAL HEALTH CASE

4. A decision that disposes of proceedings or determines a preliminary issue made at, or following, a hearing must be made by:

- a. one judge; and
- b. one other member who is a registered medical practitioner; and
- c. one other member who has substantial experience of health, or social

care matters.

5. In rule 34 (medical examination of the patient) of the 2008 Rules "an appropriate member of the Tribunal" is the other member who is a registered medical practitioner.

SPECIAL EDUCATIONAL NEEDS OR DISABILITY DISCRIMINATION IN SCHOOLS CASE

6. A decision that disposes of proceedings made at, or following, a hearing must be made by one judge and:

- a. one specialist member where the member has substantial experience of special educational needs and/or disability and both have sat on at least 25 hearings within the jurisdiction, or
- b. In complex appeals, designated as such by a SEND judge, two other members with substantial experience of special educational needs and/or disability, and where the content of the appeal demands, specialism in health and/or social care matters.

Where there is a clear disagreement (other than in respect of a matter of law) between a judge and a member sitting as a two person panel, then the judge must direct a hearing before a newly appointed three-person panel.

OTHER CASES (INCLUDING APPLICATIONS FOR AN ORDER THAT A SCHOOL BE REGARDED AS NOT REGISTERED PENDING DETERMINATION OF AN APPEAL DEALT WITH UNDER OR IN ACCORDANCE WITH RULE 22 OF THE 2008 RULES)

7. A decision that disposes of proceedings or determines a preliminary issue made at, or following a hearing, must be made by:-

- a. One judge and two other members where each other member has substantial experience of educational, child care, health, or social care matters, or
- b. Where the Chamber President considers it appropriate, two judges and one other member who has substantial experience of educational, child care, health, or social care matters.

ALL CASES

8. Where the Tribunal is constituted under paragraph 3, 5, or 6 the "presiding member" for the purposes of article 7 of the 2008 Order will be the judge. Where the Tribunal is constituted under paragraph 7(b) which judge is to be the "presiding member" will be determined by the Chamber President.

9. Where the Tribunal has given a decision that disposes of proceedings ("the substantive decision"), any matter decided under, or in accordance with, Rule 5(3)(l) or Part 5 of the 2008 Rules or section 9 of the Tribunals, Courts and Enforcement Act 2007 must be decided by one judge, unless the Chamber President considers it appropriate that it is decided either by:-

- a. the same members of the Tribunal as gave the substantive decision; or
- b. a Tribunal, constituted in accordance with paragraph 3, 5, or 6, comprised of different members of the Tribunal to that which gave the substantive decision.

10. Any other decision, including striking out a case under Rule 8 of the 2008 Rules (except at, or following, a hearing) or giving directions under Rule 5 of the 2008 Rules (whether or not at a hearing) must be made by one judge.

**The Right Honourable Sir Ernest Ryder
Senior President of Tribunals
18 December 2015**