

PILOT PRACTICE DIRECTION: PANEL COMPOSITION IN THE FIRST-TIER TRIBUNAL AND THE UPPER TRIBUNAL

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. During the Covid-19 pandemic, it may be necessary for tribunals to adjust their ways of working to limit the spread of the virus and manage their workloads appropriately. I have therefore decided to issue this Practice Direction on a pilot basis for a period of six months, although it may be reviewed within that period should it become inappropriate or unnecessary and may be revoked at any time.
3. The Lord Chancellor has approved the issue of this Practice Direction in accordance with s23 Tribunals, Courts and Enforcement Act 2007.

Scope

4. This Practice Direction applies to all appeals and applications within the First-tier and Upper Tribunal, except in mental health cases as defined in rule 1(3) of the Tribunal Procedure (First-tier Tribunal)(Health, Education and Social Care Chamber) Rules 2008.

Number of members who will decide cases

5. The Composition Statements previously issued in respect of each of the Chambers of the First-tier Tribunal and Upper Tribunal (including such pilot composition statements as already exist) will remain in force, and composition will ordinarily be determined in accordance with those statements ('the Standard Composition Arrangements').
6. However, while this Pilot Practice Direction remains in force, the following provisions will also apply to all decisions (whether on preliminary issues, or those that determine proceedings):
 - a. If a salaried judge considers that a case could not proceed, or would be subject to unacceptable delay, if the Standard Composition Arrangements were applied, that judge may decide that the case shall be heard by a judge alone, or by panel consisting of fewer or different members.
 - b. When making a decision under paragraph 6.a., salaried judges must have regard to the urgency within which a case needs to be heard and the need to ensure the case is dealt with in accordance with the overriding objective.
 - c. Where a salaried judge decides to alter the composition requirements in accordance with paragraph 6.a., that salaried judge may determine which members will hear the case, and can select salaried or fee paid members.
7. For the purposes of paragraph 6 above, a 'salaried judge' is:
 - a. A salaried judge of the relevant Chamber; or
 - b. A salaried judge assigned to the relevant Chamber; or,
 - c. A salaried surveyor member of Upper Tribunal Lands Chamber.

Involvement of Non-Legal Members not on a panel

8. If the composition arrangements for a case are altered from what they would have been under the Standard Composition Arrangements, the tribunal may seek the advice of one or more non-legal members to assist with its decision-making, provided the advice is recorded and disclosed to the parties.

Sir Ernest Ryder

Senior President of Tribunals

19/03/2020