



# Senior President of Tribunals

## PRACTICE DIRECTION

Composition of the First-tier Tribunal in relation to matters that fall to be decided by the General Regulatory Chamber

1. In this Practice Direction:
  - (a) “the Composition Order” means the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008;
  - (b) “the 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:
    - (i) under rule 8 (striking out a party’s case),
    - (ii) as to whether to consent to a withdrawal under rule 17, or
    - (iii) under rule 37 (consent order) of the Rules;
  - (e) where a discretion is conferred, that discretion is to be exercised by the Chamber President.
  
2. In the exercise of powers conferred by the Composition Order, the Senior President of Tribunals, having consulted the Lord Chancellor, makes the following determinations and supplementary provision in respect of the composition of the First-tier Tribunal in relation to matters that fall to be decided by the General Regulatory Chamber on or after 5 June 2023. These supersede all previous determinations about composition in respect of the General Regulatory Chamber.
  
3. A decision that disposes of proceedings must be made:
  - (a) by one judge, or by one judge and one or two other members where each other member has substantial experience of data protection or of freedom of information (including environmental information) rights, in an information rights case which appears to the Chamber President to be one in which:
    - (i) the issue in the appeal is whether:
      - A. the public authority holds the information in question;
      - B. 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;
      - C. the information in question is exempt information by reason of section 22 (information intended for future publication) of FOIA;
      - D. 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; or

- E. the public authority is entitled to rely on an absolute exemption, other than those provided by sections 40(2) and 41 of FOIA;
- (ii) 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 FOIA or the Data Protection Act 2018 ('DPA') by the Information Commissioner, or served under other legislation by any other authority;
- (iii) 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; or
- (iv) an application has been made under section 61(4) of FOIA or section 202(2) DPA (certifying an offence to the Upper Tribunal);
- (b) in any other information rights case, by one judge and one or two other members, where each other member has substantial experience of data protection or of freedom of information (including environmental information) rights;
- (c) in a charities case, by one, two, or three members where each member is either a judge or an other member who has substantial experience in a charity or not-for-profit organisation;
- (d) in an environment case, by one judge, or one judge and one or two other members, where each other member has substantial experience of environmental matters;
- (e) in an estate agents appeal case, by one judge and one or two other members, where each other member has the qualifications set out in article 2(4)(e), (f) or (g) of the Qualifications Order;
- (f) in a gambling appeals case, by one, two or three judges;
- (g) in an immigration services case other than an application under paragraph 4B of Schedule 6 to the Immigration and Asylum Act 1999, by one judge and one or two other members, where each other member has substantial experience in immigration services or the law and procedure relating to immigration;
- (h) in a transport case, by 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;
- (i) in any other case, by one judge.

4. 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 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, comprised of different members of the Tribunal to that which gave the substantive decision.

5. Any other decision must be made by one judge.

6. The Chamber President may for development purposes vary the composition arrangements set out in paragraphs 3 to 5 by either adding an additional judge or substituting a judge in place of an other member. A judge may not be added if it would result in a panel of four members.

7. Where the Tribunal consists of two or more members the "presiding member" for the purposes of article 7 of the Composition 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.

**Sir Keith Lindblom**

Senior President of Tribunals

19 May 2023