



# Senior President of Tribunals

## PRACTICE DIRECTION

Composition of the First-tier Tribunal in relation to matters that fall to be decided by the Health, Education and Social Care Chamber

1. In this Practice Direction:
  - (a) “the 2008 Order” means the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008;
  - (b) “the Rules” means the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, and references to numbered rules are to the rules so numbered in the Rules;
  - (c) “care standards case” means a case that is not a primary health lists case, a disability discrimination in schools case, a mental health case, or a special educational needs case;
  - (d) “primary health lists case” means a case brought under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006;
  - (e) “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;
  - (f) “disability discrimination in schools case”, “mental health case”, and “special educational needs case” have the meanings given in rule 1(3) of the Rules.
  
2. In the exercise of powers conferred by the 2008 Order, the Senior President of Tribunals, having consulted the Lord Chancellor, makes the following determinations and supplementary provision in respect of matters which fall to be decided by the Health, Education and Social Care Chamber on or after 5 June 2023. These supersede all previous determinations about composition in respect of the Health, Education and Social Care Chamber.

### 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 pharmacist; and
    - (ii) one other member who has substantial experience of health matters;

- (b) one judge and one other member who is a registered medical practitioner, registered dentist, registered optometrist, a pharmacist, or who has substantial experience of health matters; or
- (c) two judges and one other member who is a registered medical practitioner, registered dentist, registered optometrist, or a pharmacist; as the Chamber President considers appropriate.

#### 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;
  - (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) "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:
  - (a) one judge and one specialist member where the member has substantial experience of special educational needs and/or disability; or
  - (b) in complex appeals, designated as such by a judge, three members made up of:
    - (i) at least one judge;
    - (ii) at least one other member with substantial experience of special educational needs and/or disability; and
    - (iii) a third member who may be a judge, or an other member with substantial experience of special educational needs and/or disability, or where the content of the appeal demands, specialism in health and/or social care matters.
- 7. Where the Chamber President considers it appropriate in order to offer training and support to judicial office holders, a decision may be made by two judges and one other member.
- 8. 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.

#### CARE STANDARDS CASE

9. 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 one or 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

10. 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 the Tribunal consists of more than one judge the "presiding member" will be determined by the Chamber President.
11. 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 as gave the substantive decision; or
  - (b) a Tribunal, constituted in accordance with paragraphs 3 to 9, comprised of different members to that which gave the substantive decision.
12. Any other decision, including striking out a case under rule 8 (except at, or following, a hearing) or giving directions under rule 5 (whether or not at a hearing) must be made by one judge.

#### **Sir Keith Lindblom**

Senior President of Tribunals

19 May 2023