

PRACTICE DIRECTION 2A – LEVELS OF JUDICIARY

This practice direction supplements Part 2 of the Court of Protection Rules 2017

General

1.1. Rule 2.1 makes provision for a practice direction to set out which of the judges who have been nominated to act as a judge of the Court of Protection under section 46 of the Act are to be Tier 2 Judges and Tier 3 Judges.

1.2. A judge who has been nominated to act as a judge of the Court of Protection under section 46 of the Act and who is neither a Tier 2 Judge nor a Tier 3 Judge is a Tier 1 Judge.

1.3. Rule 13.4 makes provision as to which judges of the Court of Protection may reconsider decisions made by Tier 1 Judges, Tier 2 Judges and Tier 3 Judges.

1.4. Part 20 makes provision as to the destination of appeals from Tier 1 Judges, Tier 2 Judges and Tier 3 Judges.

Tier 2 Judges

2. The following judges are Tier 2 Judges for the purposes of the Court of Protection Rules 2017—

(a) The Senior Judge;

(b) a judge who has been nominated to act as a judge of the Court of Protection under section 46 of the Act by virtue of holding one of the following offices—

(i) a circuit judge;

(ii) a recorder;

(iii) a judge of the Upper Tribunal, by virtue of appointment under paragraph 1(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007;

(iv) a transferred-in judge of the Upper Tribunal (see section 31(2) of the Tribunals, Courts and Enforcement Act 2007);

(v) a deputy judge of the Upper Tribunal (whether under paragraph 7 of Schedule 3 to, or section 31(2) of, the Tribunals, Courts and Enforcement Act 2007);

(vi) the Judge Advocate General;

(vii) a person appointed under section 30(1)(a) or (b) of the Courts-Martial

(Appeals) Act 1951 (assistants to the Judge Advocate General);
(viii) the Chamber President, or Deputy Chamber President, of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal.

Tier 3 Judges

3. The following judges are Tier 3 Judges for the purposes of the Court of Protection Rules 2017—

(a) The President;

(b) The Vice-President;

(c) a judge who has been nominated to act as a judge of the Court of Protection under section 46 of the Act by virtue of holding one of the following offices—

(i) The President of the Family Division;

(ii) The Chancellor;

(iii) The President of the Queen's Bench Division;

(iv) The Master of the Rolls;

(v) The Lord Chief Justice;

(vi) The Senior President of Tribunals;

(vii) a puisne judge of the High Court;

(viii) a deputy judge of the High Court;

(ix) an ordinary judge of the Court of Appeal (including the vice-president, if any, of either division of that court);

(d) A judge who has been authorised to act as a Tier 3 Judge under paragraph 4 of this Practice Direction.

4. The President or the Vice-President may authorise the following Tier 2 Judges to act as a Tier 3 Judge in order to hear such case or cases as the President (or, as the case may be, the Vice-President) may think fit:

(a) A circuit judge who:

(i) has been nominated to act as a judge of the Court of Protection under section 46 of the Act; and

(ii) has also been authorised to act as a judge of the High Court under section 9(1) of the Senior Courts Act 1981;

(b) A recorder who:

(i) has been nominated to act as a judge of the Court of Protection under section 46 of the Act; and

(ii) has also been authorised to act as a judge of the High Court under section 9(1) of the Senior Courts Act 1981.

5. Where a Tier 2 Judge has been authorised to act as a Tier 3 Judge under paragraph 4 of this Practice Direction, any order or direction that they make whilst acting as a Tier 3 Judge must contain a statement that it has been made by a Tier 3 Judge.