



Tribunals Judiciary

PRACTICE STATEMENT

COMPOSITION OF TRIBUNALS **IN SOCIAL SECURITY AND CHILD SUPPORT CASES IN THE SOCIAL** **ENTITLEMENT CHAMBER** **ON OR AFTER 3 NOVEMBER 2008**

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, 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, as defined in regulation 2(1) of the Employment and Support Allowance Regulations 2008;
 - c. the appeal involves the determination of limited capability for work-related activity within the meaning of regulations 34 and 35 of the Employment and Support Allowance Regulations 2008;
 - 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 salaried Tribunal Judge; 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.

LORD JUSTICE CARNWATH
SENIOR PRESIDENT OF TRIBUNALS
30 October 2008