



TRIBUNALS  
JUDICIARY

**PRACTICE STATEMENT**

**COMPOSITION OF TRIBUNALS IN RELATION TO MATTERS THAT FALL TO BE  
DECIDED BY THE HEALTH, EDUCATION AND SOCIAL CARE  
CHAMBER ON OR AFTER 16 DECEMBER 2015**

1. In this Practice Statement;

- a. “the 2008 Order” means the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008;
- b. “the 2008 Rules” means the Tribunal Procedure (First-tier Tribunal)(Health, Education and Social Care Chamber) Rules 2008;
- c. “primary health lists case” means a case brought under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006;
- d. “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 as amended by the Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal (Amendment) Order 2009
- e. “mental health case,” “special educational needs case,” and “disability discrimination in schools case,” have the meaning given in rule 1(3) of the 2008 Rules.

2. In the exercise of powers conferred by the 2008 Order, the Senior President of Tribunals makes the following determinations and supplementary provisions.

**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 pharmacologist; and
  - ii. one other member who has substantial experience of health matters or;;
- b. where the Chamber President considers it appropriate, two judges and one other member who is a registered medical practitioner, registered dentist, registered optometrist, or a pharmacologist.

**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; and
- 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) of the 2008 Rules “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 one judge and:

- a. one specialist member where the member has substantial experience of special educational needs and/or disability and both have sat on at least 25 hearings within the jurisdiction, or
- b. in complex appeals, designated as such by a SEND judge, two other members with substantial experience of special educational needs and/or disability, and where the content of the appeal demands, specialism in health and/or social care matters.

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.

### **OTHER CASES (INCLUDING APPLICATIONS FOR AN ORDER THAT A SCHOOL BE REGARDED AS NOT REGISTERED PENDING DETERMINATION OF AN APPEAL DEALT WITH UNDER OR IN ACCORDANCE WITH RULE 22 OF THE 2008 RULES)**

7. 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 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**

8. Where the Tribunal is constituted under paragraph 3, 5, or 6 the “presiding member” for the purposes of article 7 of the 2008 Order will be the judge. Where the Tribunal is constituted under paragraph 7(b) which judge is to be the “presiding member” will be determined by the Chamber President.

9. 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 of the Tribunal as gave the substantive decision; or
- b. a Tribunal, constituted in accordance with paragraph 3, 5, or 6, comprised of different members of the Tribunal to that which gave the substantive decision.

10. Any other decision, including striking out a case under Rule 8 of the 2008 Rules (except at, or following, a hearing) or giving directions under Rule 5 of the 2008 Rules (whether or not at a hearing) must be made by one judge.

**The Right Honourable Sir Ernest Ryder**  
**Senior President of Tribunals**  
**18 December 2015**