

ADJUDICATOR GUIDANCE NOTE

GUIDANCE ON SITTING FOR PART-TIME ADJUDICATORS

Attached is a copy of a Ruling by the Immigration Appeal Tribunal where it was alleged that it was inappropriate for a solicitor to sit as an Adjudicator at a hearing centre where his firm practised. The Tribunal rejected the argument finding that there was no actual or apparent bias or interest.

However, the Tribunal added that its determination was not intended to be an encouragement to complacency. They say:-

“Every holder of judicial office has a duty to ensure that judicial decisions or even the judicial process, are not brought into doubt or disrepute. Every Adjudicator who has interests outside judicial office must be alert to the possibility of that interest affecting the outcome of an appeal.”

This guidance, therefore, restates the general principles, which are set out in the Terms of Conditions of Service and Terms of Appointment for Part-Time Adjudicators, and adds further guidelines. The Terms and Conditions say:-

“As a general principle a barrister or solicitor advocate ought not to sit as an Adjudicator or to appear before an Adjudicator or Immigration Appeal Tribunal, at a particular hearing centre if they are liable to be embarrassed in either capacity by doing so.

As a general rule it is undesirable for judicial post holders who are solicitors to sit at a Tribunal hearing centre where they or any partner or employee of theirs regularly practices. This is to help avoid them being assigned to adjudicate on a case, or several cases, from which they would have to stand down. If a part-time judicial post holder who is a solicitor does sit at such a hearing centre or a Tribunal, then the Lord Chancellor regards it as the post holder's personal responsibility (and not that of the staff at the Tribunal or the hearing centre) to ensure, as far as possible, that he avoids any potential conflict of interest which might require him to stand down from a particular case.

Part-time office holders should not sit in a case involving their firm or client, or otherwise where to do so could give rise to the perception of prejudice in the administration of justice. They should comply with the existing case law governing pecuniary or other interests in deciding whether to declare an interest in, or to stand down from a particular case.

A Part-time judicial office holder should not sit on a case if he has a personal, professional or pecuniary interest in that case; or if any business or practice of which he is a member in any capacity has such interest.”

In order to avoid circumstances, which may give rise to a situation of actual or perceived bias or influence, the following guidelines apply.

1. Barristers with an immigration practice should not be allocated to nor sit at regional hearing centres where they normally practise (e.g. if a Part-Time Adjudicator regularly appears as Counsel at either Taylor House or Hatton Cross, he or she will be allocated to one of the other regional centres).
2. A Part-Time Adjudicator who is in private practice as a solicitor or who otherwise works in the asylum and immigration field, should not be allocated to or sit at a hearing centre where either the Adjudicator appears regularly as an advocate or partners or employees of the Adjudicator regularly practice. Arrangements will be made for such a Part-Time Adjudicator to be allocated to a different hearing centre. The obligation lies with a newly appointed Part-Time Adjudicator to inform the Chief Adjudicator if the Adjudicator or the Adjudicator's firm or organisation does regularly appear at a particular centre. If there are any changes in the Part-Time Adjudicator's circumstances the obligation lies on the Adjudicator to inform his or her Regional Adjudicator.
3. For Part-Time Adjudicators who are solicitors administrative arrangements can be made to ensure that appeals where the Adjudicator is an advocate or which involve the Adjudicator's firm are not listed at that hearing centre (e.g. the current practice is that if a Part-Time Adjudicator regularly appears at Taylor House, any appeals in which he or she is an advocate or involving his or her firm will be listed at Hatton Cross). Similar arrangements are made in the provincial hearing centres. However, the responsibility for ensuring that the necessary administrative arrangements have been made in any particular case lies with the Part-Time Adjudicator. Any appeals listed in accordance with such arrangements need not be in a separate region but can be at a satellite centre.

4. On occasions when the above guidelines cannot be complied with, (e.g. where a barrister Adjudicator is instructed to appear at a hearing centre where the barrister usually sits as an Adjudicator), he or she should not sit as an Adjudicator at that centre during the fortnight following the date of the hearing.
5. Glasgow is at present the only hearing centre in Scotland. So Advocates and solicitors with immigration practices in Scotland who are appointed Part-Time Adjudicators are generally asked to sit at hearing centres in England. Guideline 4. above must be followed if a similar situation arises as set out in that guideline. Any Adjudicator with an immigration practice in Scotland who otherwise does sit at Glasgow must make specific arrangements as to sittings with the Regional Adjudicator.
6. If any Adjudicator has doubts about the propriety of his or her sitting arrangements and any circumstances not falling within these guidelines should be discussed in the first instance with the Regional Adjudicator.

Henry Hodge
Chief Adjudicator
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