

THE JUDICIAL COMPLAINTS (TRIBUNALS) (No 2) RULES 2008

Made - - - - 2008

Coming into force - - 3rd November 2008

The Lord Chief Justice of England and Wales, in exercise of his powers under sections 115, 117, 120 and 121 of the Constitutional Reform Act 2005, and regulation 10(2) of the Judicial Discipline (Prescribed Procedures) Regulations 2006 (S.I. 2006/676), and with the agreement of the Lord Chancellor, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland, makes the following Rules –

Citation and commencement

1.—(1) These Rules may be cited as the Judicial Complaints (Tribunals) (No 2) Rules 2008 and, subject to paragraph (2), come into force on 3rd November 2008.

(2) In relation to members of panels appointed under regulation 8(3)(b) and (c) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 (S.I. 2004/1861) these Rules shall come into force on the day when those offices are added to Schedule 14 to the Constitutional Reform Act 2005 and that addition comes into force for the purposes of the exercise of any disciplinary function, or when the Lord Chancellor, by order under section 118 of the Constitutional Reform Act 2005, designates the office as one to which the discipline provisions of the Constitutional Reform Act apply.

Interpretation

2.—(1) In these Rules-

“the 2007 Act” means the Tribunals, Courts and Enforcement Act 2007;

“Chamber President” means a person appointed under section 7(7) of the 2007 Act to preside over a chamber of the First-tier Tribunal or Upper Tribunal as the case may be;

“Deputy Chamber President” means a person appointed under paragraph 5(1) of Schedule 4 to the 2007 Act;

“investigating judicial office holder” means the President or a person designated under rule 4;

“Judge by request of the First-tier Tribunal” means a person within the meaning of paragraph 6(1) of Schedule 2 to the 2007 Act, where the judge also holds an office listed in paragraph (6)(3)(a) of that Schedule;

“Judge by request of the Upper Tribunal” means a person within the meaning of paragraph 6(1) of Schedule 3 to the 2007 Act, where the judge also holds an office listed in paragraph (6)(3)(a) of that Schedule;

“Judge of the First-tier Tribunal” means a person within the meaning of section 4(1)(a), (b) and (d) of the 2007 Act;

“Judge of the Upper Tribunal” means a person within the meaning of section 5(1)(b) to (d), (h), of the 2007 Act;

“Other member of the First-tier Tribunal” means a person within the meaning of section 4(3) of the 2007 Act, unless paragraph (d) applies;

“Other member of the Upper Tribunal” means a person within the meaning of section 5(2) of the 2007 Act, unless paragraph (c) applies;

“President” means a President listed in column 1 of Schedule 1 or 2 or a person acting on his behalf under rule 11 or any other enactment;

“the Regulations” means the Judicial Discipline (Prescribed Procedures) Regulations 2006 (S.I. 2006/676);

“the relevant Chief Justice” means –

- (a) in relation to a judicial office holder who exercises functions wholly or mainly in Scotland, the Lord President of the Court of Session;
- (b) in relation to a judicial office holder who exercises functions wholly or mainly in Northern Ireland, the Lord Chief Justice of Northern Ireland;
- (c) in any other case, the Lord Chief Justice of England and Wales.

(2) Any requirement in these Rules to provide information to, or refer a matter to, the Lord Chancellor and the relevant Chief Justice shall be met by providing the information or referring the matter to the Office for Judicial Complaints established under regulation 3 of the Regulations.

Judicial office holders to whom these Rules apply

3. Subject to rule 4, a President must deal with complaints about tribunal members listed opposite him in column 2 of Schedule 1 or 2 in accordance with the Regulations and these Rules.

Investigating judicial office holder

4.—(1) Subject to paragraph (2), a President may designate a judicial office holder listed opposite him in column 2 of Schedule 1 or 2 who has suitable experience to deal with a specific complaint about another such judicial office holder or to deal with all, or a category of, complaints relating to all, or a category of, other such judicial office holders.

(2) Before exercising his powers under paragraph (1) in respect of any complaint about a judicial office holder who sits wholly or mainly in Scotland or Northern Ireland, a President shall consult the Lord President of the Court of Session or the Lord Chief Justice of Northern Ireland, as the case may be.

(3) If none of the judicial office holders listed opposite the President in column 2 of Schedule 1 or 2 is available or has suitable experience to deal with a specific complaint—

- (a) if the subject of the complaint exercises functions wholly or mainly in Scotland, the Lord President of the Court of Session may designate—
 - (i) another President or judicial office holder listed in Schedule 1 or 2 who exercises functions wholly or mainly in Scotland; or
 - (ii) a judge of the Court of Session;
 - (iii) a sheriff or sheriff principal;
 - (iv) the President or a member of the Lands Tribunal for Scotland;
 - (v) a member of the panel of chairmen of VAT tribunals for Scotland;
 - (vi) the President, the Vice President or a member of the panel of chairmen of Employment Tribunals (Scotland),
to deal with the complaint;
- (b) if the subject of the complaint exercises functions wholly or mainly in Northern Ireland, the Lord Chief Justice of Northern Ireland may designate—
 - (i) another President or judicial office holder listed in Schedule 1 or 2 who exercises functions wholly or mainly in Northern Ireland; or
 - (ii) a holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002,
to deal with the complaint;

- (c) in any other case, the President may designate another President or judicial office holder listed in Schedule 1 or 2, who does not sit wholly or mainly in Scotland or Northern Ireland and who has suitable experience, to deal with the complaint.
- (4) Notwithstanding any designation under this rule, the President may decide to deal with a specific complaint himself or may reserve to himself the determination of the complaint.
- (5) An investigating judicial office holder who is not a President must—
- (a) inform the President upon receiving any complaint falling within the scope of rule 5(1); and
 - (b) refer to the President any complaint that he does not reject under rule 7(1) if –
 - (i) it falls within the scope of rule 5(1); or
 - (ii) he considers that it should be upheld and that the President might wish to take disciplinary action himself.

Informing the Lord Chancellor and the relevant Chief Justice about complaints

5.—(1) A President must inform the Lord Chancellor and the relevant Chief Justice when he receives a complaint that might have any substance to it and which—

- (a) follows a significant number of similar or related complaints;
- (b) is an allegation of improper discrimination on grounds such as age, race, gender, sexual orientation, religion or disability;
- (c) is otherwise of such significance that either removal of the judicial office holder from office or the exercise by the relevant Chief Justice of his powers under section 108 of the Constitutional Reform Act 2005 (as modified, if appropriate, by sections 120(1) and 121(1)) might be considered;
- (d) has been received from a Member of Parliament, a Member of the European Parliament, a Member of the Scottish Parliament, a Member of the Northern Ireland Assembly or a Member of the National Assembly of Wales;
- (e) is about a judicial office holder who also holds office as –
 - (i) an ordinary judge of the Court of Appeal in England and Wales (including the vice-president, if any, of either division of that Court);
 - (ii) a Lord Justice of Appeal in Northern Ireland;
 - (iii) a puisne judge of the High Court (in England and Wales or Northern Ireland);
 - (iv) a judge of the Court of Session;
 - (v) a circuit judge;
 - (vi) a sheriff or sheriff principal in Scotland; or
 - (vii) a county court judge in Northern Ireland; or
- (f) is about a judicial office holder who is no longer a member of the tribunal.

(2) Unless he has been designated under rule 4(3)(b), an investigating judicial office holder must inform the Lord Chief Justice of Northern Ireland when he receives a complaint about a judicial office holder who exercises functions wholly or mainly in Northern Ireland that might have some substance to it and does not fall within the scope of paragraph (1).

Enquiries and investigations

6.—(1) An investigating judicial office holder may undertake such enquiries or carry out such investigations as are necessary for him to perform his functions under these rules.

(2) A complainant must reply to a request made by an investigating judicial office holder pursuant to such enquiries or investigations within twenty working days.

(3) An investigating judicial office holder must not uphold a complaint without giving the subject of the complaint at least twenty working days in which to comment on the complaint and respond to any request for information concerning the complaint.

Rejection of a complaint

7.—(1) Subject to paragraphs (2) and (3), unless there are reasons why he believes a complaint should be investigated, the investigating judicial office holder must reject a complaint, or part of a complaint, if—

- (a) it does not adequately particularise the matter complained of;
- (b) it is about a judicial decision or judicial case management, and raises no question of misconduct;
- (c) the action complained of was not done or caused to be done by a judicial office holder;
- (d) it is untrue, mistaken, misconceived or otherwise without substance;
- (e) it is vexatious;
- (f) it raises a matter that has already been dealt with, whether under these Rules or otherwise, and does not present any material new evidence;
- (g) it is about a person who no longer holds any judicial office;
- (h) it is about the private life of a member of a tribunal and could not reasonably be considered to affect his suitability to hold judicial office;
- (i) it is about the professional conduct in a non-judicial capacity of a member of a tribunal and could not reasonably be considered to affect his suitability to hold judicial office;
- (j) for any other reason it does not relate to judicial misconduct.

(2) An investigating judicial office holder may not reject a complaint solely under paragraph (1)(a) unless he has given the complainant a reasonable opportunity to provide adequate particulars of the complaint.

(3) Where an account of facts given by a complainant differs from an account given by the judicial office holder about whom the complaint is made, the investigating judicial office holder should consult any independent evidence which exists which may verify the facts in dispute before dismissing the complaint, unless to do so would be disproportionate in all the circumstances.

(4) Where a complaint is rejected, the investigating judicial office holder must –

- (a) inform the complainant of the rejection and give him an explanation;
- (b) if the subject of the complaint is aware of the complaint, inform him of the rejection;
- (c) if the Lord Chancellor and the relevant Chief Justice were informed about the complaint under rule 5(1), inform them and the President (where the investigating judicial office holder is not the President) of the rejection;
- (d) if the Lord Chief Justice of Northern Ireland was informed of the complaint under rule 5(2), inform him of the rejection.

Referral to the Lord Chancellor and the relevant Chief Justice

8.—(1) Subject to paragraph (2), where a complaint is not rejected, the President may, and if the complaint falls within the scope of rule 5(1)(a) to (e) must, refer it to the Lord Chancellor and the relevant Chief Justice with advice as to whether a judicial investigation under Part 5 of the Regulations is necessary and, if not, whether—

- (a) the complaint should be dismissed or upheld;
- (b) any disciplinary action should be taken if the complaint were to be upheld and, if so, what action;
- (c) any alternative or additional action should be taken.

(2) Where a complaint within the scope of rule 5(1)(f) is not rejected, the President must refer it to the Lord Chancellor and the relevant Chief Justice with any information gathered as a result of enquiries under rule 6.

(3) The Lord Chancellor or the relevant Chief Justice may require any complaint to be referred to them at any stage.

(4) Where—

(a) a complaint has been withdrawn or has been treated as withdrawn under regulation 12(2) of the Regulations; and

(b) the President considers that information received in connection with the complaint suggests that disciplinary action might be justified,

he must refer the matter to the Lord Chancellor and the relevant Chief Justice so that they may consider exercising their powers, including their powers under regulation 12(3).

Determining a complaint

9.—(1) Where a complaint is neither rejected under rule 7 nor referred to the Lord Chancellor and the relevant Chief Justice under rule 8, the investigating judicial office holder must decide whether to dismiss or uphold the complaint.

(2) The investigating judicial office holder must inform the complainant and the subject of the complaint whether a complaint has been dismissed or upheld and must give the complainant an explanation.

(3) Where a complaint is upheld, the investigating judicial office holder must give the subject of the complaint a reasonable opportunity to comment on the proposed response to be made to the complainant and send him a copy of the response.

(4) Where a complaint about which the Lord Chancellor and the relevant Chief Justice were informed under rule 5(1) is subsequently found not to fall within the scope of rule 5(1) and is either dismissed or upheld, the President must—

(a) send them a copy of the response made to the complainant;

(b) inform them of any action taken in respect of the subject of the complaint.

(5) Where a complaint about which the Lord Chief Justice of Northern Ireland was informed under rule 5(2) is either dismissed or upheld, the investigating judicial office holder must –

(a) send him a copy of the response made to the complainant;

(b) inform him of any action taken in respect of the subject of the complaint.

Cases referred by the Lord Chancellor or the relevant Chief Justice or which arise from other sources

10.—(1) Where—

(a) information has been referred to a President by the Lord Chancellor or the relevant Chief Justice under regulation 13(1) of the Regulations; or

(b) a case has been sent to a President under regulation 10(10) of the Regulations for further consideration,

the case must be considered as though it were a complaint and in accordance with any directions by the Lord Chancellor or the relevant Chief Justice, but the Lord Chancellor or the relevant Chief Justice may require either that the case be referred to both of them after any enquiries or investigations have been carried out under rule 6 or that they be informed before the investigating judicial office holder determines the case.

(2) Where a President has considered a case in accordance with rule 10(1) and is minded to dismiss it he must obtain the concurrence of the Lord Chancellor and the relevant Chief Justice before doing so.

(3) In accordance with regulation 10(3A) of the Regulations, where a President receives no complaint but receives information from any source which suggests to him that disciplinary proceedings might be justified he must consider it as though it were a complaint and deal with it under these rules with the exception that any obligation to be discharged in relation to a complainant does not apply.

Designation of a Judicial Office Holder to act as President

11. Where an office of President is vacant or the President is unavailable or incapacitated and no person is acting in his place under any enactment, the relevant Chief Justices may designate any other President or other judicial office holder listed in Schedule 1 or 2 to act as the President for the purpose of the Regulations and these Rules.

Deferral of consideration of a case

12.—(1) An investigating judicial office holder may defer consideration of a complaint where it is necessary to do so.

(2) Where consideration of a complaint is deferred, the investigating judicial office holder must inform the complainant and, if he has been informed of the complaint, the subject of the complaint.

Delegation

13. The relevant Chief Justice may delegate any of his functions under these Rules.

Revocation

14. The Judicial Complaints (Tribunals) Rules 2008 are revoked.

Transitional Provision

15. Where a complaint is made in respect of a person who holds an office listed in Schedule 1 Column 2 to these Rules, and that complaint is made before these Rules come into force or is made in respect of conduct before that date the complaint shall be decided in accordance with these Rules.

Date 2008

CJ

I agree

Date 2008

C

I agree

Date 2008

Lord President of the Court of Session

I agree

Date 2008

Lord Chief Justice of Northern Ireland

SCHEDULE 1

<i>Column 1- President</i>	<i>Column 2 – Judicial Office Holder</i>
Chamber President of a chamber of the First-tier Tribunal	A person assigned to the same chamber who is a Judge of the First-tier Tribunal or other member of the First-tier Tribunal
Chamber President of a chamber of the Upper Tribunal	A person assigned to the same chamber who is a Judge of the Upper Tribunal or other member of the Upper Tribunal
Chamber President	Deputy Chamber President
Chamber President of a chamber of the Upper Tribunal	A Judge assigned to the same chamber who is a Judge by request of the First-tier Tribunal or a Judge by request of the Upper Tribunal unless that person also holds office as an ordinary judge of the Court of Appeal in England and Wales or as a puisne judge of the High Court in England and Wales
Senior President of Tribunals	Judge by request of the First-tier Tribunal or a Judge by request of the Upper Tribunal if that person also holds office as an ordinary judge of the Court of Appeal in England and Wales or as a puisne judge of the High Court in England and Wales

SCHEDULE 2

<i>Column 1</i>		<i>Column 2</i>	
<i>President</i>	<i>Enactment under which appointed</i>	<i>Judicial Office Holder</i>	<i>Enactment under which appointed</i>
President of the Lands Tribunal	Section 2(1) of the Lands Tribunal Act 1949 (c. 42)	Member of the Lands Tribunal	Section 2(1) of the Lands Tribunal Act 1949
Chief Commons Commissioner	Section 17(1) of the Commons Registration Act 1965 (c.64)	Commons Commissioner	Section 17(1) of the Commons Registration Act 1965
Substitute Chief Commons Commissioner	Section 17(3) of the Commons Registration Act 1965		
Presiding Special Commissioner	Section 4(1) of the Taxes Management Act 1970 (c.9)	Special Commissioner	Section 4(1) of the Taxes Management Act 1970

		Deputy Special Commissioner	Section 4A(1) of the Taxes Management Act 1970
President of the Family Health Services Appeal Authority	Paragraph 1 of Schedule 9A to the National Health Service Act 1977 (c.49)	Deputy President of the Family Health Services Appeal Authority Member of the Family Health Services Appeal Authority	Paragraph 1 of Schedule 9A to the National Health Service Act 1977 Paragraph 1 of Schedule 9A to the National Health Service Act 1977
President of the Transport Tribunal	Paragraph 2(1)(a) of Schedule 4 to the Transport Act 1985 (c.67)	Chairman of the Transport Tribunal	Paragraph 2(1)(a) of Schedule 4 to the Transport Act 1985
Chairman of the Copyright Tribunal	Section 145(2) of the Copyright, Designs and Patents Act 1988 (c.48)	Deputy chairman of the Copyright Tribunal	Section 145(2) of the Copyright, Designs and Patents Act 1988
President of the Charity Tribunal	Paragraph 1(2)(a) of Schedule 1B to the Charities Act 1993 (c.10)	Legal member of the Charity Tribunal Ordinary member of the Charity Tribunal	Paragraph 1(2)(b) of Schedule 1B to the Charities Act 1993 Paragraph 1(2)(c) of Schedule 1B to the Charities Act 1993
President of VAT tribunals	Paragraph 2(2) of Schedule 12 to the Value Added Tax Act 1994 (c.23)	Member of panel of chairmen of VAT tribunals for England and Wales	Paragraph 7(3)(a) of Schedule 12 to the Value Added Tax Act 1994
President of the Employment Appeal Tribunal Temporary President of the Employment Appeal tribunal	Section 22(3) of the Employment Tribunals Act 1996 (c.17) Section 23(1) of the Employment Tribunals Act 1996	Judge nominated by the Lord Chief Justice of England and Wales from among the judges of the High Court Temporary judge of the Employment Appeal Tribunal Temporary additional judge of the Employment Appeal Tribunal Member of the Employment Appeal Tribunal	Section 22(1)(a) of the Employment Tribunals Act 1996 Section 23(2)(a) of the Employment Tribunals Act 1996 Section 24(1) of the Employment Tribunals Act 1996 Section 22(1)(c) of the Employment Tribunals Act 1996
President of the Special Educational Needs Tribunal for Wales	Section 333 of the Education Act 1996 (c.56), as applied by section 336ZA	Member of the chairmen's panel of the Special Educational Needs Tribunal for Wales	Section 333 of the Education Act 1996, as applied by section 336ZA
Chairman of the	Section 6(4) of the	Deputy chairman of	Section 6(4) of the

Information Tribunal	Data Protection Act 1998 (c.29)	the Information Tribunal	Data Protection Act 1998
President of the Immigration Services Tribunal	Paragraph 2 of Schedule 7 to the Immigration and Asylum Act 1999 (c.33)	Member of the Immigration Services Tribunal	Paragraph 1(2) of Schedule 7 to the Immigration and Asylum Act 1999
President of the Financial Services and Markets Tribunal	Paragraph 2(1) of Schedule 13 to the Financial Services and Markets Act 2000 (c.8)	Deputy President of the Financial Services and Markets Tribunal Member of panel of chairmen of the Financial Services and Markets Tribunal Member of lay panel of the Financial Services and Markets Tribunal	Paragraph 2(3) of Schedule 13 to the Financial Services and Markets Act 2000 Paragraph 3(1) of Schedule 13 to the Financial Services and Markets Act 2000 Paragraph 3(4) of Schedule 13 to the Financial Services and Markets Act 2000
President of the Adjudication Panel for England	Section 75(4) of the Local Government Act 2000 (c.22)	Deputy President of the Adjudication Panel for England Member of the Adjudication Panel for England	Section 75(4) of the Local Government Act 2000 Section 75(3) of the Local Government Act 2000
President of the Competition Appeal Tribunal Acting President of the Competition Appeal Tribunal	Section 12(2)(a) of the Enterprise Act 2002 (c.40) Paragraph 3 of Schedule 2 to the Enterprise Act 2002	Member of panel of chairmen of the Competition Appeal Tribunal	Section 12(2)(b) of the Enterprise Act 2002
President of the Asylum and Immigration Tribunal	Paragraph 5(1)(a) of Schedule 4 to the Nationality, Immigration and Asylum Act 2002 (c.41)	Deputy President of the Asylum and Immigration Tribunal Legally qualified member of the Asylum and Immigration Tribunal Member of the Asylum and Immigration Tribunal	Paragraph 5(1)(b) of Schedule 4 to the Nationality, Immigration and Asylum Act 2002 Paragraphs 2(1)(a) to (d) of Schedule 4 to the Nationality, Immigration and Asylum Act 2002 Paragraph 2(1)(e) of Schedule 4 to the Nationality, Immigration and Asylum Act 2002
President of the Gambling Appeals Tribunal	Paragraph 1(1)(a) of Schedule 8 to the Gambling Act 2005 (c.19)	Member of the Gambling Appeals Tribunal	Paragraph 1(1)(b) of Schedule 8 to the Gambling Act 2005

President of Employment Tribunals (England and Wales)	Regulation 4(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 (S.I. 2004/1861)	Regional Chairman	Regulation 6(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004
Acting President of Employment Tribunals (England and Wales)	Regulation 4(6) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004	Member of panel of chairmen of Employment Tribunals (England and Wales)	Regulation 8(3)(a) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004
		Member of panel of members of Employment Tribunals (England and Wales)	Regulation 8(3)(b) and (c) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004
President of Employment Tribunals (Scotland)	Regulation 4(2) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 (S.I. 2004/1861)	Member of panel of members of Employment Tribunals (Scotland)	Regulation 8(3)(b) and (c) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004
Acting President of Employment Tribunals (Scotland)	Regulation 4(6) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004		
The most senior of the Chairmen of an Agricultural Land Tribunal, as determined by the Lord Chief Justice of England and Wales	-----	Chairman of an Agricultural Land Tribunal (other than the most senior)	Paragraph 13(1) of Schedule 9 to the Agriculture Act 1947 (c.48)
		Member of panel of deputy-chairmen of an Agricultural Land Tribunal	Paragraph 14(1) of Schedule 9 to the Agriculture Act 1947
		Member of panel	Paragraph 15(1) of Schedule 9 to the Agriculture Act 1947
The most senior President of a panel of the Residential Property Tribunals, as determined by the Lord Chief Justice of	-----	Member of panel appointed by the Lord Chancellor	Paragraph 2(a) of Schedule 10 to the Rent Act 1977 (c.42)

England and Wales			
Liaison Judge of the Mental Health Review Tribunals, designated by the Lord Chief Justice of England and Wales	-----	Chairman of the Mental Health Review Tribunal for Wales Member of the Mental Health Review Tribunal for Wales	Paragraph 3 of Schedule 2 to the Mental Health Act 1983 Paragraph 1 of Schedule 2 to the Mental Health Act 1983