



## **Commentary on The Tribunal Business Arrangements**

The Tribunal Business Arrangements are made by the President under statutory authority and deal with the selection of members. This Commentary briefly summarises and explains the formal document for the benefit of members, staff and users of the Tribunal. It is not, however, a part of the formal document.

In this commentary, the word “chairman” means a member of the Tribunal’s panel of chairmen, or a Vice-President (or the President) who together constitute “Senior Members” (the statutory term used in the Arrangements).

Paragraph  
numbers  
in the TBA

### **Preliminary matters**

3-7 Preliminary matters prior to the hearing or between hearings will be dealt with by a chairman alone without a hearing, but he/she may refer the matter to a full panel or require a hearing (or both). The chairman to do this will be the person selected to preside over the appeal, if such a selection has been made and he/she is available. However, where the decision on a preliminary issue might result in determining the appeal, the matter must be considered by a full panel.

### **Hearings**

8-10 Appeals will be heard by a panel of three members, one of whom must be a chairman (unless the President orders otherwise).

16 This also applies where the parties have agreed to dispense with an oral hearing and to the review of a decision previously made. In the latter, no member involved in the original decision may sit.

### **Members failing to attend/unable to sit**

11-14 If the hearing has not yet begun, efforts should be made wherever possible to find a substitute, but if that does not prove possible, the hearing may proceed with just two members (never with only one) provided one is a chairman. If there is no chairman, the hearing may not proceed.

If the hearing is under way or the appeal is part heard, a panel may proceed with only two members (never with only one) provided the remaining members consider that it is in the interests of justice to

continue. Where one of the remaining members is a Senior Member, the panel should consider whether the possibility of a divided decision, or the absence of a third member, argues for an adjournment. The interests of the parties and the effect of an adjournment should be taken into consideration. Where there is no Senior Member, the panel should reflect carefully on whether they will be able to handle the matter adequately. They will take into account the complexity of the case, the stage it has reached, the effect of an adjournment on the parties, the views of the parties and any other relevant considerations.

Where a new member is selected and added to a panel, chairman or not, the hearing must start afresh.

### **Members unable to agree**

- 15 Where a panel with an even number of members cannot agree, a new hearing before a different panel must be ordered. A chairman *never* has a second or casting vote.

### **Selection of members**

- 17-19 The Registrar has instituted arrangements to facilitate a fair system for selecting members and chairmen to sit, but the President may issue instructions relating to specific members or cases. The chair is to be taken by the person selected as the "presiding Senior Member".

19.x.09