



VTE/PS/B2: 23 March 2010  
[Effective from 1.4.10]

## **PRACTICE STATEMENT: DUTIES AND RESPONSIBILITIES OF THE CLERK/TRIBUNAL OFFICER AT THE HEARING**

### **1. Introduction**

1.1 Judicial decision-making rests exclusively with the members of the panel, but the system depends critically on the provision of appropriate advice by the clerk/tribunal officer. The arrangements must ensure that it is clear to all concerned that it is the panel that is making the decision and that the clerk/tribunal officer is not exerting undue influence.

1.2 The four fundamental principles are as follows:

- Justice must not only be done, but must be seen to be done (which in this context means that it should be clear to everyone that it is the panel that is finding the facts and making the decision);
- Any substantive advice given to the panel by the clerk/tribunal officer must be given in public and the parties, if present, must be given an opportunity by the presiding senior member to comment.
- The clerk/tribunal officer has a duty to give appropriate advice and the panel must co-operate in this regard.
- The clerk/tribunal officer has a duty to ensure that every case is conducted fairly.

1.3 These principles apply the case law developed in respect of advice to magistrates.

### **2. During the hearing**

2.1 The clerk/tribunal officer is responsible for providing advice to the panel which it requires properly to discharge its functions, whether or not the panel has requested that advice, on:

- (1) questions of law;
- (2) questions of mixed law and fact;
- (3) matters of practice and procedure;
- (4) any relevant decisions of the superior courts and tribunals;
- (5) the decision-making structure to be applied in any given appeal.

2.2 The clerk/tribunal officer should keep an accurate and full note of the evidence and submissions of the parties at the hearing.

2.3 The clerk/tribunal officer must not play any part in making findings of fact or law but may assist the panel by reminding it of the evidence and arguments, using notes of the proceedings for the purpose.

2.4 The clerk/tribunal officer may ask questions of witnesses and the parties in order to clarify the evidence and any issues in the appeal. The clerk/tribunal officer when asking questions must ensure that s/he is not adopting a partisan role in the proceedings and not conveying his/her personal views on the appeal to the panel. The clerk/tribunal officer should await the invitation of the chairman before asking questions, but may seek clarification of an answer or point at the time. The chairman must give the clerk/tribunal officer the opportunity to ask any questions after that opportunity has been given to the other panel members. The clerk/tribunal officer should use this opportunity sparingly.

2.5 The clerk/tribunal officer is under a duty to assist unrepresented parties to present their case, but must do so without appearing to become an advocate for the party concerned.

### **3. At the conclusion of the hearing**

3.1 At the conclusion of the hearing and before retiring, the presiding chairman should ask the clerk/tribunal officer whether there is anything further he or she wishes to say. If he or she does and makes substantive points, it will be necessary to invite the parties to comment if they wish.

3.2 The clerk/tribunal officer should not withdraw along with the panel members. The panel should first deliberate on the case in private and then, before coming to a final conclusion, must invite the clerk/tribunal officer to join them. The clerk/tribunal officer will thus be fully informed of the reasoning behind the decision, be able to raise any queries or make any suggestions and be fully able to reflect the panel's reasoning in the written decision. Any member of the panel may seek the clerk/tribunal officer's advice.

3.3 If in the course of discussions in the retiring room, the clerk/tribunal officer gives substantive advice to the panel which has not been previously canvassed during the hearing, it will be necessary to reconvene the hearing for that advice to be tendered in the presence of the parties and for them to be given an opportunity to comment on it. If the parties have already left, it may be necessary to adjourn and re-list the case for a further hearing.

3.4 In the retiring room, the presiding chairman shall ensure that the clerk/tribunal officer is informed of the panel's reasoning and their understanding and findings on the facts, so that the final written decision with reasons may be drafted. In addition, the clerk/tribunal officer may assist the presiding chairman with the wording of any oral decision that is to be communicated.

3.5 The clerk/tribunal officer should return to the hearing room separately from and in advance of the panel members.

3.6 The clerk/tribunal officer may request the panel to adjourn briefly to enable him/her to seek guidance from the Registrar or a colleague and the presiding chairman should normally comply with such request.

3.7 Where there is no separate retiring room and the panel must deliberate in the hearing room, the above provisions should be read accordingly with the parties, their representatives, members of the public and the clerk/tribunal officer withdrawing from the hearing room or being called in as appropriate.

3.8 The clerk/tribunal officer must accompany the panel on any site visit.

#### 4. Decision

4.1 The clerk/tribunal officer is responsible for recording the panel's reasons and drafting the decision for approval or amendment by every member of the panel. The chairman will sign the final agreed version of the decision before it is sent to the parties.

4.2 The draft should accurately record the findings of fact and law made by the panel.

4.3 It is the duty of the panel to produce a decision that gives a clear explanation for its decision.

4.4 The clerk/tribunal officer should make a clear and full note where the panel has refused to follow advice given, a copy of which should be sent to the Registrar.

23 March 2010



A handwritten signature in blue ink, appearing to be "P. C. D.", written over a large, stylized blue scribble. Below the signature, the word "President" is printed in a small, black, sans-serif font.