

**JUDGES OF THE UPPER TRIBUNAL  
(ADMINISTRATIVE APPEALS CHAMBER)**

**2009**

**Senior President of Tribunals**

Sir Robert Carnwath CVO

**Chamber President**

Sir Gary Hickinbottom (to 20 April 2009)

Sir Paul Walker (from 21 April 2009)

**Upper Tribunal judges assigned to the AAC**

*Chamber Presidents of the First-tier Tribunal:*

HH Judge Robert Martin, Social Entitlement Chamber

HH Judge Phillip Sycamore, Health, Education and Social Care Chamber

Dr Harcourt Concannon, War Pensions and Armed Forces Compensation Chamber<sup>1</sup>

*Great Britain Social Security Commissioners:*

Douglas May QC

Mark Rowland

John Mesher

Patrick Howell QC

Stephen Pacey

Patrick Powell

Howard Levenson

David Williams

Edward Jacobs

Andrew Lloyd-Davies

Andrew Bano<sup>2</sup>

Charles Turnbull

Elisabeth Jupp

Shelley Lane

Christopher Ward

Alan Gamble

Nicholas Wikeley

*Northern Ireland Social Security Commissioners:*

HH Judge John Martin QC, Chief Commissioner, Northern Ireland

Kenneth Mullan, Commissioner, Northern Ireland

*Great Britain Deputy Social Security Commissioners:*

Sir Crispin Agnew of Lochnaw Bt QC

David Burns QC

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<sup>1</sup> To 31 May 2009.

<sup>2</sup> from 1 June 2009 President, War Pensions and Armed Forces Compensation Chamber

Moya Brown  
Godfrey Cole  
Alison Green  
Ann Humphrey  
Michael Mark  
Elisabeth Ovey  
Nicholas Paines QC  
Tanya Parker  
Richard Poynter  
Ann Ramsay  
Alison Rowley  
Jeremy Thomas  
Robin White  
Christopher Whybrow QC  
John Wright QC

*Former Chairmen of the Mental Health Review Tribunal:*

Jeremy Cooper  
John Wright

*Former Chairman of the Criminal Injuries Compensation Appeals Panel:*

Roger Goodier

*Former President and Deputy President of the Care Standards Tribunal:*

HH Judge David Pearl (Former President)  
HH Judge Simon Oliver (Former Deputy President)

*Former Chief Asylum Support Adjudicator:*

Sehba Storey

*Deputy President, Asylum and Immigration Tribunal:*

Mark Ockelton

*Deputy Presidents, Health, Education and Social Care Chamber of the First-tier Tribunal:*

John Aitken (from 14 July 2009)  
Mark Hinchliffe (from 1 October 2009)

*Acting President, General Regulatory Chamber of the First-tier Tribunal:*

John Angel (from 1 September 2009)

*President and Chairmen of the Transport Tribunal:*

Hugh Carlisle QC (President) (from 1 September 2009)  
HH Judge Jacqueline Beech (from 1 September 2009)  
HH Michael Brodrick (from 1 September 2009)  
Frances Burton (from 1 September 2009)

*Former President of the Consumer Credit and Estate Agents Appeals Tribunals:*

HH Judge Peter Wulwik (from 1 September 2009)

*Former President of the Charity Tribunal:*

Alison McKenna (from 1 September 2009)

### **Upper Tribunal members assigned to the AAC**

*Qualifying former members of the lay panel of the Care Standards Tribunal:*

Carole Alford  
Richard Beeden  
David Braybrook  
Brian Cairns  
Carole Caporn  
Beryl Chatfield  
Jennifer Cross  
Sally Derrick  
Margaret Diamond  
Linda Elliot  
Mike Flynn  
Elena Fowler  
Janice Funnell  
Tim Greenacre  
Margaret Halstead  
Graham Harper  
Susan Howell  
John Hutchinson  
Mike Jobbins  
Caroline Joffe  
Susan Last  
Gillian MacGregor  
Sallie Prewett  
Ronald Radley  
Linda Redford  
Heather Reid  
Peter Sarll  
Suraj Sharma  
Michelle Tynan  
Judith Wade  
Chris Wakefield  
Keith White  
Christa Wiggin  
John Williams  
Margaret Williams  
Andrew Wilson  
Raymond Winn

*Members of the Transport Tribunal:*

George Inch (from 1 September 2009)  
Stuart James (from 1 September 2009)  
Leslie Milliken (from 1 September 2009)  
Patricia Steel (from 1 September 2009)  
David Yeomans (from 1 September 2009)

## **INTRODUCTORY NOTE**

### *The Upper Tribunal (Administrative Appeals Chamber)*

The Upper Tribunal is a superior court of record created by the Tribunals, Courts and Enforcement Act 2007. It has jurisdiction throughout the United Kingdom. On 3 November 2008 when relevant parts of the Act came into force, powers were

exercised so as to bring into being the Administrative Appeals Chamber (“AAC”), which at that stage was the sole chamber of the Upper Tribunal. The Social Security and Child Support Commissioners and Deputy Commissioners of Great Britain and of Northern Ireland became judges of the Upper Tribunal assigned to the AAC. Almost all the functions of the Commissioners in Great Britain<sup>3</sup>, including those previously exercised as Pensions Appeal Commissioners on appeal from the Pensions Appeals Tribunals, were transferred to the AAC. The AAC became the body hearing appeals from the First-tier Tribunal in social security and child support cases in Great Britain, and in vaccine damage cases throughout the United Kingdom. In war pensions and armed forces compensation cases it became the body hearing appeals from the First-tier Tribunal in England and Wales, from the Pensions Appeal Tribunals in Scotland, and to a limited extent from the Pensions Appeal Tribunals in Northern Ireland.<sup>4</sup>

Also on 3 November 2008 the AAC became the body hearing second-level appeals in mental health, care standards and special educational needs and disability cases in England and Wales and senior judges in those jurisdictions joined the AAC. In addition the AAC was given a jurisdiction by way of first-level appeals from the Independent Safeguarding Authority in England and Wales, and for this purpose specially qualified members of the lay panel of the Care Standards Tribunal were appointed to the AAC. On 1 September 2009 the General Regulatory Chamber of the First-tier Tribunal was created with responsibility for, among other things, estate agents and consumer credit cases throughout the UK and transport cases in Great Britain. Appeal rights to the AAC were conferred in these jurisdictions and senior judges joined the AAC. At the same time the function of deciding certain of the first-level appeals from Traffic Commissioners, formerly dealt with by the Transport Tribunal,<sup>5</sup> was also transferred, and for this purpose additional specially qualified members joined the AAC.

In cases arising under the law of England and Wales or under the law of Northern Ireland ss 15 to 18 of the 2007 Act<sup>6</sup> set out a “judicial review” jurisdiction conferred on the Upper Tribunal. In addition to this “original” jurisdiction,<sup>7</sup> amendments to the Senior Courts Act 1981 and the Judicature (Northern Ireland) Act 1978 respectively are made by s 19 of the 2007 Act so as to provide for transfer to the Upper Tribunal of judicial review cases. The position in Scotland differs in that the Upper Tribunal has no original “judicial review” jurisdiction: under s 21 of the 2007 Act the Upper

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<sup>3</sup> In Great Britain the office of Social Security Commissioner remains for the purpose of one specific jurisdiction, that of hearing appeals in respect of recovery of NHS charges in Scotland.

<sup>4</sup> In Scotland a new right of appeal from assessment decisions in war pensions cases was created by the Transfer of Tribunal Functions Order 2008, and rights of appeal from other war pensions and armed forces compensation decisions, previously lying to the Social Security Commissioners, were transferred to the AAC. In Northern Ireland a similar new right of appeal from assessment decisions in war pensions cases was created. The Northern Ireland Social Security and Child Support Commissioners continue to deal with all other jurisdictions (including appeals from other decisions of the Northern Ireland Pensions Appeal Tribunals) exercised by them immediately before 3 November 2008.

<sup>5</sup> The Transport Tribunal continues to hear appeals from penalty decisions of Traffic Commissioners in Scotland.

<sup>6</sup> brought into force on 3 November 2008 along with the remainder of Part 1 of the 2007 Act.

<sup>7</sup> which is confined to specified classes (see below).

Tribunal's "judicial review" jurisdiction is confined to deciding judicial review applications transferred to it by the Court of Session under s 20. Thus in all three jurisdictions there is a discretionary power to transfer certain types of judicial review case to the Upper Tribunal. Also in all three jurisdictions there is a power to specify classes of judicial review case which must be transferred to the Upper Tribunal: see ss 18(6) and 20(3) of the 2007 Act.<sup>8</sup> In Scotland one such class (comprising challenges to a procedural decision or a procedural ruling of the First-tier Tribunal) has been specified.<sup>9</sup> In England and Wales two classes have been specified: (a) any decision of the First-tier Tribunal on an appeal made in the exercise of a right conferred by the Criminal Injuries Compensation Scheme in compliance with s 5(1) of the Criminal Injuries Compensation Act 1995 (appeals against decisions on review); and (b) any decision of the First-tier Tribunal made under the Tribunal Procedure Rules or s 9 of the 2007 Act where there is no right of appeal to the Upper Tribunal and that decision is not an excluded decision within para (b), (c), or (f) of s 11(5) of the 2007 Act.<sup>10</sup> No classes have as yet been specified in Northern Ireland.

The 2007 Act, by s 18(8), imposes restrictions on who may preside at the hearing in the Upper Tribunal of an application for judicial review, or permission to apply for judicial review, arising under the law of England & Wales or Northern Ireland. No such restriction is placed on who may preside at the hearing of transferred applications, whether from the High Court in England and Wales, the High Court in Northern Ireland, or the Court of Session in Scotland.

This is the first volume of the Administrative Appeals Chamber Reports. It includes both decisions made by Commissioners in Great Britain before 3 November 2008 and decisions made by the AAC since that date, as well as decisions of the Northern Ireland Commissioners and decisions of the courts on appeal from Commissioners. This volume thus reflects the changes which began on 3 November 2008, and takes over from the series of Reported Decisions of the Social Security and Child Support Commissioners, which ended with Volume XXV (2008). For convenience the consolidated tables in this volume include cases reported in that series.

The AAC has four offices:

The Administrative Appeals Chamber of the Upper Tribunal  
5th Floor Chichester Rents  
81 Chancery Lane  
London  
WC2A 1DD

Tel: (020) 7911 7085

Fax: (020) 7911 7093

Email: [adminappeals@tribunals.gsi.gov.uk](mailto:adminappeals@tribunals.gsi.gov.uk)

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<sup>8</sup> In England, Wales and Northern Ireland such a specification means also that the Upper Tribunal has an "original" jurisdiction in relation to the specified classes: see s 15(2) of the 2007 Act.

<sup>9</sup> Act of Sederunt (Transfer of Judicial Review Applications from the Court of Session) 2008, SSI 2008 No. 357.

<sup>10</sup> Lord Chief Justice's Practice Direction of 29.10.08

The Administrative Appeals Chamber of the Upper Tribunal  
Cardiff Civil Justice Centre  
2 Park Street  
Cardiff  
CF10 1ET

Tel: (02920) 662257  
Fax: (02920) 376461

The Administrative Appeals Chamber of the Upper Tribunal  
George House  
126 George Street  
Edinburgh  
EH2 4HH

Tel: (0131) 271 4310  
Fax: (0131) 271 4398  
Email: [osscc@osscc-scotland.org.uk](mailto:osscc@osscc-scotland.org.uk)

The Administrative Appeals Chamber of the Upper Tribunal  
3rd Floor  
Bedford House  
16 - 22 Bedford Street  
Belfast  
BT2 7FD.

Tel: 028 9072 8731  
Fax: 028 9031 3510  
Email: [socialsecuritycommissioners@courtsni.gov.uk](mailto:socialsecuritycommissioners@courtsni.gov.uk)

Further information about the Upper Tribunal judges and about the procedure for appealing to the Upper Tribunal may be obtained from the appropriate office or from the Internet – as regards Great Britain, from the Administrative Appeal Chamber webpage on the Tribunals service website at [www.administrativeappeals.tribunals.gov.uk/](http://www.administrativeappeals.tribunals.gov.uk/) or, as regards Northern Ireland, from the Commissioners' webpage on the Northern Ireland Court Service website at [www.courtsni.gov.uk/en-GB/Tribunals/OSSC/](http://www.courtsni.gov.uk/en-GB/Tribunals/OSSC/)

#### *Reported Decisions of Commissioners and Upper Tribunal Judges*

Commissioners' and Upper Tribunal decisions on questions of legal principle are treated as binding on tribunals and on decision-makers acting on behalf of Government departments and local authorities in relevant geographical jurisdictions. That means that the principles laid down in the decisions must be applied in other cases arising in the same geographical jurisdiction (which, depending on the subject matter, may be the UK as a whole, Great Britain as a whole, or one or more of England, Wales, Scotland and Northern Ireland). In other geographical jurisdictions

such decisions are not binding but are persuasive.

Reported decisions are those decisions that are published in this official series to give them greater prominence. Published with them are decisions of superior Courts on appeal from or on judicial review of decisions of Commissioners and Upper Tribunal judges and decisions of the European Court of Justice arising out of proceedings before Commissioners and Upper Tribunal judges.

The selection of Great Britain Commissioners' and AAC decisions for reporting is made by an editorial board as described in Practice Memorandum No 2 reproduced in Volume XXI of the Reported Decisions of the Social Security and Child Support Commissioners. New guidelines for selection of decisions for reporting were issued in 2006 and updated in June 2009<sup>11</sup> and are set out after this note. The selection of Commissioners' decisions for reporting in Northern Ireland is made by the Chief Commissioner. Comments on the suitability of any decision for reporting may be sent to the secretary of the editorial board at the London office of the AAC by email to [jill.walker@justice.gsi.gov.uk](mailto:jill.walker@justice.gsi.gov.uk). Any comments on Northern Ireland Commissioners' decisions will be forwarded to the Chief Commissioner in Northern Ireland.

Each reported decision has a headnote in which the decision is summarised and which identifies the Commissioner, Upper Tribunal judge or Court who gave the decision, the date of the decision and the original file number. In Great Britain, they are written by the Legal Information Officers and Registrars in the AAC's London and Edinburgh offices. In Northern Ireland, they are written by officers in the Department for Social Development or by the Legal Officer and submitted to the Chief Commissioner for approval.

#### *The Numbering of Commissioners' and Upper Tribunal Decisions*

In Great Britain all decisions of Commissioners, and of judges of the AAC concerning matters formerly dealt with by Commissioners, have file numbers beginning with a "C", eg CIS/933/2006. Scottish cases are identified by an "S" after the "C", eg CSDLA/133/2005. When there was a separate Commissioners' office in Wales, Welsh cases were identified by a "W" after the "C". The other letters indicate the type of case, generally by reference to the benefit under consideration. The first set of numbers represents the individual file number. The final digits identify the year in which the file was opened at the Commissioners'/AAC office.

Letters which are, or have been, used to indicate the type of case are listed in Appendix 2.

When a decision is selected for reporting it is given a new number beginning with an "R": eg CH/51/2008 is reported as R(H) 2/09. The letters in brackets again identify the type of case. Scottish decisions are not expressly identified as such. Until 1999, the final digits identified the year in which the decision was selected for reporting. They now identify the year in which the decision was first published as a reported decision.

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<sup>11</sup> New guidelines for 2010 onwards will be published in the next volume of these reports.

In Northern Ireland, the letters identifying the type of case always appear in brackets after the numbers and, since 1999, the file number has been based on a financial year rather than a calendar year. Thus C72/98(IB) was the number of the decision reported as R 2/00 (IB); C3/01-02(IS) was the number of the decision reported as R 1/02 (IS). The letters themselves are based on the official abbreviation used by the Department for Social Development and its predecessors for the relevant benefit and so they are not always the same as the ones used in Great Britain. A “T” in brackets after the file number or reported number indicates a decision of a Tribunal of Northern Ireland Commissioners.

Decisions of the Upper Tribunal that appear on the website of the AAC are given a title (anonymous pending review) and a neutral citation number. See the Senior President’s Practice Statement *Form of decisions and neutral citation: First-tier Tribunal and Upper Tribunal on or after 3 November 2008*, published on the Tribunals Service website page [www.tribunals.gov.uk/Tribunals/Rules/rules.htm](http://www.tribunals.gov.uk/Tribunals/Rules/rules.htm) and reproduced after this Note. Decisions of the Upper Tribunal reported in this series during 2009 are given an “R” number, but with the addition of the title and neutral citation number, and published in sequence with Commissioners’ decisions, eg CH/3160/2007 becomes *AH v Mendip District Council and the Secretary of State for Work and Pensions* [2008] UKUT 18 (AAC), R(H) 3/09 and should be so cited.

In this volume, the decisions are arranged alphabetically according to the type of case and then arranged numerically. The decisions from Great Britain are printed before those from Northern Ireland.

### *The Publication of Reported Commissioners’ Decisions*

Reported decisions of Commissioners in Great Britain from 1991 (and many unreported decisions) may be downloaded from the Commissioners’ website. Reported decisions are also published quarterly by the Department for Work and Pensions on the DWP website [www.dwp.gov.uk/advisers/](http://www.dwp.gov.uk/advisers/).

Northern Ireland reported decisions from 1978 (and many unreported decisions) may be downloaded from the website of the Department for Social Development at [www.dsdni.gov.uk/index/law\\_and\\_legislation.htm](http://www.dsdni.gov.uk/index/law_and_legislation.htm).

Bound volumes of reported decisions have been published by The Stationery Office (formerly HMSO) since 1948, Great Britain decisions and Northern Ireland decisions being published separately until 1999.

Miranda Bayliss and Maggie Phelps, Legal Information Officers at the London office of the AAC, have prepared the text of the decisions for publication in this volume. They have relied substantially on the work done by the AAC Registrars, by the Publications team in DMA Customer Support Services of the Department for Work

and Pensions under Maxine Taylor and by the team under Moya Stewart in the DMS Unit of the Department for Social Development.

## **APPENDIX 1**

### **GUIDELINES FOR REPORTING**

#### **Why decisions are reported**

The key reasons why decisions are reported is that they (i) decide difficult issues, (ii) contribute to the coherent development or operation of the law or (iii) give practical guidance to decision-makers or appeal tribunals.

#### **Decisions of single Upper Tribunal Judges**

Whether a particular decision should be reported is based on these criteria –

- if it is of value as a precedent. This requires that the decision commands the broad assent of the Chamber. Relevant factors include: whether the decision decides an issue for the first time; whether it modifies a reported decision; whether the decision resolves a conflict or settles a doubtful point; whether it has been overtaken by amendments to the legislation; and the number of cases in which it is likely to be relevant.
- if it extends existing principles to new areas of the Upper Tribunal Judges' jurisdiction.
- for comments that are not essential to the decision but contribute to the coherent development of the law.
- as an illustration of how the law applies if the issue commonly arises and there is no other reported decision.
- if it gives practical guidance to decision-makers or appeal tribunals.

#### **Decisions of three Judge Panels of Upper Tribunal Judges**

A decision of a three Judge Panel of Upper Tribunal Judges should be reported in the absence of exceptional reasons for not doing so.

#### **Court judgments**

Court judgments should be reported if (i) they satisfy the criteria for reporting a decision by a single Upper Tribunal Judge, except the broad assent of the Upper Tribunal Judges and (ii) deal with an area of law within the Upper Tribunal Judges' jurisdiction. They should not be reported if they deal with other areas of law, even if they relate to the Upper Tribunal Judges' jurisdiction.

Judgments on permission to appeal are only reported if they contain useful analysis.

## Editing

In some rare cases, it may be appropriate for a case to be edited so that not all paragraphs appear in the reported version. If so, this will be indicated in the report and a full copy of the original decision be available on our website.

**Editorial Board June 2006 (Up-dated December 2009)**

### APPENDIX 2

Letters used to indicate type of case (unreported and reported decisions)

A	Attendance allowance
AF	War pensions and the armed and reserve forces compensation scheme
CR	Compensation recovery
CS	Child support
CTF	Child trust fund
DLA	Disability living allowance
DWA	Disability working allowance
F	Family allowance (now child benefit)
FC	Family credit
FG	Forfeiture – general (bereavement benefit and widow's benefit)
FP	Forfeiture – pension (retirement pension)
G	General (bereavement benefit, carer's allowance, child's special allowance, death grant, guardian's allowance, invalid care allowance, maternity benefit and widow's benefit, including forfeiture cases before 2003)
H	Housing benefit and council tax benefit
HR	Home responsibilities protection
I	Industrial accidents and diseases and industrial injuries benefits (injury benefit, disablement benefit, reduced earnings allowance and industrial death benefit)
IB	Incapacity benefit
IS	Income support and social fund payments
JSA	Jobseeker's allowance
M	Mobility allowance
P	Pension (retirement pension, including forfeiture cases before 2003)

PC Pension credit  
S Sickness benefit, invalidity benefit and severe disablement allowance  
SB Supplementary benefit  
SSP Statutory sick pay  
TC Tax credits  
U Unemployment benefit

