

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

2010

Senior President of Tribunals

Sir Robert Carnwath CVO

Chamber President

Sir Paul Walker

High Court judges assigned by request to the AAC

The Honourable Mr Justice Nicol

The Honourable Mr Justice Ouseley

The Honourable Mr Justice Stadlen

Upper Tribunal judges assigned to the AAC

President of the Lands Chamber of the Upper Tribunal:

George Bartlett QC

Chamber Presidents of the First-tier Tribunal:

HH Judge Robert Martin, Social Entitlement Chamber

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

Andrew Bano, War Pensions and Armed Forces Compensation Chamber ¹

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

Charles Turnbull

Elisabeth Jupp

Shelley Lane

Christopher Ward

Alan Gamble

Nicholas Wikeley

¹ Assigned to the AAC as a GB Social Security Commissioner

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

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

Former Deputy President, Asylum and Immigration Tribunal:

Mark Ockelton²

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

John Aitken

Mark Hinchliffe

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

John Angel

President and Chairmen of the Transport Tribunal:

Hugh Carlisle QC (President)

HH Judge Jacqueline Beech

HH Michael Brodrick

Frances Burton

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

HH Judge Peter Wulwik

² Now Vice President Upper Tribunal Immigration and Asylum Chamber, with effect from 15 February 2010

Former President of the Charity Tribunal:

Alison McKenna

Former President of the Adjudication Panel for England:

David Laverick (from 18 January 2010)

Former President of the Claims Management Services Tribunal:

Sir Stephen Oliver QC (from 18 January 2010)

Former President of the Gambling Appeals Tribunal:

Nicholas Warren (from 18 January 2010)

Former President of the Immigration Services Tribunal:

HH Judge The Lord Parmoor (from 18 January 2010)

Former President of the Family Health Services Appeal Authority:

Paul Kelly (from 18 January 2010)

Former Deputy Chairmen of the Information Tribunal, qualified to deal with National Security Certificate cases³:

Andrew Bartlett QC

Michael Beloff QC

David Farrer QC

James Goudie QC

Roderick MacDonald QC

David Marks QC

Mr Justice Kenneth Parker

Annabel Pilling

Robin Purchas QC

Christopher Ryan

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

³ Assigned to the AAC from 18 January 2010

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
Stuart James
Leslie Milliken
Patricia Steel
David Yeomans

Former Members of the Information Tribunal⁴:

John Black
Jacqueline Blake
Vivian Bower
Terry Butler
Anne Chafer
Malcolm Clarke
Suzanne Cosgrave
Roger Creedon
Pieter De Waal
Sir Peter Dixon
Sarah Ebanja
Dr Henry Fitzhugh
Richard Fox
Colin Hake
Elizabeth Hodder
Melanie Howard
Gareth Lloyd Jones
Michael Jones
Jean Nelson
John Randall
Marion Saunders
John Scampion
Stephen Shaw

⁴ Assigned to the AAC from 18 January 2010

David Sivers
Anthony Stoller
Rosalind Tatam
Paul Taylor
Jenni Thomson
Alasdair Warwood
Nigel Watson
Andrew Whetnall
David Wilkinson
Ivan Wilson

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 Britain⁵, 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.⁶

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 (GRC) 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,⁷ was also transferred, and for this purpose additional specially qualified members joined the AAC.

On 18 January 2010 six new jurisdictions were created in the First-tier Tribunal with onward appeals to the AAC:

- *England only*: Local Authority Standards in England;

⁵ 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.

⁶ 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.

⁷ The Transport Tribunal continues to hear appeals from penalty decisions of Traffic Commissioners in Scotland.

- *England and Wales*: Claims Management Services, Primary Health Lists;
- *England, Wales, Scotland*: Gambling;
- *England, Wales, Scotland and Northern Ireland*: Immigration Services, Information Rights.

Rules governing the Information Rights jurisdiction provide for all appeals to be begun in the First-tier Tribunal, but require that National Security Certificate cases be transferred to the AAC, and permit the transfer of other cases where both the GRC and AAC presidents agree.

In cases arising under the law of England and Wales or under the law of Northern Ireland ss 15 to 18 of the 2007 Act⁸ set out a “judicial review” jurisdiction conferred on the Upper Tribunal. In addition to this “original” jurisdiction,⁹ 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 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.¹⁰ In Scotland one such class (comprising challenges to a procedural decision or a procedural ruling of the First-tier Tribunal) has been specified.¹¹ 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.¹² 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. Those restrictions apply to cases which are brought in the Upper Tribunal pursuant to its “original” jurisdiction. 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.

⁸ brought into force on 3 November 2008 along with the remainder of Part 1 of the 2007 Act.

⁹ which is confined to specified classes (see below).

¹⁰ 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.

¹¹ Act of Sederunt (Transfer of Judicial Review Applications from the Court of Session) 2008, SSI 2008 No. 357.

¹² Lord Chief Justice’s Practice Direction of 29.10.08

This is the second volume of the Administrative Appeals Chamber Reports. It includes decisions made by the AAC, and decisions of the courts on appeal from Commissioners and AAC judges, as well as relevant decisions in other jurisdictions. No decisions of Northern Ireland Commissioners were reported in 2010. For convenience the consolidated tables in this volume include cases reported in the series Reported Decisions of the Social Security and Child Support Commissioners, which ended with Volume XXV (2008).

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

The Administrative Appeals Chamber of the Upper Tribunal
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Tel: (02920) 662257
Fax: (02920) 376461

The Administrative Appeals Chamber of the Upper Tribunal
George House
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Tel: (0131) 271 4310
Fax: (0131) 271 4398
Email: ossc@ossc-scotland.org.uk

The Administrative Appeals Chamber of the Upper Tribunal
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Bedford House
16 - 22 Bedford Street
Belfast
BT2 7FD.
Tel: 028 9072 8731
Fax: 028 9031 3510
Email: 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 Appeals Chamber

webpages at 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/

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 AAC judges and decisions of the European Court of Justice arising out of proceedings before Commissioners and AAC judges. Also included are some decisions of courts (and other tribunals) that are of particular relevance to the work of the AAC even though the individual case was not an appeal from, or otherwise directly connected to, the AAC.

The selection of Great Britain 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 December 2009 and September 2010 and are set out in Appendix 1. 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. 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 AAC 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 an AACR number eg [2010] AACR 1.

Decisions reported before 2010 were given a number with a prefix beginning with an “R”: eg CH/51/2008 was 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.

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. From 2010 any reported Northern Ireland Commissioners’ decisions are published in the AACR series and numbered accordingly.

Decisions of the Upper Tribunal that appear on the website of the AAC are given a title (under current practice, usually anonymised) 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 at www.tribunals.gov.uk/Tribunals/Rules/rules.htm and reproduced after this Note. Decisions of the Upper Tribunal reported in this series during 2009 were 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 became *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.

Titles of all decisions reported or published on the website from 2010 are provided with a “flag” in round brackets after the title in order to indicate the subject matter of each decision, eg *KS v Secretary of State for Work and Pensions (JSA)* [2009] UKUT 122 (AAC); [2010] AACR 3. Flags currently in use are listed in Appendix 3.

Citation of cases

Both the neutral citation number and the report reference should always be used on the first occasion on which a reference is made to a reported decision, eg *KS v Secretary of State for Work and Pensions (JSA)* [2009] UKUT 122 (AAC); [2010] AACR 3 or *KS v SSWP (JSA)* [2009] UKUT 122 (AAC); [2010] AACR 3’.

The Publication of Reported Commissioners' and AAC Decisions

Reported decisions of Commissioners in Great Britain from 1991 (and many unreported decisions) may be downloaded from the AAC website. Reported decisions from 1991 to 2009 were also published quarterly by the Department for Work and Pensions on the DWP website <http://www.dwp.gov.uk/publications/specialist-guides/decisions/>. We are grateful to the DWP Publications team for their cooperation during those years.

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_nidoc_database.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.

Reported decisions of the AAC may be downloaded from the AAC website.

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 are grateful for help received from the AAC Registrars.

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 two or three Judge Panels of Upper Tribunal Judges

A decision of a Two or Three Judge Panel will be considered for reporting using the same criteria as apply to the decision of a single Judge, save that the Editorial Board will also have regard:

(i) to the number of Judges who sat on the appeal; and (ii) to paragraph 3(a) of, and to analogous provisions in, the Practice Statement by the Senior President of Tribunals on the “Composition of Tribunals in relation to matters that fall to be decided by the Administrative Appeal Chamber of the Upper Tribunal on or after November 2008.”

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 will be available on our website.

Editorial Board June 2006 (Up-dated December 2009 & Sept 2010)

APPENDIX 2

Letters used in file numbers of Social Entitlement and War Pensions and AFCS cases 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

APPENDIX 3

Names of cases

From 2010 a “flag”, indicating the subject matter of a decision, will be included at the end of the name of the decision. In benefit cases, this will indicate the type of benefit in issue but will use standard forms of abbreviations rather than AAC file references.

The standard flags for SEC, SEN, WP&AFCS appeals and judicial reviews will be –

<i>Flag</i>	<i>Subject</i>
AA	Attendance allowance
AFCS	Armed Forces Compensation Scheme
BB	Bereavement benefit (incl widowed parent's allowance)
CA	Carer's allowance
CHB	Child benefit
CIC	Criminal injuries compensation
CR	Compensation recovery: social security benefits
CR: NHS	Compensation recovery; NHS charges
Credits	Credits
CSM	Child support maintenance
CTB	Council tax benefit (by itself)
DLA	Disability living allowance

Enforcement reference	Reference to the Upper Tribunal by the First-tier Tribunal of a failure to comply with the First-tier Tribunal's order
ESA	Employment and support allowance
GA	Guardian's allowance
GRB	Graduated retirement benefit
HB	Housing benefit (or housing benefit with CTB)
HRP	Home responsibilities protection
IB	Incapacity benefit
II	Industrial injuries
IS	Income support
JR	Judicial review
JSA	Jobseeker's allowance
MA	Maternity allowance
Review	Review
RP	Retirement pension
SEN	Special educational needs
SF	Social fund
SPC	State pension credit
TC	Tax credit
VDP	Vaccine damage payment
WB	Widow's benefit (incl widowed mother's allowance)
WP	War pension

The flag will appear in brackets at the end of the case name. Thus, an income support case will be cited as, say: *AB v Secretary of State for Work and Pensions (IS)* [2010] UKUT 123 (AAC).

Other flags may be used for decisions as required and will be in plain English.