

# THE NATURE OF THE ROLE OF A PENSIONS APPEAL TRIBUNALS LEGAL MEMBER

## Background

**The Pensions Appeal Tribunals** have been in their present form in Northern Ireland since 1943 through the passing of the **Pensions Appeal Tribunals Act 1943** although they have been in existence since the **War Pensions Act 1919**.

Pensions Appeal Tribunals in Northern Ireland and Scotland (and the parallel War Pensions and Armed Forces Compensation Chamber of the First-tier Tribunal in England & Wales (WPAFCC) and Pensions Appeal Tribunals for Scotland) hear appeals from decisions made under two separate compensation schemes.

The first, known as the 'new' scheme, is provided for in the **Armed Forces and Reserve Forces (Compensation Scheme) Order 2011**.

The second, known as the 'old' scheme, is provided for in the **Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006**.

It is important to note that the reason for the Order making provision for the 'old' scheme post-dating the Order for the 'new', is because the 2006 Order consolidated in to a single instrument the **Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983**, and subsequent amending Orders.

In summary, the decision-making process is as follows. A claimant to a pension applies to the Secretary of State. Claims are decided on behalf of the Secretary of State by the Service Personnel and Veterans Agency at the Ministry of Defence. A claimant who receives an adverse decision in a claim (or on a subsequent review) may appeal to a Pensions Appeal Tribunal. On appeal the jurisdiction of the Tribunal may be to decide whether the conditions of entitlement to a pension are satisfied or against the level of assessment of the degree of disablement. Occasionally other issues arise.

Pensions Appeal Tribunals operate under the judicial management of the President of Pensions Appeal Tribunals for Northern Ireland who is responsible for the efficient processing of appeals. The President is assisted in his functions by a Deputy President.

### **The Role of the Legal Member**

The key characteristics of most tribunals, including the Pensions Appeal Tribunals, are flexibility, efficiency, transparency, independence, impartiality and simplification. The practice and procedures of the Pensions Appeal Tribunals are circumscribed by a set of procedural rules – the Pensions Appeal Tribunals (Northern Ireland) rules 1991, as amended. Although these rules provide for formal structures and processes for the Pensions Appeal Tribunals, the practice and procedure of the Tribunal, as is common with most tribunal systems, is much less formal than the ordinary courts.

The tribunal adopts an ‘inquisitorial’ approach which means that the Tribunal is concerned to arrive at the correct answer to the issues which arise in the appeal and will, if required, raise and address issues even if they have not been raised by the parties to the proceedings. The approach is also ‘enabling’ ensuring that the appellant has the opportunity to present his/her case in the best possible manner. This latter approach is particularly important in tribunals where the appellant often appears without legal representation. While the level of representation in the Pensions Appeal Tribunals is reasonably high, many appellants do remain unrepresented. The Secretary of State is usually represented.

The members of Pensions Appeal Tribunals are appointed by the Northern Ireland Judicial Appointments Commission and are fee-paid. The Tribunal normally consists of a Legal Chairman, a Medical Member and a Service Member. The length of an individual hearing will vary depending on the issues which arise. Several appeals are usually listed for hearing and determination in one day. Chairmen and Members sit mostly in Belfast but may be required to sit at other venues in Northern Ireland. Chairmen and Members will be assigned by the President according to the business needs of the Tribunal. Occasionally there may be a requirement for the Tribunal, or

an individual Member of the Tribunal, to visit the appellant in his/her domiciliary setting.

The papers relating to the appeals listed for hearing in a session are forwarded to the members of the Tribunal in advance and Members will be required to read and assimilate the details of those cases in preparation for the hearing.

On the day of the hearing all Members are expected to participate in pre-hearing discussions to confirm the issues which arise; the nature of the evidence which is before the Tribunal; and the precise procedure to be adopted when the hearing commences.

The Legal Member will be expected to be familiar with the relevant statutory provisions and case law and to use his/her knowledge and expertise to advise the Tribunal on matters of law; to help to promote in each case the most expeditious dispatch of business compatible with the interests of justice; to maintain the authority and dignity of the Tribunal; to participate fully in the decision-making process; and to keep a Record of the Proceedings and draft the decisions and reasons therefor. The Legal Member will need to develop effective working relationships with the other Members of the Tribunal, the administrative support staff and representatives of the parties to the proceedings.

In all of the proceedings of the Tribunal, it is expected that Members will conduct themselves in such a manner that all of the parties are able to present their respective cases and have those cases considered as fully and fairly as possible. It is important to note that many of the issues raised in appeals are sensitive.

### **Appeals**

The Upper Tribunal in the United Kingdom hears appeals from the Pensions Appeal Tribunals from Northern Ireland, arising from Section 5 of the **Pensions Appeal Tribunals Act 1943** – ‘assessment’ appeals. In Northern Ireland, Social Security Commissioners, designated as Pensions Appeal Commissioners for the purpose, hear all other appeals against decisions of the Pensions Appeal Tribunals for

Northern Ireland, namely under Sections 1 to 4 and Section 5A of the **Pensions Appeal Tribunals Act 1943**.

### **Training**

Members of the Tribunal will be expected to participate in judicial training arranged for and organised by the President. This will include initial induction training on appointment and training throughout their period of service.

There is close co-operation in the judicial training function between the Pensions Appeal Tribunals in Northern Ireland and the parallel WPAFCC and the Pensions Appeal Tribunals for Scotland. Members of the Pensions Appeal Tribunal for Northern Ireland are, on occasions, invited to attend judicial training events organised by the WPAFCC and it is expected that all Members will attend such training events.

Administrative support to the Pensions Appeal Tribunals is provided for by the Northern Ireland Courts and Tribunals Service which makes arrangements for the listing of appeals and for such matters as the payments of fees and expenses.

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