FTT Judges sitting as judges of the county court

Procedural issues in relation to appeals and assessors[1]

Introduction

1. On 22 April 2014, the Crime and Courts Act 2013 Sch.9(1) para. 4 was brought into force, providing that judges of the First-tier Tribunal are judges of the county court and therefore able to exercise the jurisdiction of the county court, providing that a claim form has been issued and the matter has been listed for hearing by them.

2. This made it possible for judges of the Residential Property Division of the First-tier Tribunal (Property Chamber) ("the FTT") to determine issues within the jurisdiction of the county court. This has led to two deployment pilot schemes.

3. There is one in which uncontested applications for new tenancy of business premises under the Landlord and Tenant Act 1954 part II which are issued in the Central London County Court are heard by judges of the FTT: see https://tinyurl.com/yba2my8b.

4. There is another pilot scheme under which disputes relating to residential property which raise some issues within the jurisdiction of the county court and others within the jurisdiction of the FTT are heard by an FTT judge acting in both capacities, referred to as "double-hatted sitting". There is, at present, no published guidance on the operation of this scheme. The previous published guidance has been withdrawn for redrafting but will be re-issued shortly. There are detailed explanations of the purpose of the pilot and its operation in two reports:

   - The 2015 Interim Report Of The Working Group On Property Disputes In The Courts And Tribunals - https://www.judiciary.uk/wp-content/uploads/2011/03/final-interim-report-cjc-wg-property-disputes-in-the-courts-and-tribunals.pdf

   - The 2018 Report On Property Chamber Deployment Project - https://www.judiciary.uk/wp-content/uploads/2018/11/property-chamber-deployment-project-report-oct2018.pdf

5. Double-hatted sitting, which has been pioneered by Judge Siobhan McGrath, the President of the FTT, is generally very advantageous to the parties, saving time and costs. For example, take the case of a collective enfranchisement claim where the freehold or intermediate leasehold interest is owned by an individual who cannot be found. Under ss.26-27 of the 1993 Act, this requires both an application to the court and an application to the FTT. It is now possible for both the jurisdiction of the court

[1] The material in this paper was originally prepared for and presented at a workshop at the Chancery Bar Association Annual Conference 2019, which was led by Judge Siobhan McGrath, the President of the FTT, Amanda Gourley and me.

and the jurisdiction of the FTT to be exercised in one go, so reducing the time and cost for the tenants.

6. However, double-hatted sitting does give rise to a need for care when navigating the procedural issues which it can give rise to. In *Avon Ground Rents Limited v Child* [2018] UKUT 204 (LC), Holgate J and HHJ Hodge QC, sitting both as judges of the county court and as judges of the Upper Tribunal (Lands Chamber) heard an appeal a case heard under the double hatting deployment pilot scheme, and gave guidance on the future conduct of such cases. They said:

> "*42 It is important to appreciate that the statutory provisions which permit the flexible deployment of FTT judges as judges of the County Court do not affect the substantive statutory provisions which govern the respective jurisdictions of the County Court and the FTT, nor do they alter the procedural rules which govern proceedings in those two bodies. There are significant differences between them. Procedure in the County Court is governed by the CPR while procedure in the FTT is governed by the FTT Rules. The FTT has no power to enter a money judgment or otherwise require one party to make a payment to another but simply declares what the parties' rights are and leaves questions of enforcement to the County Court….*
>
> *45 Different rules govern the time for appealing, the procedure for seeking permission to appeal, and the destination of the appeal, depending upon whether it is sought to appeal a decision of the FTT or the County Court. It is therefore essential that where a judge acts on the same occasion both as a judge of the FTT and as a judge of the County Court, that judge is very clear in his or her own mind as to which "hat" is being worn in relation to each aspect of the decision-making process, and that he or she maintains and articulates a clear distinction at all times between the discrete functions and roles being performed….*".

7. This paper addresses two technical procedural issues that may need to be considered where an FTT Judge sits as a judge of the county court.

   (1) The first relates to valuer members of the FTT acting as assessors. The 1954 Act pilot provides that the FTT judges will sit "*alongside a valuer (sitting as a legal assessor)*". This raises the question of the role of assessors under the CPR and how a valuer member of the FTT could perform that role.

   (2) The second issue arises where there is double-hatted sitting, and a disappointed party wishes to appeal.

The role of assessors in county court proceedings

8. S.63 of the County Courts Act 1984 provides

> *(1) In any proceedings the judge may, if he thinks fit, summon to his assistance, in such manner as may be prescribed, one or more persons of skill and experience in the matter to which the proceedings relate who may be willing to sit with in the county court a judge of the court and act as assessors….*

(3) Subject to subsection (4), the remuneration of assessors for sitting under this section shall be determined by the court and shall be costs in the proceedings unless otherwise ordered by the court.

(4) Where one or more assessors are summoned for the purposes of assisting a judge in reviewing the taxation of the costs of any proceedings the remuneration of any such assessor—
(a) shall be at such rate as may be determined by the Lord Chancellor with the approval of the Treasury; and
(b) shall be payable out of moneys provided by Parliament.

(5) Where any person is proposed to be summoned as an assessor, objection to him, either personally or in respect of his qualification, may be taken by any party in the prescribed manner.

This is in the same terms as s.70 of the Senior Courts Act 1981, which applies to High Court proceedings.

9. CPR r.35.15 provides:

(1) This rule applies where the court appoints one or more persons under section 70 of the Senior Courts Act 1981 or section 63 of the County Courts Act 1984 as an assessor.

(2) An assessor will assist the court in dealing with a matter in which the assessor has skill and experience.

(3) An assessor will take such part in the proceedings as the court may direct and in particular the court may direct an assessor to—
(a) prepare a report for the court on any matter at issue in the proceedings; and
(b) attend the whole or any part of the trial to advise the court on any such matter.

(4) If an assessor prepares a report for the court before the trial has begun—
(a) the court will send a copy to each of the parties; and
(b) the parties may use it at trial.

(5) The remuneration to be paid to an assessor is to be determined by the court and will form part of the costs of the proceedings.

(6) The court may order any party to deposit in the court office a specified sum in respect of an assessor's fees and, where it does so, the assessor will not be asked to act until the sum has been deposited.

(7) Paragraphs (5) and (6) do not apply where the remuneration of the assessor is to be paid out of money provided by Parliament.

10. Practice Direction 35 para 10 provides:

> *10.1. An assessor may be appointed to assist the court under rule 35.15. Not less than 21 days before making any such appointment, the court will notify each party in writing of the name of the proposed assessor, of the matter in respect of which the assistance of the assessor will be sought and of the qualifications of the assessor to give that assistance.*
>
> *10.2. Where any person has been proposed for appointment as an assessor, any party may object to that person either personally or in respect of that person's qualification.*
>
> *10.3. Any such objection must be made in writing and filed with the court within 7 days of receipt of the notification referred to in paragraph 10.1 and will be taken into account by the court in deciding whether or not to make the appointment.*
>
> *10.4. Copies of any report prepared by the assessor will be sent to each of the parties, but the assessor will not give oral evidence or be open to cross-examination or questioning.*

11. The decision as to whether to appoint an assessor and, if so, the identity of the assessor is a judicial decision, although the notification of the identity of the assessor may be done by court staff: *Cary v Commissioner of Police of the Metropolis* [2015] I.C.R. 71 at [69] per Christopher Clarke LJ.

12. At [65], he said that if the Court nominates a proposed assessor, it should: "… *notify the parties and provide details of the proposed assessor's qualifications, which are most likely to be in the form of a CV. The rules require this to be done 21 days before any appointment; but the process should not be left to take place in, say, the two months before the trial, since if the objection is upheld it will be necessary to select another assessor(s) and give a new notification.*"

13. The role of assessors appointed under CPR r.35.15 was considered by the Court of Appeal in *Ahmed v Governing Body of the University of Oxford* [2003] 1 W.L.R. 995, but the observations made in that case cannot now be relied on, as the Court of Appeal reconsidered the position and issued fresh guidance in *Owners of the Ship Bow Spring v Owners of the Ship Manzanillo II* [2005] 1 W.L.R. 144. The principles established by the *Manzanillo II* can be summarised as follows:

    (1) Assessors do not decide any issue. Their function is to assist or advise the judge so as to enable that judge to reach a conclusion.

    (2) Article 6 of the ECHR requires that the parties must have knowledge of, and comment on, all evidence adduced or observations made with a view to influencing the court's decision. Assessors are experts, and therefore the consultation between the assessors and the court should take place openly as part of the assembling of evidence.

    (3) Because the judge is not bound to accept the advice he receives from the assessors, the parties are entitled to an opportunity to contend that the judge

should or should not follow it. It is, therefore, impermissible for the judge to retire to discuss the case with the assessors and then give judgment.

14. In *The Global Mariner* [2005] 1 Lloyd's Rep 699 at [14], Gross J gave more detailed guidance on the procedure to be followed in following *Manzanillo II*. He said at [16]: "*The aim is to strike the right (and proportionate) balance between the desirable goal of transparency on the one hand and the need to curb the cost and delay inherent in the 'ping pong' of post-hearing exchanges on the other*". The guidance was as follows:

> "*(i) The range of topics on which advice might be sought from the Assessors should be canvassed with counsel by, latest, the stage of final submissions.*
>
> *(ii) Ordinarily, the questions asked of the Assessors by the Judge should not stray outside the range previously discussed with counsel; should they do so, however, there are safeguards contained in (iii) and (iv) below.*
>
> *(iii) The questions ultimately put by the Judge, together with the answers given by the Assessors, should be disclosed to counsel before any draft judgment is handed down.*
>
> *(iv) Counsel should thereafter be given the opportunity to make submissions to the Judge, as to whether the advice given by the Assessors should be followed. Ordinarily, any such submissions should be in writing; but if there is good reason for doing so, an application could be made for an oral hearing. The Judge will consider any such submissions before finalising his judgment.*
>
> *(v) Generally speaking, the interests of proportionality and finality will make it unnecessary to repeat the procedure after the Judge and the Assessors have had the opportunity of considering the parties' submissions and any suggested further or revised questions. Accordingly, unless the Judge in his discretion thinks it appropriate to disclose them to counsel before the judgment is finalised, any further or revised answers will simply be recorded in the judgment, together with the Judge's decision as to whether or not to accept the Assessors' advice and his reasons for doing so*".

15. Accordingly, if a valuer member of the FTT is to be appointed as an assessor for the purposes of proceedings within the jurisdiction of the county court, then:

(1) An FTT Judge, and not a member of staff, must form the view that an assessor is needed, and decide who it should be, bearing in mind the issues in the case.

(2) A member of staff should then write to the parties notifying them of the name of the proposed assessor, of the matter in respect of which the assistance of the assessor will be sought and of the qualifications of the assessor to give that assistance. This must take place 3 weeks before the Judge decides to appoint the assessor.

(3) Any party may object to that person either personally or in respect of that person's qualification, in which case the objection must be made in writing and filed with the Tribunal office within 7 days of receipt of the notification referred and the Judge must then make a judicial decision on whether to make the appointment or not.

(4) At the hearing, the Judge must make it clear that he or she is going to be deciding the issue within the jurisdiction of the court, and that the assessor's role is to advise and not decide.

(5) The assessor's advice must be given in a way such that the parties know what it is and can make submissions on it. The procedure set out in *The Global Mariner* or some suitable adaptation of that procedure should be adhered to.

Appeals from a decision of an FTT Judge acting as a county court judge

Which Court does one appeal to?

16. There was a time when appeals were simple. Appeals from a Master went to a High Court Judge. Appeals from a County Court Registrar/District Judge went to a Circuit Judge. All other appeals went to the Court of Appeal.

17. Those simple days are long gone. The latest convoluted complexity inflicted on litigants and those advising them is contained in the Access to Justice Act 1999 (Destination of Appeals) Order 2016. This has to be read with s.5 of the County Courts Act 1984 and a cold, wet towel.

18. As I read the Order, there are two categories of office holder who are, by virtue of the office they hold, a judge of the county court. Appeals from decisions by those in category 1 go to the High Court. Appeals from those in category 2 go to a Judge of the County Court in category 1. The two categories appear to be as set out in the table in the Appendix to this paper.

19. As I read the 2016 Order, in a deployment pilot case, the route of appeal would depend on the office or offices held by the FTT Judge who acts as a county court judge to determine that part of the dispute falling within the jurisdiction of the county court. On this reading if the FTT Judge is also a Recorder or a deputy High Court Judge (as some FTT Judges are), then an appeal would lie to the High Court.

20. Another reading is possible, which is that what matters is the office by virtue of which the FTT Judge purports to act as a county court judge in determining the dispute. So if an individual holds the office of Recorder and also the office of an FTT Judge, and states that they are determining the dispute as an FTT Judge, an appeal would be to a category 1 county court judge and not to the High Court.

21. On either reading, if the FTT Judge is the Chamber President then any appeal will be to the High Court.

22. The practical solution in case of uncertainty is to seek a direction from the judge whose decision it is sought to appeal as to the appropriate appeal court or, if that cannot be obtained, to file an appellant's notice with both the county court and the High Court, and to invite both offices to allocate the appeal to an individual who is authorised to sit as a judge of the High Court and who therefore will undoubtedly have jurisdiction to determine the appeal.

The conduct of appeals under the CPR

23. The conduct of appeals under the CPR are governed by r.52.21 which provides:

> "*(1) Every appeal will be limited to a review of the decision of the lower court unless—*
>
> *(a) a practice direction makes different provision for a particular category of appeal; or*
>
> *(b) the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.*
>
> *(2) Unless it orders otherwise, the appeal court will not receive—*
>
> *(a) oral evidence; or*
>
> *(b) evidence which was not before the lower court.*
>
> *(3) The appeal court will allow an appeal where the decision of the lower court was—*
>
> *(a) wrong; or*
>
> *(b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.*
>
> *(4) The appeal court may draw any inference of fact which it considers justified on the evidence.*
>
> *(5) At the hearing of the appeal, a party may not rely on a matter not contained in that party's appeal notice unless the court gives permission.*"

24. That rule empowers the appeal court to hold a full re-hearing of the case, with oral evidence and evidence which was not before the lower court. In practice, appeal courts operating under the CPR never exercise that power; rather, where a re-hearing is called for, they remit the case to the lower court with a direction for a re-hearing. In *EI Dupont de Nemours & Co v ST Dupont* [2006] 1 WLR 2793, at para 96 Aldous LJ said, commenting on the rule (at that time it was rule 52.11) said that where the appeal court did decide to determine the appeal by way of a rehearing:

> "*On such a rehearing the court will hear the case again. It will if necessary hear evidence again and may well admit fresh evidence. It will reach a fresh decision unconstrained by the decision of the lower court, although it will give to the decision of the lower court the weight that it deserves. The circumstances in which an appeal court hearing an appeal from within the court system will decide to hold such a*

rehearing will be rare, not least because the appeal court has power under rule 52.10(2)(c)[2] *to order a new trial or hearing before the lower court.*"

Permission to appeal under the CPR

25. Permission to appeal ("PTA") is required which may be granted either by the lower court at the hearing at which the appealed decision was made or by the appeal court. It is not essential to apply first to the lower court, but it is good practice: *P. v. P.* [2015] EWCA Civ 447 at [68].

26. An appeal is brought by filing an appellant's notice which, subject to any other direction, must be within 21 days after the decision of the lower court under appeal.

27. One important point to bear in mind in double hatted cases is that, under the CPR, the court whose decision is being appealed can only grant PTA at the hearing at which the appealed decision is made: CPR r.52.3(2). In *McDonald v Rose* [2019] EWCA Civ 4, the Court of Appeal gave the following guidance at [21]:

> (1) The date of the decision for the purposes of time running for filing an appellant's notice is the date of the hearing at which the decision is given, which may be ex tempore or by the formal hand-down of a reserved judgment - this was referred to as "the decision hearing".
>
> (2) A party who wishes to apply to the lower court for permission to appeal should normally do so at the decision hearing itself. In the case of a formal hand-down where counsel have been excused from attendance that can be done by applying in writing prior to the hearing. The judge will usually be able to give his or her decision at the hearing, but there may be occasions where further submissions and/or time for reflection are required, in which case the permission decision may post-date the decision hearing.
>
> (3) If a party is not ready to make an application at the decision hearing it is necessary to ask for the hearing to be formally adjourned in order to give them more time to do so. The judge, if he or she agrees to the adjournment, will no doubt set a timetable for written submissions and will normally decide the question on the papers without the need for a further hearing. As long as the decision hearing has been formally adjourned, any such application can be treated as having been made "at" it for the purpose of CPR 52.3 (2) (a). Such adjournments should in the generality of cases be unnecessary. Where a reserved judgment has been pre-circulated in draft in sufficient time parties should normally be in a position to decide prior to the hand-down hearing whether they wish to seek permission to appeal, and to formulate grounds and such supporting submissions as may be necessary; and that will often be so even where there has been an ex tempore judgment. Putting off the application will increase delay and create a risk of procedural complications. But it will nevertheless sometimes be justified.

[2] Which is now r.5.20(2)(c).

(4) If no permission application is made at the original decision hearing, and there has been no adjournment, the lower court is no longer seized of the matter and cannot consider any retrospective application for permission to appeal.

(5) Whenever a party seeks an adjournment of the decision hearing as per (3) above they should also seek an extension of time for filing the appellant's notice, otherwise they risk running out of time before the permission decision is made. The 21 days continue to run from the decision date, and an adjournment of the decision hearing does not automatically extend time.

(6) Any extension should normally be until 21 days after the permission decision. However, the judge should consider whether a period of that length is really necessary in the particular case: it may be reasonable to expect the party to be able to file their notice more promptly once they know whether they have permission.

Tribunal appeals

28. There are two different statutory bases for appeals from the Residential Property Division of the Property Chamber of the FTT in enfranchisement and service charge cases. In both cases, PTA is required and in both cases appeals are to the Upper Tribunal (Lands Chamber) ("UT"). S.11 of the Tribunals, Courts and Enforcement Act 2007 provides a right of appeal on any point of law arising from a decision made by the First-tier Tribunal. 176A and B of the Commonhold and Leasehold Reform Act 2002 provide a right of appeal in all other cases.

29. An application for PTA cannot be made to the UT unless an application has first been made to and refused by the FTT: rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010. That is different to the position under the CPR, where it is permissible to apply to the appeal court for PTA even if the lower court was not asked for PTA.

30. The time limit for an application for permission to appeal made to the FTT is 28 days after the latest of the dates that the Tribunal sends to the person making the application

(a) written reasons for the decision;
(b) notification of amended reasons for, or correction of, the decision following a review; or
(c) notification that an application for the decision to be set aside has been unsuccessful,

see rule 52(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

31. If the FTT refuses PTA, the time limit for applying to the UT for PTA is 14 days after the date on which FTT sent notice of its refusal of PTA to the applicant: rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010.

32. If the FTT grants PTA, a notice of appeal must be filed with the UT within 1 month of the date that the FTT sent notice of the PTA to the appellant: rule 24 of the 2010 Rules.

33. Appeals in the UT in enfranchisement and service charge disputes take one of three forms: (1) an appeal by way of review; (2) an appeal by way of review which if successful will involve a consequential re-hearing; or (3) an appeal by way of re-hearing: see Upper Tribunal Practice Direction (2010) para 4.2(2) and 5.1(1). The differences between these forms are explained in an Explanatory Leaflet published by HMCTS.[3]

34. An appeal by way of review takes the same form as an appeal under the CPR. No further evidence is heard, and the UT considers whether the FTT correctly applied the law to the evidence put before it. If the UT decides that the FTT did not, then it may be necessary to remit the matter to the FTT for further consideration.

35. An appeal by way of rehearing is the form of appeal usually conducted by the Lands Tribunal before it was abolished: see *Wellcome Trust Ltd v Romines* [1999] 3 EGLR 229. The parties call the witnesses and adduce the evidence they rely on to support their case. The UT on such an appeal will determine whether the FTT's decision was wrong by reference to that evidence, which may be different to that called in the FTT: *Cadogan v 2 Herbert Crescent Freehold Ltd* LRA/91/2007 at [68], *Daejan Investments Ltd v The Holt (Freehold) Ltd* LRA/133/2006 at [40], *Voyazides v Eyre – 60 Avenue Road, NW8* [2013] UKUT 013 at [7], *82 Portland Place (Freehold) Ltd v Howard De Walden Estates Ltd* [2014] UKUT 133 (LC) at [188].

36. An appeal by way of review which if successful will involve a consequential re-hearing proceeds initially by considering whether the FTT correctly applied the law to the evidence put before it. If the UT concludes it did, then the appeal is dismissed. If the UT concludes it did not, the UT then proceeds to hear the appeal by way of rehearing.

Appeals in double hatted cases

37. In a double hatted case, there ought ideally to be one document which is a decision of the FTT, to which all its members will have contributed, and one document which is a judgment of the county court, written exclusively by the FTT Judge. The two will no doubt refer to each other, but they ought to be kept separate.

38. The parties ought, as a matter of course, when making submissions on the substantive issues, to invite the FTT Judge, acting as a county court judge, to make an order along the following lines:

> "The time for filing any appellant's notice is extended:
> (a) until 28 days after the date on which the court's judgment is sent to the parties and,

[3] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718600/t605-eng.pdf

(b) if within those 28 days, either party makes an application to this court for permission to appeal, until the date falling 1 month after the date on which this court sends to the parties its decision on the application for permission to appeal."

39. In that way, the timetable for appealing from the judgment made under the jurisdiction of the county court will be more or less aligned with the timetable for appealing from the FTT decision.

40. In cases where an appellant wishes to appeal from both the FTT decision and from the judgment of the FTT Judge acting as a county court judge, and PTA is given by the FTT and by the FTT Judge acting as a county court judge, it would appear appropriate to:

(1) file an appellant's notice under the CPR in the appropriate appeal court, the county court or the High Court, and

(2) file a notice of appeal with the UT, and

(3) invite the court office and the registrar of the UT to allocate the appeals to the same individual, who will hear them both as a judge of the county court/High Court and as a judge of the UT, and to direct that the management of the appeal will be undertaken by the registrar of the UT.

41. Bearing in mind the flexibility of CPR r.52.21 and the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the appeal judge would be able to conduct the appeal as a review or a rehearing, or as a review with a rehearing to follow, depending on what appeared appropriate. Any subsequent appeal would lie to the Court of Appeal.

Appendix - the two categories of county court judge for the purposes of appeals

Category 1 – appeals go to the High Court	Category 2 – appeals go to a judge in Category 1
A Circuit judge	A District Judge of the County Court
A Deputy Circuit judge appointed under s.24 of the Courts Act 1971	A Deputy District Judge of the County Court
The Lord Chief Justice	A Deputy District Judge of the High Court appointed under section 102 of the Senior Courts Act 1981
The Master of the Rolls	A District Judge (Magistrates' Courts)
The President of the Queen's Bench Division	A person appointed under section 30(1)(a) or (b) of the Courts-Martial (Appeals) Act 1951 (assistants to the Judge Advocate General)
The President of the Family Division	A judge of the First-tier Tribunal by virtue of appointment under paragraph 1(1) of Schedule 2 to the Tribunals Courts and Enforcement Act 2007
The Chancellor of the High Court	A transferred-in judge of the First-tier Tribunal (see section 31(2) of that Act)
An ordinary judge of the Court of Appeal	A member of a panel of Employment Judges established for England and Wales or for Scotland
The Senior President of Tribunals	
A puisne judge of the High Court	
A deputy judge of the High Court	
The Judge Advocate General	
A Recorder	
Senior Master of the Queen’s Bench Division	
Chief Chancery Master	
Chief Taxing Master	
Chief Bankruptcy Registrar	
Senior District Judge of the Family Division	
Master Queen’s Bench Division	
Queen’s Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals	
Admiralty Registrar	
Master of the Chancery Division	
Insolvency and Companies Court Judge	
Taxing Master of the Senior Courts	
District judge of the principal registry of the Family Division	

Category 1 – appeals go to the High Court	**Category 2 – appeals go to a judge in Category 1**
A Chamber President or a Deputy Chamber President of a chamber of the Upper Tribunal or of a chamber of the First tier Tribunal unless that person is also a county court district judge or deputy county court district judge or deputy High Court district judge or a magistrates court district judge[4]	
A judge of the Upper Tribunal by virtue of appointment under paragraph 1(1) of Schedule 3 to the Tribunals Courts and Enforcement Act 2007 unless that person is also a county court district judge or deputy county court district judge or deputy High Court district judge or a magistrates court district judge	
A transferred-in judge of the Upper Tribunal (see section 31(2) of that Act) unless that person is also a county court district judge or deputy county court district judge or deputy High Court district judge or a magistrates court district judge	
A deputy judge of the Upper Tribunal (whether under paragraph 7 of Schedule 3 to or section 31(2) of that Act) unless that person is also a county court district judge or deputy county court district judge or deputy High Court district judge or a magistrates court district judge	

[4] This is because article 5(2) of the 2016 Order provides that paragraph (1)(c)(ii), which provides for appeals from category 1 judges to go to the High Court "shall not apply if the decision is made by a judge of the county court who is also a judge of the county court" specified in s. 5(1)(b) or (2)(m) or (r) of the 1984 Act.