



Northern Ireland  
Valuation Tribunal  
President

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## **Northern Ireland Assembly Bill 15/09, the “High Hedges Bill”**

I refer to our recent discussions and it might perhaps be of value to have some thoughts on my part concerning the matter.

As you will know, the Northern Ireland Valuation Tribunal (“Valuation Tribunal”) came into being under the provisions of the Rates (Northern Ireland) Order 1977 (“1977 Order”) as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“2006 Order”) (*see Article 29 of the 2006 Order, inserting Article 36A, and Schedule 1 of the 2006 Order, inserting Schedule 9B of the 1977 Order*). The Valuation Tribunal rules of procedure are contained in the Valuation Tribunal Rules (Northern Ireland) 2007, and these latter rules have been subsequently amended to take account of, for example, the lone pensioner allowance scheme or the respective energy efficiency homes and the low-carbon homes schemes.

The provisions contained within the 1977 Order, as amended by the 2006 Order, prescribe to the Valuation Tribunal a statutory structure that is composed of a President who is the judicial head of the tribunal, and three separate categories of members of the tribunal. These latter are, firstly, the legal members, secondly, members who have had experience in the valuation of land, and thirdly, ordinary members (*see Schedule 9B 2. (2) of the 1977 Order for the statutory basis for appointments*).

Rules of procedure for the Valuation Tribunal are made by virtue of Schedule 9B 7. of the 1977 Order and Schedule 9B 8. (b) of the 1977 Order provides that rules may include provision providing that the chairman of any such tribunal must be the President or a legal member.

In the Valuation Tribunal rules of procedure, as amended, made accordingly under these provisions (“the Rules”), it is provided that the tribunal as properly constituted shall comprise three members, which members shall include, firstly, the President or a legal member, secondly, a member who has had experience in the valuation of land (“valuation member”), and, thirdly, an ordinary member. It is provided that the chairman of a tribunal shall be the President or a legal member. However, it is possible, with the consent of the parties, for any proceedings to be determined by a tribunal in the absence of any one member other than the chairman, or indeed by the chairman alone. From this, it can be observed that the proceedings of any properly constituted Valuation Tribunal must, at the very least, be conducted by a chairman who can be either the President or a legal member.

Thus the constitution of the Valuation Tribunal, as prescribed by statute, presupposes that the technical knowledge, skills and experience brought to bear in the Valuation Tribunal's decision making by the specific contributions that are to be made on the part of the valuation member and of the ordinary member shall normally form a core element in the process of decision making of the Valuation Tribunal. There is however a facility to dispense with these specific contributions by agreement of the parties. It is also possible to do so in preliminary or interlocutory determinations of the Valuation Tribunal were it is provided by the Rules that the legal chairman may act alone.

Materially, that latter dispensation does not apply to the specific contribution of the legal chairman. The reason for this is that the conduct of judicial proceedings and the technical management and control of any court or tribunal forming a component part of our judicial system is very properly entrusted to a qualified and experienced judicial officer. The composition of most tribunals in our judicial system of courts and tribunals thus, whilst recognising the technical expertise of the specialist or expert members, nonetheless places a fundamental emphasis upon there existing, at the very core of the judicial process, a suitably qualified and experienced judge or tribunal chairman. It is for that reason that the Rules, as amended, are structured in the manner in which they presently exist.

Any judicial tribunal properly exercising its function, and the Valuation Tribunal is no exception, can of course be called upon at any time to make a rapid and authoritative determination upon a point of law, for example,

bearing upon the tribunal's legal and technical jurisdiction or upon an issue of compliance with rights and obligations under the European Convention and domestic law such as the Human Rights Act 1998, or the Northern Ireland Act 1998. Many and varied legal and technical issues underpin the day-to-day operation of tribunal proceedings. The conduct of tribunal proceedings by the President or legal member, in the role of tribunal chairman, is executed in a manner where the chairman is at all times acutely conscious of a broad range of technical and legal issues which might affect the fairness, propriety, and the proper judicial conduct of any hearing or other judicial process before the Valuation Tribunal.

The chairman of the tribunal is tasked with the general management of proceedings as prescribed by the Rules, including, for example, determining preliminary or interlocutory matters such as the making of interim orders, extending of time limits, requiring the attendance of parties, requiring the written answers to questions, ordering the joinder of parties and, indeed, when merited, the exercise of the ultimate sanction of dismissal or striking out of proceedings or defence where there is material and significant default. The chairman is thus responsible for the judicial control and management of any hearing in compliance with the law and for the preparation and promulgation of the Valuation Tribunal's decision or other determination. Further to that, the Valuation Tribunal chairman bears responsibility for conducting any legal review of the tribunal's decision under the Rules and for dealing with any appeal procedures. All of these many and varied judicial functions must be properly and competently discharged on the basis of a comprehensive and sound knowledge and grasp of the principles of jurisprudence and of the law generally.

Bearing all of the foregoing observations in mind, I have scrutinised the Northern Ireland Assembly Bill 15/09, the "High Hedges Bill". I note that the provisions of the Bill provide for an appeal to the Valuation Tribunal upon a number of statutory bases. The Valuation Tribunal is defined in the interpretation section of the Bill as being, "*the Northern Ireland Valuation Tribunal, established by Article 36A of the Rates (Northern Ireland) Order 1977 (NI 28)*". Thus, as defined, the Valuation Tribunal to which any appeal would be made under the terms of the Bill would be a Valuation Tribunal as it is constituted, as mentioned above.

It has been mooted that the appeal mechanism to the Valuation Tribunal to be provided for by the Bill might perhaps be conducted by an appeal to a Valuation Tribunal which, under this particular statutory jurisdiction, might consist of the valuation member sitting alone; that is to say in the absence of either the President or a legal member (or indeed in the absence of the ordinary member). As can be observed from what has been said above, that

would not be possible. This is so for the reason that the President or the legal member do constitute an integral and an indispensable component of the Valuation Tribunal as it is presently prescribed under the statutory provisions.

If the aim were sought to be achieved in this discrete jurisdictional area of the valuation member sitting alone as a Valuation Tribunal, the constitutional provisions grounding the Valuation Tribunal would need to be fundamentally altered. I would respectfully urge caution in regard of that possible course of action for what I trust will be viewed as being a number of good reasons. Firstly, as is mentioned above, it is generally and for good cause recognised that judicial proceedings in our legal system of courts and tribunals are properly to be managed and conducted by a suitably qualified judicial officer. Certain of the reasons for this are mentioned above; these do not require repetition, nor do the considerable range and number of judicial tasks and functions which are required to be performed and attended to by the Valuation Tribunal's legal members require elaboration.

The legal members of the Valuation Tribunal are lawyers of considerable experience and competence and are judicial officers who have been selected consequent upon a rigorous judicial selection process conducted by the Northern Ireland Judicial Appointments Commission. These judicial officers have undergone dedicated judicial training and it is recognised that these are persons whose training, skills and experience make them suitably and properly qualified to engage in the fair and proper conduct and management of judicial proceedings.

Whilst in no way decrying the very valuable and the very high level of skill and experience brought to bear in Valuation Tribunal proceedings on the part of the valuation members, the task of the valuation members has properly to be seen as quite a different and distinct task to that of the legal members; thus the respective contributions are currently (and indeed very properly) recognised by the Rules of the Valuation Tribunal as being quite distinct and different.

I am thus rather concerned at the prospect of valuation members, sitting as sole members of the Valuation Tribunal in this discrete jurisdictional area, being required to undertake work which is quite outside the valuation members' ambit or range of competence or area of technical expertise, skill and training.

I am also concerned at the manner in which the valuation members, if they were to be required to engage in sitting alone as members of the Valuation Tribunal, might be expected to interface with the prescribed function of the

President of the Valuation Tribunal, who bears ultimate responsibility as the legal head of the tribunal. That function of the President encompasses, amongst other matters, setting and maintaining the standard of judicial decision making of the tribunal, ensuring consistency of decisions and the proper and appropriate conduct of the judicial function, whilst affording judicial independence to each properly constituted tribunal. The mooted proposal would appear in effect to suggest a fracturing of the primary function of the Valuation Tribunal as it is presently constituted, countenancing the prospect of a “two tier” system of justice being afforded to stakeholders by the Valuation Tribunal, dependent upon the specific jurisdictional area that is to be administered in the tribunal’s function. I have additional concerns about how this suggestion might sit comfortably within the structure as envisaged by Sir Andrew Leggatt in his report and the subsequent process of tribunals reform as this might affect Northern Ireland in due course.

Having made these observations, I do believe that it might well be possible to address specific concerns surrounding cost in the administration of justice and efficiency of operation of the Valuation Tribunal in this discrete area, whilst also addressing the concerns that have been expressed above. In this regard, my suggestion is that the Valuation Tribunal shall continue to be constituted as it currently exists under the foregoing statutory provisions. Thus, all tribunal business should continue to be conducted by a legal member as chairman. That shall, I think, safeguard the judicial integrity of the process. However, the contribution of the valuation member to the assessment of technical evidence in this new jurisdictional area might well be catered for and recognised in the proper implementation of that part of the Rules providing for the general and quite wide-ranging power ascribed to the Valuation Tribunal to manage proceedings.

In addition to that, there is express provision made in the Bill for procedural rules to be made. Amended rules, for example, might permit the function of the valuation member in the assessment of technical evidence to be more practically and rationally prescribed without affecting the fundamental constitutional makeup of the Valuation Tribunal. By this means, any such additional or amended rules of procedure might be fashioned to sit comfortably with the function of the legal member in the continuance of the statutory role as prescribed and in the maintenance and protection of judicial integrity in the process.

Having said all of that, it is certainly the case that the proper and rational function of the ordinary member and the ordinary member’s place in this additional jurisdiction might be subject to further close scrutiny in this exercise, with an eye to matters of cost, and attention may be directed to the

proper and effective contribution of that component to the decision-making process. It occurs that if arrangements might be envisaged for a two member tribunal (the legal and the valuation member) to sit in this discrete jurisdictional area, a mechanism might readily be put into place for dealing with a “casting vote”. I would certainly be very happy to assist in further discussions or scrutiny concerning any proposals for amendment to the Rules.

I do harbour substantial concern, on account of the nature of what has been mooted, at the quality of justice which might be afforded by a Valuation Tribunal that is to be constituted by a valuation member only, and, furthermore, at the potential prospect of the effective fracturing of the function of the Valuation Tribunal into separate tiers, not to say the doubts and uncertainties concerning the precise role and function of the President of the Valuation Tribunal in all of this, as mooted.

Leaving aside for the moment all of the foregoing, I would say that in general terms the Valuation Tribunal would be well placed to deal with any anticipated business in this new jurisdiction area. As President of the Valuation Tribunal, I would certainly welcome the proposal that this new area of statutory jurisdiction might be brought within the ambit of the functions of the tribunal. I believe that the Valuation Tribunal would be very capable of undertaking this work and would be efficient and effective, both in regard to the conduct of business and also in terms of cost, in making a significant contribution towards the dispensing of justice and the resolution of disputes within this new area of jurisdiction and in providing an independent, coherent and user-friendly service.

James V Leonard  
President  
Northern Ireland Valuation Tribunal