

**Tenth meeting of European Labour Court Judges
Stockholm, September 2, 2002**

Labour Court Lay Judges

**Questionnaire
General Reporter: Judge Peter Clark**

**United Kingdom Response
Judge Peter Clark**

1 Does your Appellate Labour Court (ALC) comprise of: -

- (a) a professional judge or judges only?
- (b) lay judges only?
- (c) the tripartite model; ie professional judge(s) plus two (or more) lay judges, one from each of the social partners?

A professional judge with two lay judges. Further appeals are to courts of professional judges only.

2 What is the composition of your first instance Labour Court?

As above. For certain purposes a single professional judge (Chairman of Employment Tribunals) may sit alone.

3 Are there any plans or proposals currently in place to alter the composition of your ALC? Is so, what? For how long have the present arrangements been in place?

No present plans. Present arrangements have been in place since 1972.

4 If lay members do sit in your court with professional judges: -

- (a) are there any types of appeal on which professional judges alone
 - (i) may or (ii) must sit without lay judges?

The professional judge may sit alone to hear appeals from a chairman sitting alone below and to give directions for disposal of appeals. Otherwise a full panel of three sits.

- (b) are lay judges required to adjudicate on questions of law only, or on questions of fact/mixed law and fact as well under the terms of the ALC's jurisdiction?

Law only.

- (c) can the lay members outvote the professional judge in decision making?

Each member of the ALC (in UK, the Employment Appeal Tribunal (EAT)) has an equal vote. Thus the two lay members of the panel may (and occasionally do) outvote the professional presiding judge.

- 5 Is there any requirement that at least one lay judge sitting on the panel has particular expertise in a given type of case, eg discrimination cases (race, sex, disability)?

No.

- 6 Is there a policy of appointing lay judges from each of the social partners? If so, is it the practice to draw one member from each background to sit with the professional judge on each appeal?

This has been the traditional model here. However, the distinction has been blurred in recent appointments. Panels normally have a representative from each side of industry.

- 7 How are lay judges selected for appointment; is it by open competition, recommendation by interested bodies; administrative appointment or otherwise?

It is now by open competition. Following a paper sift a selection panel sits to recommend persons for appointment. Formerly, members were nominated by employer and trade union organisations. Appointments are formally made by the Crown.

- 8 For what period of time are lay judges appointed? Are such times renewable? In what circumstances, other than age or ill health may they be removed from office or their appointments not renewed?

Lay members are appointed for a term of three years. The term is renewable and is normally renewed. Members are currently required to retire on reaching age seventy. They may be removed for misconduct. I believe that one member's

appointment was not renewed for failing to sit the required number of days per year; another when made bankrupt.

- 9 What training in law and procedure is given to lay judges of the ALC?

New members have two days sitting in with an experienced court. There is one training day each year.

- 10 How often do the lay judges disagree? Is it often, sometime, rarely? Do they see their role as that of independent judge or representative of 'their' side of industry?

Majority decisions are rare. Members are not delegates from their side of industry. They are independent judges and willingly adopt that role.

- 11 Do you perceive there to be

(a) advantages and (b) disadvantages in sitting with lay colleagues in the ALC? If so, what are they?

(a) Advantages: public perception; practical input to decision-making; same constitution as lower tribunals.

(b) Disadvantages: our jurisdiction is limited to correcting errors of law, not fact. Lay judges have no legal training.

- 12 Overall, from your experience do you believe that the administration of justice in your ALC is improved or impaired by the presence of lay judges as opposed to professional judge(s) sitting alone? Please say why you reach your conclusion.

Overall, lay judges improve the administration of justice in this jurisdiction for the positive reasons set out at 11 above.