



COMPETITION APPEAL TRIBUNAL

Response to the Tribunal's consultation on conflicts rule

1. Under the current approach (the **CAT conflict rule**) it is generally a condition of the appointment of ordinary members and Chairs of the CAT (or the nomination of Deputy High Court Judges to sit as Chairs of the CAT) that they do not engage in any activities concerning competition cases in the UK or advise on cases concerning sectoral regulation that could come before the Tribunal. This generally includes part-time consultancy work, but does not ordinarily include purely academic research, teaching or writing (subject to guidance from the CAT if those activities affect its work). Accordingly, members are required to relinquish their appointment if they wish to advise clients, whether in the private or public sectors, in those fields. Where a barrister or solicitor does not carry out work in those fields but is a member of a chambers or firm which does carry out such work, that may not of itself prevent appointment if the Tribunal is satisfied that the barrister or solicitor is sufficiently distant from that work that the conflict risk is manageable on both sides.
2. The Tribunal consulted on the CAT conflict rule for the first time in its history. The purpose of the consultation was to inform the future recruitment of members or deployment of judges, taking account of the desirability of diversity and regional representation, via processes conducted under the aegis of the appointing and nominating authorities.
3. The Tribunal received 17 responses to the consultation from fee-paid and judicial Chairs, ordinary members, non-member barristers and economists, a law firm, a barristers' chambers and two institutional respondents.
4. Respondents who opposed a relaxation were concerned that, because the Tribunal is distinguished by its specialist caseload and the relatively small and specialist community of lawyers and experts who serve it, the appointment of any current practitioner would give rise to concerns of unfair inside advantage. The expansion of the Tribunal's jurisdictions over recent years was also noted, as was the fact that competition disputes may involve any sector and affect a wide range of companies. The Tribunal's judgments were therefore

considered to have a greater impact than those in many types of general commercial or chancery litigation.

5. In addition, the fact that cases before the Tribunal, like civil cases elsewhere, are sometimes of very long duration was thought to increase the risk of conflict or apparent bias for current practitioners, who might be required not to take on work for clients who pose a conflict risk for an extended period (which would of course also present practical problems of transparency during that time). There would also be the risk of recusal of a Chair or ordinary member being required after a case had commenced, which would be disruptive and might cause delay to the proceedings. There was also a concern that the presence of practitioners would hinder frank internal discussions among members.
6. These factors prompted these respondents – which included all the responding Chairs – to oppose a relaxation of the conflict rule, in order to preserve confidence in the Tribunal’s integrity.
7. Those supporting a change, either generally or in respect of particular types of practitioners, such as barristers or economists, were of the view either that (a) the risk of apparent bias arising was low, and was outweighed by the benefit of having members with live advisory experience, or (b) the risk could be sufficiently mitigated by way of case-by-case recusals based on new and detailed Tribunal guidelines or code of conduct on conflict risks, or by confining affected members and Chairs to cases concerning matters outside the area in which they practised.
8. The Tribunal thanks all respondents for their considered and carefully argued responses. While the Tribunal recognises the benefit of having Chairs and ordinary members with current advisory experience, it regards the issues identified by the respondents who are opposed to a change as being compelling. In particular, the long duration of many of the cases before the Tribunal (which are usually docketed to a panel for the lifetime of the case, unlike in some other courts), the fact that similar issues of substance and procedure arise across most of its cases, and the specialist nature of the work, means that the risk of conflicts is greater than may normally be the case for other areas of the judiciary where current practitioners are often appointed as fee paid judges.

9. The Tribunal was not convinced that this risk would be sufficiently mitigated by case-by-case recusals. The Tribunal accords prime importance to the avoidance of any material risk of actual or perceived conflict in its operation which could damage to its reputation for impartiality.
10. Accordingly, **the Tribunal has concluded that, for the present, it will not implement a change to the CAT conflict rule.** The general approach will therefore remain as set out in paragraph 1 above, subject to specific adjustments on a case-by-case basis where appropriate.

16 December 2025