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Double Hatting In The First-Tier Tribunal

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DOUBLE HATTING IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

Flexible judicial deployment deals with the longstanding problem of what has officially been described by “legal ping-pong”, where courts and tribunals transfer and re-transfer cases back and forth, confusing both parties and their legal advisers in equal measure.

The basic premise with ‘double hatting’ is that all aspects of a dispute are determined on the same day by a judge wearing the different jurisdictional ‘hats’ of a County Court Judge and a Tribunal Judge. The idea is to simplify matters, reduce costs, speed things up and provide consistency.

There is no Practice Direction about flexible deployment in property cases. There is no widely available template for County Court directions to initiate flexible deployment. Some First-tier Tribunal panel areas have circulated suggested draft directions to local judiciary and the Association of Leasehold Enfranchisement Practitioners are producing model directions for enfranchisement disputes. But other than that, guidance is very thin indeed.

In the first appeal from a ‘double hatting’ case, namely *Avon Ground Rent v Child* [2018] UKUT; [2018] H.L.R. 44, at para 45 of the judgment, Holgate J states that:

“It is...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.”

In *Avon v Child*, the Upper Tribunal went even further, suggesting the directions should be identifying discrete issues at an early stage, at para 81:

“When a transfer order is drawn up care needs to be taken to see that it identifies the specific matters being transferred, that those matters do fall within the FTT’s jurisdiction and that they fall within the scope of the power to order the transfer.”

It is therefore important to get things right at the directions stage in the County Court. For example, it is not uncommon to see directions which purport to “transfer” issues to the F-tT that were plainly intended to be “allocated” to an F-tT judge or vice versa. Even tribunals can be unsure about whether County Court directions are intended to initiate ‘double hatting’ and it is sometimes necessary to revert to the County Court judge to clarify matters.

CONCLUSIONS

Flexible judicial deployment is here to stay. It gives rise to procedural challenges, particularly given the absence of any formal guidance – as well as a number of substantive issues which are being worked through to this day.

The full version of this article will be available in a future edition of the *Landlord and Tenant Review*.

This was co-written with Mark Loveday, Tribunal Judge and Barrister at Tanfield Chambers.