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STATUTORY INSTRUMENTS

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**2007 No. 90**

**The Claims Management Services Tribunal Rules 2007**

**PART 3**

**Hearings**

**Determination without oral hearing**

**23.**—(1) The Tribunal may determine an appeal, or any particular issue, without an oral hearing if—

- (a) the parties agree in writing;
- (b) the issue concerns an application for directions; or
- (c) rule 22(3) applies.

(2) Where an appeal or an issue is determined in accordance with this rule, the Tribunal must consider whether there are circumstances that make it undesirable to publish the whole or part of its decision.

(3) If the Tribunal decides that a restriction on publication is desirable the Tribunal may take any steps, including any one or more of the steps specified in paragraph (5).

(4) Any step taken under paragraph (3) must be taken with a view to ensuring the minimum restriction on publication that is consistent with the need for the restriction.

(5) The specified steps referred to in paragraph (3) are—

- (a) anonymising the decision;
- (b) editing the text of the decision;
- (c) declining to publish the whole or part of the decision.

(6) Before reaching a decision under paragraph (2), the Tribunal must invite the parties to make representations.

**Public hearings and directions for private hearings**

**24.**—(1) In this rule, “hearing” means any hearing under these Rules except for the hearing of any application made to the Tribunal without notice to the other party.

(2) Subject to the following paragraphs of this rule, all hearings must be in public.

(3) The Tribunal may direct that all or part of a hearing is to be in private—

- (a) upon the application of all the parties; or
- (b) upon the application of any party, if the Tribunal is satisfied that a hearing in private is necessary, having regard to—
  - (i) the interests of public order, national security or the protection of the private lives of the parties; or
  - (ii) any unfairness to the appellant that might result from a hearing in public,

if the Tribunal is satisfied that a hearing in private would not prejudice the interests of justice.

(4) Before determining an application under paragraph (3)(b), the Tribunal must give the other party an opportunity to make representations.

(5) Before giving a direction under paragraph (3) that all of a hearing should be in private, the Tribunal must consider whether it is only necessary that part of the hearing should be in private.

(6) The Tribunal may hold proceedings in private and has the power to direct that any particular individual be excluded.

(7) The Tribunal may permit any individual to attend a hearing, which is to be held in private.

(8) The Tribunal may exclude from the whole or part of a hearing any person whose conduct, in the opinion of the Tribunal, has disrupted or is likely to disrupt, the hearing.

(9) Subject to any direction under paragraph (10), the secretary must provide for the public inspection at the Tribunal's offices of—

- (a) a daily list of all hearings, which are to be held; and
- (b) information about the time and place fixed for the hearings.

(10) Where all or part of a hearing is held or is to be held in private, the Tribunal may direct that information about the whole or part of the proceedings before the Tribunal (including information that might help to identify any person) must not be made public.

(11) Where a direction is given under paragraph (10), it must state what information (if any), is to be entered in the register or removed from it.

### **Representation at hearings**

**25.**—(1) Subject to paragraph (2), the parties may appear at the hearing (with assistance from any person if desired), and may be represented by any person, whether or not that person is legally qualified.

(2) If in any particular case the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a person to assist or represent a party at the hearing.

(3) In this rule, “hearing” means any hearing under these Rules.

### **Procedure at hearings**

**26.**—(1) Subject to the 2006 Act and these Rules, the Tribunal must conduct all hearings under these Rules in such manner as it considers most suitable to the clarification of the issues before it, and generally to the just, expeditious and economical determination of the proceedings.

(2) Subject to any directions by the Tribunal, the parties may—

- (a) give evidence (and, with the consent of the Tribunal, bring expert evidence);
- (b) call witnesses;
- (c) question any witnesses; and
- (d) address the Tribunal on the evidence, and generally on the subject matter of the appeal.

(3) Evidence may be admitted by the Tribunal—

- (a) whether or not it would be admissible in a civil trial in England and Wales; and
- (b) whether or not it was available to the Regulator when the Regulator's decision was made.

(4) If a party fails to attend or be represented at any hearing of which that party has been duly notified, the Tribunal may, if it is satisfied that there is no sufficient reason for the absence—

- (a) hear and determine the application or appeal in the party's absence; or

(b) adjourn the hearing,  
and may give any directions it thinks fit.

### **Decision of the Tribunal**

**27.**—(1) Subject to paragraph (2) and to rule 23(3), the Tribunal must make arrangements for public access to its decision.

(2) Where the whole or any part of any hearing under these Rules was held in private, the Tribunal must consider whether, having regard to—

- (a) the reason for the hearing or any part of it being in private; and
- (b) the outcome of the hearing,

it would be undesirable to publish the whole or part of its decision.

(3) If the Tribunal decides that a restriction on publication is desirable the Tribunal may take any steps, including any one or more of the steps specified in paragraph (5).

(4) Any step taken under paragraph (3) must be taken with a view to ensuring the minimum restriction on publication that is consistent with the need for the restriction.

(5) The specified steps that can be taken by the Tribunal under paragraph (3) are—

- (a) anonymising the decision;
- (b) editing the text of the decision; and
- (c) declining to publish the whole or part of the decision.

(6) Before reaching a decision under paragraph (2), the Tribunal must invite the parties to make representations.

(7) The secretary must as soon as may be practicable—

- (a) whether there has been an oral hearing or not, send a notification of the decision and the reasons for reaching it to each of the parties to the appeal; and
- (b) subject to any steps taken under paragraph (3), under rule 23(3) or any direction given under rule 24(10), enter the decision and the reasons for reaching it in the register.

(8) Every notification under paragraph (7)(a) must be accompanied by a notification of—

- (a) any relevant provision of the 2006 Act relating to appeals from the Tribunal; and
- (b) the time within which, and the place at which, an application for permission to appeal is to be made.

### **Review of the Tribunal's decision**

**28.**—(1) If, on the application of a party or of its own initiative, the Tribunal is satisfied that—

- (a) its decision was wrongly made as a result of an error;
- (b) new evidence has become available since the conclusion of the hearing to which that decision relates, the existence of which could not have been reasonably known or foreseen;  
or
- (c) there is good reason,

the Tribunal may review and set aside its decision.

(2) An application under paragraph (1) must be made—

- (a) orally at the hearing immediately following the announcement of the decision by the Tribunal; or

- (b) by way of written application filed not later than 14 days after the date on which the notification of the decision was sent to the party making the application, stating the grounds on which the application is made.
- (3) Where the Tribunal proposes to review its decision on its own initiative, the secretary must notify the parties of that proposal not later than 14 days after the date on which the decision was sent to the parties.
- (4) The parties must have an opportunity to make representations on any application or proposal for review under this rule.
- (5) A review under this rule is to be determined either by the same members of the Tribunal who made the decision or by a differently constituted Tribunal appointed by the President.
- (6) The parties must be notified of the decision that the Tribunal is minded to make following a review under this rule and have an opportunity to make representations.
- (7) The decision of the Tribunal whether or not to set aside the decision must be recorded in a certificate signed by the chairman.
- (8) If the Tribunal sets the decision aside—
- (a) the Tribunal must—
    - (i) substitute such decision as it thinks fit; or
    - (ii) order a re-hearing before either the same or a differently constituted Tribunal; and
  - (b) the certificate of the chairman recording the decision in accordance with paragraph (7) must be sent to the secretary who must immediately—
    - (i) make such correction as may be necessary in the register; and
    - (ii) must send a copy of the entry so corrected to each party.
- (9) If the Tribunal does not set the decision aside the secretary must notify each of the parties in writing to this effect.