

1988 No. 351

FINANCIAL SERVICES

**The Financial Services Tribunal (Conduct of
Investigations) Rules 1988**

<i>Made</i> - - - -	<i>2nd March 1988</i>
<i>Laid before Parliament</i>	<i>2nd March 1988</i>
<i>Coming into force</i>	<i>24th March 1988</i>

The Secretary of State in the exercise of his powers under paragraph 4(1) of Schedule 6 to the Financial Services Act 1986(a) and of all other powers enabling him in that behalf and after consulting the Council on Tribunals in accordance with section 10 of the Tribunals and Inquiries Act 1971(b), hereby makes the following Rules -

Citation commencement and interpretation

1.—(1) These rules may be cited as the Financial Services Tribunal (Conduct of Investigations) Rules 1988 and shall come into force on 24th March 1988.

(2) In these Rules:

“the Act” means the Financial Services Act 1986;

“the applicant” means any person who has required that a matter be referred to the Tribunal under section 97 of the Act;

“an English and Welsh case” means any case which is neither a Northern Irish case nor a Scottish case;

“a Northern Irish case” means any case where, at the time of the reference of the case to the Tribunal, the applicant is, or, in the case of an investigation conducted under rule 3, all or a majority of the applicants are, either habitually resident, or have their principal places of business, in Northern Ireland;

“relevant authority” means the person by whom a matter is referred to the Tribunal; and

“a Scottish case” means any case where, at the time of the reference of the case to the Tribunal the applicant is, or, in the case of an investigation conducted under rule 3, all or a majority of the applicants are, either habitually resident, or have their principal places of business, in Scotland.

(3) References in these Rules to a numbered rule shall be construed as references to the rule bearing that number in these Rules.

(4) References in any of these Rules to a numbered paragraph shall unless the reference is to a paragraph of a specified rule, be construed as references to the paragraph bearing that number in the rule in which it appears.

Information concerning references

2. Where a matter has been referred to the Tribunal, the Tribunal shall, upon being requested to do so by the person referring it or by a person who has the right to require, or who has required, that the same or a related matter be referred to the Tribunal, inform the person making the request whether the same or a related matter has been referred and, if it has, of the identity of each person at whose request the reference was made.

Joining of matters

3.—(1) This rule applies in any case in which the Tribunal is in receipt of more than one reference under section 97 of the Act and those references are concerned with the same matter or a related matter.

(2) In any case which falls within paragraph (1), the Tribunal may, if it thinks it expedient to do so, and shall, if it is requested to do so by the applicant in a case in which two or more related matters are referred to it at the request of one applicant or by all the applicants in any other case, order that the relevant investigations are to be conducted as a single investigation.

(3) In any case in which, by virtue of paragraph (2), the Tribunal proposes that two or more investigations are to be conducted as a single investigation, the Tribunal shall give notice in writing of that fact to the relevant authority and to the applicant or applicants concerned and, where there is more than one applicant, shall notify each applicant concerned of the identity of the other applicant or applicants.

(4) Subject to paragraph (5), the Tribunal shall not make an order under paragraph (2) which would be made other than at the request of the applicant or applicants unless –

- (a) it has given the applicant or applicants a period of fourteen days beginning with the date of the notice referred to in paragraph (3) in which to make representations in writing as to why the order not be made; and
- (b) in the case of an investigation which, by virtue of the situation of the habitual residence or principal place of business of a majority, but not all, of the applicants would be treated as an English and Welsh case, a Northern Irish case or a Scottish case, it is satisfied all the applicants consent to it being so treated.

(5) Where –

- (a) the Tribunal is satisfied that an applicant has shown good cause why an order should not be made under paragraph (2); or
- (b) an applicant does not consent to the investigation into the matter referred by him being treated as an English and Welsh case, a Northern Irish case or a Scottish case

the Tribunal shall order that the matter referred by the applicant in question shall be separately investigated and may, if it considers that expedient to do so, order that its investigations into the other matters with respect to which it had originally proposed to make an order under paragraph (2) be conducted as a single investigation.

(6) The Tribunal shall inform an applicant in writing of any order it makes under paragraph (5) with respect to the matter referred to it by that applicant.

Information to be supplied by relevant authority

4.—(1) On referring a case to the Tribunal under section 97 of the Act the relevant authority shall –

- (a) send to the Tribunal a copy of the written notice served by it on the applicant in pursuance of the Act and a copy of the notification by the applicant that he wishes the case to be referred to the Tribunal; and
- (b) give notice to the applicant of the date on which the case has been referred by it to the Tribunal and of the address to which any statement, notice or other document required by these rules to be given or sent to the Tribunal is to be given or sent.

(2) Within 21 days of referring the case to the Tribunal the relevant authority shall either send to the Tribunal and to the applicant or, in a case which is to be conducted as a single investigation under rule 3, to each of the applicants such further information and copies of such other documents and records as it considers would be of assistance to the Tribunal, or, if there is no such information or copies, the relevant authority shall within the said period notify the Tribunal and the applicant or applicants to that effect.

Statement of the applicant

5.—(1) Within 21 days after the expiry of the period referred to in rule 4(2) the applicant or, as the case may be, each applicant shall send to the Tribunal a statement of his grounds for requiring the matter to be investigated by the Tribunal specifying –

- (a) which matters of fact (if any) contained in the written notice served on him or copied to him under the Act he disputes;
- (b) any other matters which he considers should be drawn to the attention of the Tribunal; and
- (c) the names and addresses of any witnesses whose evidence he wishes the Tribunal to hear and the subject matter, but not the details, of the evidence with which each witness would deal.

(2) The applicant or, where an order has been made under rule 3, each applicant shall, on sending the statement referred to in paragraph (1) to the Tribunal, send a copy to the relevant authority and, where an order has been made under rule 3, to the other applicants, if any, involved.

Investigation by the Tribunal

6. After the receipt of the statement or statements referred to in rule 5 or, if no such statement or statements are received, after the expiry of the period referred to in that rule, the Tribunal shall investigate the case and make a report by carrying out such inquiries as it thinks appropriate for that purpose into and concerning such information, documents, records and matters as are placed before it and in carrying out such inquiries the requirements set out in the following rules shall apply.

Methods of inquiry by the Tribunal

7.—(1) As soon as practicable after the Tribunal has considered the subject matter of the investigation it shall notify the relevant authority and the applicant, or, if there is more than one applicant, each applicant, of the manner in which it proposes to conduct its inquiries and in particular whether oral evidence is to be taken.

(2) The Tribunal shall give the relevant authority and the applicant, or, if there is more than one applicant, each applicant, fourteen days from the date of the notification referred to in paragraph (1) in which to make representations on the manner in which it proposes to conduct its inquiries and such representations may be made orally or in writing at the option of the relevant authority or the applicant or applicants.

(3) After considering any representations that may be made under paragraph (2), the Tribunal shall notify the relevant authority and the applicant, or, if there is more than one applicant, each applicant, whether and, if so, in what respects it has decided to alter the manner in which it proposes to carry out its inquiries.

(4) If, at any subsequent stage in its investigation, the Tribunal proposes to make any material change in the manner in which its inquiries are to be carried out it shall notify the relevant authority and the applicant or applicants and the provisions of paragraphs (2) and (3) shall apply accordingly.

Taking of evidence

8.—(1) When, in carrying out its inquiries, the Tribunal –

(a) wishes to examine a witness orally –

(i) it shall give notice to the applicant or, if there is more than one applicant, to each applicant and to the relevant authority of the time and place at which the examination will be held; and

(ii) the applicant or applicants and the relevant authority shall be entitled to be present at the examination by the Tribunal of any witness and to put such questions to him as may appear to the Tribunal to be relevant to the subject matter of the investigation; or

(b) takes into consideration documentary evidence or evidence in the form of computer or other non-written records not placed before the Tribunal under the provisions of rules 4 and 5, the Tribunal shall give the applicant or applicants and the relevant authority an opportunity of inspecting that evidence and taking copies or an appropriate record thereof.

(2) The Tribunal shall send to the applicant or each of the applicants and the relevant authority transcripts of all oral evidence which has been given.

(3) A person who has attended a hearing in obedience to a summons issued by the Tribunal shall be entitled to such sum as the Tribunal considers reasonable in respect of his attendance at and his travelling to and from the hearing.

Final representations

9. After the Tribunal has completed the taking of such evidence as it considers necessary for the purpose of its investigation and has sent the transcripts referred to in rule 8(2), it shall notify the applicant, or, if there is more than one, each applicant, and the relevant authority of that fact and of the fact that they have fourteen days from the date of the notification in which to make representations on the evidence and on the subject matter of the investigation generally and of the fact that any such representations may be made orally or in writing.

Representation at a hearing

10. At the hearing of oral representations or the taking of oral evidence –

(a) the applicant, or, if there is more than one applicant, each applicant, may be represented by Counsel or a solicitor, or by any other person allowed by the Tribunal to appear on his behalf; and

(b) the relevant authority may be represented by Counsel or a solicitor or by any officer or servant of the relevant authority.

Service of written representations

11.—(1) Where the relevant authority makes any written representations to the Tribunal in the course of its investigation, the relevant authority shall send a copy of such representations to the applicant, or, if there is more than one applicant, to each applicant.

(2) Where an applicant makes any written representations to the Tribunal in the course of its investigation, he shall send a copy of such representations to the relevant authority and, in the case of an investigation conducted under rule 3, to each of the other applicants, if any.

Hearings in public or in private

12.—(1) The Tribunal shall conduct its investigation in private and, save to the extent that these rules provide for the hearing of oral representations or for the taking of oral evidence and the applicant, or if there is more than one applicant, all the applicants, request that any such representations or evidence shall be heard or taken in public, no person other than –

- (a) those specified in rule 10; or
- (b) any person who has or could have requested the Tribunal to join its investigation of the matter in question with an investigation of a matter which he has required to be referred to it; or
- (c) any person who could have requested the Tribunal to join its investigation of the matter in question with an investigation of a matter which he could have required to be referred to it; or
- (d) a person having the leave of the Tribunal

shall be entitled to be present when any such representation is heard or evidence taken.

(2) Nothing in this rule shall prevent a member of the Council on Tribunals or of its Scottish Committee from attending, in his capacity as such a member, any hearing at which any oral representation is made or any oral evidence is taken.

Notices

13. Any notice or other document required by these rules to be given or sent may be given or sent by first class post.

Time limits

14. In any investigation the Tribunal may, if it considers there is good reason to do so, permit the relevant authority or the applicant or applicants to send any document or perform any act after the time prescribed in these rules and such permission may be granted after the time prescribed has expired.

Powers of Chairman

15. Anything required or authorised to be done by the Tribunal in the course of an investigation may be done by the Chairman alone except –

- (a) the settling of the manner in which the Tribunal is to conduct its investigation;
- (b) the hearing or consideration of any representations made by the relevant authority or the applicant or applicants; and
- (c) the taking of evidence, whether orally or in the form of documents or non-documentary records.

Period within which report to be made

16.—(1) The Tribunal shall, unless the relevant authority, on the application of the Tribunal, grants such extension or extensions to whichever is relevant of the periods specified below as the relevant authority may notify in writing to the Tribunal, make its report on each matter referred to it for investigation to the relevant authority no later than –

- (a) three months after the date on which a matter is referred to it in any case in which the matter referred is the imposition or variation of a prohibition or requirement under Chapter VI of Part I of the Act which takes effect before that date;
- (b) six months after the date on which the matter is referred to it in any case in which the matter in question is not the subject of a single investigation by virtue of an order made under rule 3; and
- (c) in any case in which several matters are the subject of a single investigation by virtue of an order made under rule 3, six months after the last date on which a matter which is a subject of the investigation was referred to it.

(2) The relevant authority may only extend the period referred to in paragraph (1) where it appears to that authority that, through exceptional circumstances, the Tribunal will be unable to make its report within whichever is relevant of those periods and it may grant a further extension or further extensions only if it appears to it that, owing to such circumstances, the Tribunal will be unable to make its report within whichever is relevant of those periods as previously extended.

Representations on proposed report

17. If, in a matter which is referred to the Tribunal for investigation under section 97(1)(a) of the Act, the Tribunal is minded to report to the relevant authority that, in its opinion, the appropriate decision would be different from that taken or proposed to be taken by the relevant authority, it shall inform the relevant authority and applicant of the decision which it is minded to report would be the appropriate decision and shall afford the applicant and the relevant authority fourteen days in which to make written or oral representations to it before making its report.

Northern Irish and Scottish cases

18. Any hearing or oral representations under rule 7(2), 9 or 17 and any examination of a witness under rule 8(1)(a) shall, in a Scottish case or a Northern Irish case, be made or held in Scotland or Northern Ireland as the case may be unless the applicant, or if there is more than one applicant all of them, consents to any such hearing or examination taking place elsewhere.

Costs

19.—(1) The Tribunal may, where it considers that the relevant authority or an applicant has been responsible for frivolous, vexatious, improper or unreasonable action or for any delay which with diligence could have been avoided, make an order awarding costs (or, in Scotland, expenses) against the relevant person and in favour of the other person or persons but the Tribunal shall not make an order awarding costs against a person unless it has notified the person in writing that it proposes to do so and has given that person the period of fourteen days from the date of the notice in which to make representations against the making of the order.

(2) An order under paragraph (1) may order the person at fault to pay to the other person or persons either a specified sum in respect of the costs incurred by that other person or persons in connection with the proceedings or the whole or part of such costs as taxed (if not otherwise agreed).

(3) Any costs required by an order under this rule to be taxed may be taxed in the county court according to such of the scales prescribed by the county court rules for proceedings in the county court as shall be directed by the order.

(4) In any application of paragraph (3) to a Scottish case for the reference to the county court and the county court rules there shall be substituted references to the Auditor of the Sheriff Court and the Sheriff Court Table of Fees for civil proceedings.

2nd March 1988

Francis Maude
Parliamentary Under Secretary of State,
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make provision for regulating the procedure of The Financial Services Tribunal. They include provision for the holding of proceedings in private, for the awarding of costs or expenses and for the payment of expenses to persons required to attend before the Tribunal.