
STATUTORY INSTRUMENTS

2003 No. 1372

The Competition Appeal Tribunal Rules 2003

PART IV

CLAIMS FOR DAMAGES

Application of rules to claims for damages

30. The rules applicable to proceedings under sections 47A and 47B of the 1998 Act (claims for damages) are those set out in this Part, and in Part I, Part II (except for rules 8 to 16) and Part V of these rules. In respect of proceedings in Scotland, references in this Part to “claimant” and “defendant” shall be read respectively as “pursuer” and “defender”.

COMMENCEMENT OF PROCEEDINGS

Time limit for making a claim for damages

31.—(1) A claim for damages must be made within a period of two years beginning with the relevant date.

(2) The relevant date for the purposes of paragraph (1) is the later of the following—

- (a) the end of the period specified in section 47A(7) or (8) of the 1998 Act in relation to the decision on the basis of which the claim is made;
- (b) the date on which the cause of action accrued.

(3) The Tribunal may give its permission for a claim to be made before the end of the period referred to in paragraph (2)(a) after taking into account any observations of a proposed defendant.

(4) No claim for damages may be made if, were the claim to be made in proceedings brought before a court, the claimant would be prevented from bringing the proceedings by reason of a limitation period having expired before the commencement of section 47A.

Manner of commencing proceedings under section 47A of the 1998 Act

32.—(1) A claim for damages under section 47A of the 1998 Act must be made by sending a claim form to the Registrar within the period specified in rule 31(1).

(2) The claim form referred to in paragraph (1) shall state—

- (a) the full name and address of the claimant;
- (b) the full name and address of the claimant’s legal representative, if appropriate;
- (c) an address for service in the United Kingdom; and
- (d) the name and address of the defendant to the proceedings.

(3) The claim form shall contain—

(a) a concise statement of the relevant facts, identifying any relevant findings in the decision on the basis of which the claim for damages is being made;

(b) a concise statement of any contentions of law which are relied on;

(c) a statement of the amount claimed in damages, supported with evidence of losses incurred and of any calculations which have been undertaken to arrive at the claimed amount;

(d) such other matters as may be specified by practice direction,

and its contents shall be verified by a statement of truth signed and dated by the claimant or on his behalf by his duly authorised officer or his legal representative.

(4) There shall be annexed to the claim form—

- (a) a copy of the decision on the basis of which the claim for damages is being made;
- (b) as far as practicable a copy of all essential documents on which the claimant relies.

(5) Unless the Tribunal otherwise directs, the signed original of the claim form (and its annexes) must be accompanied by ten copies certified by the claimant or his legal representative as conforming to the original.

Manner of commencing proceedings under section 47B of the 1998 Act

33.—(1) Where a claim for damages is made under section 47B of the 1998 Act by a specified body on behalf of consumers the claim form shall in addition to the information required by rule 32—

- (a) contain the name and address of the specified body and a concise statement of the object or activities of that body;
- (b) contain the names and addresses of the persons it seeks to represent;
- (c) be accompanied by a document or documents, giving consent to the specified body by each of the individuals listed in the claim form to act on his behalf;
- (d) indicate whether each individual listed in connection with the claim is a “consumer” for the purposes of section 47B of the 1998 Act.

(2) A claim for damages commenced under section 47A of the 1998 Act may be continued by a specified body under section 47B of that Act subject to such directions as may be given by the Tribunal.

Amendment

34. A claim form may only be amended—

- (a) with the written consent of all the parties; or
- (b) with the permission of the Tribunal.

Addition of parties

35. The Tribunal may, after hearing the parties, grant permission for one or more parties to be joined in the proceedings in addition or in substitution to the existing parties.

RESPONSE TO A CLAIM FOR DAMAGES

Acknowledgment and notification

36.—(1) On receiving a claim the Registrar shall send an acknowledgment of receipt to the claimant and send a copy of the claim form to the defendant.

(2) Within 7 days of receipt of the copy of the claim form from the Registrar the defendant shall send to the Registrar an acknowledgment of service of the claim form in such form as the President may direct.

Defence to a claim for damages

37.—(1) Within 28 days of receipt of the copy of the claim form from the Registrar the defendant shall send to the Registrar a defence setting out in sufficient detail which of the facts and contentions of law in the claim form it admits or denies, on what grounds and on what other facts or contentions of law it relies.

(2) The contents of the defence shall be verified by a statement of truth signed and dated by the defendant or on his behalf by his duly authorised officer or his legal representative.

(3) Unless the Tribunal otherwise directs, the signed original of the defence (and its annexes) must be accompanied by ten copies certified by the defendant or his legal representative as conforming to the original.

Additional claims

38.—(1) A defendant may make a counterclaim against a claimant or a claim against any other person—

- (a) without the Tribunal’s permission if he includes it with his defence;
- (b) at any other time with the Tribunal’s permission.

(2) Rules 31, 32(2), (3), (4) and (5) shall apply to claims or counterclaims under this rule and rules 36 and 37 shall apply to the response to such claims, subject to any direction by the Tribunal to the contrary.

Further pleadings

39. No further pleadings may be filed without the permission of the Tribunal.

SUMMARY DISPOSAL

Power to reject

40.—(1) The Tribunal may, of its own initiative or on the application of a party, after giving the parties an opportunity to be heard, reject in whole or in part a claim for damages at any stage of the proceedings if—

- (a) it considers that there are no reasonable grounds for making the claim;
- (b) in the case of proceedings under section 47B of the 1998 Act it considers that the body bringing the proceedings is not entitled to do so, or that an individual on whose behalf the proceedings are brought is not a consumer for the purposes of that section;
- (c) it is satisfied that the claimant has habitually and persistently and without any reasonable ground—
 - (i) instituted vexatious proceedings, whether against the same person or different persons; or
 - (ii) made vexatious applications in any proceedings; or
- (d) the claimant fails to comply with any rule, direction, practice direction or order of the Tribunal.

(2) When the Tribunal rejects a claim it may enter judgment on the claim in whole or in part or make any other consequential order it considers appropriate.

Summary judgment

41.—(1) The Tribunal may of its own initiative or on the application of a party, after giving the parties an opportunity to be heard, give summary judgment in a claim for damages or reject in whole or in part a claim or defence in a claim for damages if—

- (a) it considers that—
 - (i) the claimant has no real prospect of succeeding on the claim or issue; or
 - (ii) the defendant has no reasonable grounds for defending the claim or issue; and
- (b) there is no other compelling reason why the case or issue should be disposed of at a substantive hearing.

(2) The Tribunal shall not exercise its power under this rule before the filing of the defence.

(3) The Tribunal shall give such directions as it considers appropriate for dealing with a request under this rule.

(4) Upon giving summary judgment the Tribunal may make any consequential order it considers appropriate.

Withdrawal

42.—(1) The claimant may withdraw his claim only—

- (a) with the consent of the defendant; or
 - (b) with the permission of the President or, if the case has proceeded to a hearing, the Tribunal.
- (2) Where a claim is withdrawn—

- (a) the Tribunal may make any consequential order it thinks fit;
- (b) no further claim may be brought by the claimant in respect of the same subject matter.

OFFERS AND PAYMENTS TO SETTLE

Offers and payments to settle

43.—(1) A payment to settle is an offer made by way of payment into the Tribunal in such manner as may be prescribed by practice direction.

(2) A payment to settle the whole or part of a claim may be made by a defendant once a claim for damages has been commenced.

(3) Notification of a payment to settle into the Tribunal must be sent to the Registrar and to the party to whom the payment to settle is made. Such notification must state precisely the basis on which the payment has been calculated.

(4) A payment to settle may be withdrawn or reduced only with the permission of the Registrar.

(5) A payment to settle may be accepted any time up to 14 days before the substantive hearing of the claim.

(6) Where a claimant accepts a defendant's payment to settle the whole or part of the proceedings, he shall be entitled to his costs of the proceedings or such costs relating to the part of the proceedings to which the offer related, up to the date of serving notice of acceptance, unless the Tribunal otherwise directs.

(7) Notwithstanding rule 55(3), where following a substantive hearing a claimant fails to better a payment to settle, the Tribunal will order the claimant to pay any costs incurred by the defendant after the latest date on which the payment or offer could have been accepted unless it considers it unjust to do so. The Tribunal may order such costs to carry interest from that date and to be paid on an indemnity basis.

(8) The fact that a payment to settle has been made shall not be communicated to the members of the Tribunal deciding the case until all questions of liability and the amount of money to be awarded have been agreed between the parties or determined by the Tribunal.

(9) A payment to settle under this rule will be treated as “without prejudice ” except as to costs.

(10) This rule does not preclude either party from making an offer to settle at any time or by any other means. In the event that, following a substantive hearing, a claimant recovers less than the amount offered by a defendant other than by way of a payment to settle, the Tribunal may take that fact into account on the issue of costs, notwithstanding the provisions of rule 55(3).

CASE MANAGEMENT

Case management generally

44.—(1) In determining claims for damages the Tribunal shall actively exercise the Tribunal’s powers set out in rules 17 (Consolidation), 18 (Forum), 19 (Directions), 20 (Case management conference etc.), 21 (Timetable for the oral hearing), 22 (Evidence), 23 (Summoning or citing of witnesses) and 24 (Failure to comply with directions) with a view to ensuring that the case is dealt with justly.

(2) Dealing with a case justly includes, so far as is practicable—

- (a) ensuring that the parties are on an equal footing;
- (b) saving expense;
- (c) dealing with the case in ways which are proportionate—
 - (i) to the amount of money involved;
 - (ii) to the importance of the case;
 - (iii) to the complexity of the issues; and
 - (iv) to the financial position of each party;
- (d) ensuring that it is dealt with expeditiously and fairly; and
- (e) allotting to it an appropriate share of the Tribunal’s resources, while taking into account the need to allot resources to other cases.

(3) The Tribunal may in particular—

- (a) encourage and facilitate the use of an alternative dispute resolution procedure if the Tribunal considers that appropriate;
- (b) dispense with the need for the parties to attend any hearing;
- (c) use technology actively to manage cases.

Security for costs

45.—(1) A defendant to a claim for damages may by request under this rule seek security for his costs of the proceedings.

(2) A request for security for costs must be supported by written evidence.

(3) Where the Tribunal makes an order for security for costs, it shall—

- (a) determine the amount of security; and
- (b) direct—
 - (i) the manner in which, and
 - (ii) the time within whichthe security must be given.
- (4) The Tribunal may make an order for security for costs under this rule if—
 - (a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
 - (b) one or more of the conditions in paragraph 5 applies.
- (5) The conditions are—
 - (a) the claimant is an individual—
 - (i) who is ordinarily resident out of the jurisdiction; and
 - (ii) is not a person against whom a claim can be enforced under the Brussels Conventions or the Lugano Convention or the Regulation, as defined by section 1(1) of the Civil Jurisdiction and Judgments Act 1982⁽¹⁾;
 - (b) the claimant is a company or other incorporated body—
 - (i) which is ordinarily resident out of the jurisdiction; and
 - (ii) is not a body against whom a claim can be enforced under the Brussels Conventions or the Lugano Convention or the Regulation;
 - (c) the claimant is an undertaking (whether or not it is an incorporated body, and whether or not it is incorporated inside or outside the United Kingdom) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;
 - (d) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;
 - (e) the claimant failed to give his address in the claim form, or gave an incorrect address in that form;
 - (f) the claimant is acting as a nominal claimant, other than under section 47B of the 1998 Act, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;
 - (g) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.

PAYMENTS OF DAMAGES

Interim payments on claims for damages

46.—(1) An interim payment is an order for payment by the defendant on account of any damages (except costs) which the Tribunal may hold the defendant liable to pay.

(2) The claimant may not request an order for an interim payment before the end of the period for filing a defence by the defendant against whom the claim is made.

(3) The claimant may make more than one request for an order for an interim payment.

(4) The Tribunal may make an interim payment order if—

(1) 1982 c. 27; section 1(1) is amended by paragraph 1 of Schedule 2 to the Civil Jurisdiction and Judgments Order 2001 (S.I.2001/3929).

- (a) the defendant against whom the order is sought has admitted liability to pay damages to the claimant;
 - (b) it is satisfied that, if the claim were to be heard the claimant would obtain judgment for a substantial amount of money (other than costs) against the defendant from whom he is seeking damages.
- (5) The Tribunal must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.
- (6) A request for an interim payment shall include—
- (a) the grounds on which an interim payment is sought;
 - (b) any directions necessary in the opinion of the claimant for the determination of the request.
- (7) On receiving a request for an interim payment the Registrar shall send a copy to all the other parties to the proceedings and shall inform them of the date by which they may submit written or oral observations to the Tribunal.

Order for payment of damages

- 47.**—(1) If satisfied that the claimant is entitled to an amount of damages, the Tribunal shall order that amount to be paid to the claimant by the defendant.
- (2) Where an award is made in respect of a claim included in proceedings brought by a specified body under section 47B of the 1998 Act, the Tribunal may (with the consent of the individual concerned and the specified body) order that the amount awarded is to be paid to the specified body on behalf of the individual.
- (3) The Tribunal shall make such consequential orders as may be necessary for the payment of damages awarded in proceedings under section 47B of the 1998 Act.
- (4) In making any order for the payment of damages to a claimant the Tribunal may take into account any sums owing from the claimant to the defendant.

TRANSFERS

Transfer of claims from the Tribunal

- 48.** The Tribunal may, at any stage of the proceedings on the request of a party or of its own initiative, and after considering any observations of the parties direct that a claim for damages (other than a claim included in proceedings under section 47B of the 1998 Act) be transferred to—
- (a) the High Court or a county court in England and Wales or Northern Ireland; or
 - (b) the Court of Session or a sheriff court in Scotland.

Transfer of claims to the Tribunal

- 49.**—(1) A claim which may be made under section 47A of the 1998 Act may be transferred to the Tribunal from any court in accordance with rules of court or any practice direction.
- (2) The person bringing the claim shall within 7 days of the order of the court transferring the claim or such other period directed by that court, send to the Registrar—
- (a) a certified copy of the order of the court transferring the claim to the Tribunal;
 - (b) any pleadings and documents in support of the claim filed with the court in which the claim was begun;
 - (c) any directions sought for the further progress of the claim.

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(3) As soon as practicable after receipt of the documents referred to in paragraph (2) a case management conference shall be held in accordance with rule 20.