
STATUTORY RULES OF NORTHERN IRELAND

2005 No. 178

The Care Tribunal Regulations (Northern Ireland) 2005

PART IV

CASE MANAGEMENT

Appointment of Care Tribunal

5.—(1) The Department shall nominate members of the lay panel who appear to have experience and qualifications relevant to the subject matter of the case.

(2) The Department may at any time before the hearing (or if the case is to be determined without oral hearing, before the case is determined) nominate from the appropriate panel another person or other persons in substitution for one or both of the lay panel members.

(3) The Department shall appoint a person to act as Secretary to the Tribunal for purposes of the appeal.

Directions

6.—(1) If either party has requested that there shall be a preliminary hearing, or if the Chairman considers that a preliminary hearing is necessary, the Chairman shall fix a date for the preliminary hearing, as soon as possible after the expiry of the 5 working days referred to in paragraph 6 of Schedule 1, 2, 4, or 6 or paragraph 9 of Schedule 3, or 5, as the case may be.

(2) At the preliminary hearing, or if a preliminary hearing is not to be held, as soon as possible after, and in any event not later than 10 working days after, the expiry of the 5 working days referred to in paragraph (1) the Chairman –

- (a) shall give directions as to the dates by which any document, witness statement or other material upon which any party is intending to rely shall be sent to the Care Tribunal, and, if the Chairman considers it appropriate, to the other party;
- (b) may give any other direction in exercise of his powers under this Part which he considers appropriate; and
- (c) shall, where the applicant has requested that the case be determined without an oral hearing, give a direction as to the date, which shall be not less than 10 working days after the last date on which he has directed that any document, witness statement or other evidence be sent to the Care Tribunal, by which the parties shall send any written representations regarding their appeal to the Care Tribunal.

(3) If, at any time it appears to the Chairman that the appeal is of such a nature that it shall be determined at an oral hearing, he may (after considering any representations from the parties) direct that such a hearing shall be held but otherwise the case shall be determined without an oral hearing if the applicant has so requested.

(4) The Chairman may direct that exchange of witness statements or other material shall be simultaneous or sequential, as he considers appropriate.

(5) The Secretary shall notify the parties as soon as possible in writing of any directions the Chairman gives in writing under paragraphs (2) and (3) above.

(6) The Secretary shall notify the parties as soon as possible, and in any event not less than 5 working days before the hearing of the date, time and place of any preliminary hearing.

(7) The parties may be represented or assisted at any preliminary hearing by any person.

Fixing and notification of hearing

7.—(1) The Secretary in consultation with the Chairman must, fix a date for the hearing of the case unless the applicant has requested in writing that the case be determined without a hearing.

(2) The date fixed for the hearing shall be the earliest practicable date having regard to any directions which have been made by the Chairman with regard to the preparation of evidence but shall be no sooner than 15 working days after the latest date on which the Chairman has directed that the evidence of the parties (including the statements of any witnesses or experts) shall be filed or exchanged.

(3) The Secretary must inform the parties in writing of the date, time and place of the hearing no less than 20 working days before the date fixed for the hearing.

(4) The Secretary may, in consultation with the Chairman, alter the place of the hearing and, if he does, must without delay inform the parties in writing of the alteration.

(5) Subject to paragraph (6), the Chairman may adjourn the hearing, either on the application of either party or on his own initiative.

(6) The Chairman shall not adjourn the hearing unless satisfied that refusing the adjournment would prevent the just disposal of the case.

(7) If the Chairman adjourns the hearing, then the Secretary must, without delay, inform the parties in writing of the date, time and place at which the hearing will be resumed.

Appeal against secondary listing

(i) Where a person (“the applicant”) has been included in the DWC (NI) list under Article 3 of the 2003 Order and by virtue of Article 36(4) to (7) of that Order has also been included in the DWVA (NI) list, and the applicant accepts his inclusion on the DWC (NI) list and wishes only to appeal against his inclusion on the DWVA (NI) list then, the appeal is an appeal against the DWVA (NI) listing only;

(ii) Where a person (“the applicant”) has been included in the DWVA (NI) list under Article 35 of the 2003 Order and by virtue of Article 8(1) of that Order has also been included in the DWC (NI) list, and the applicant accepts his inclusion on the DWVA (NI) list and wishes only to appeal against his inclusion on the DWC (NI) list then, the appeal is an appeal against the DWC (NI) list only.

Multiple appeals

9.—(1) Subject to paragraphs (2) and (3), where two or more cases relate to the same person, establishment or agency, the Chairman may, on the application of either party or on his own initiative, direct that such cases shall be heard together if he considers it appropriate to do so.

(2) Where a person (“the applicant”) has by virtue of Article 40 of the 2003 Order, been included in the DWVA (NI) list pursuant to a reference under Articles 4, 5, or 6 of the 2003 Order or as a result of being named in a relevant inquiry under Article 7(2) of the 2003 Order then subject to paragraph (4) any appeal against inclusion in the DWVA (NI) list shall be joined with any appeal against inclusion in the DWC (NI) list and in that event the appeal against inclusion in the DWC (NI) list shall be heard first.

(3) Where a person (“the applicant”) has by virtue of Article 8 of the 2003 Order been included in the DWC (NI) list pursuant to a reference made under Articles 36, 37 or 38 of the 2003 Order, or as a result of being named in a relevant inquiry under Article 39 of that Order, then subject to paragraph (4) any appeal against inclusion in the DWC (NI) list shall be joined with any appeal against inclusion in the DWCA(NI) list and in that event the appeal against inclusion in the DWVA (NI) list shall be heard first.

(4) The applicant may request the Chairman in writing to give a direction that the appeals referred to in paragraph (2) or (3) shall be heard separately.

(5) Before making any direction under paragraph (1) the Chairman shall –

- (a) where the direction which he proposes to give is at the request of either party, give the other party the opportunity to make written representations; or
- (b) where the direction which he proposes to give is on his own initiative, give both parties the opportunity to make written representations.

(6) In considering whether to give a direction under paragraph (1), the Chairman shall take into account the following matters –

- (a) any written representations made by either party;
- (b) the increased cost of hearing the cases together or separately; and
- (c) any unreasonable delay in hearing any case which would be caused by hearing the appeals together or separately.

(7) In considering whether to give a direction under paragraph (4) the Chairman shall take into account the following matters –

- (a) any representations from the applicant which show he would be significantly disadvantaged if the appeals were to be heard together;
- (b) the increased cost of hearing the appeals together or separately; and
- (c) any unreasonable delay in hearing either appeal which would be caused by hearing the appeals together or separately,

and shall give a direction that the appeals be heard separately where he is satisfied that it would be unfair in all the circumstances to hear the appeals together.

Further directions

10.—(1) The Chairman may at any time on the application of either party or on his own initiative, vary any direction which he has given or give any further direction in exercise of any of his powers under this Part as he considers appropriate.

(2) Before making any further direction, or varying any direction under paragraph (1) –

- (a) the Chairman shall, where the variation or further direction which he proposes to give –
 - (i) is at the request of either party, give the other party the opportunity to make written representations; or
 - (ii) is on his own initiative, give both parties the opportunity to make written representations;
- (b) the Chairman may direct that there shall be a preliminary hearing in relation to any proposed variation or further direction if he considers it appropriate or if a preliminary hearing has been requested by either party.

Unless orders

11.—(1) The Chairman may at any time make an order to the effect that, unless the party to whom the order is addressed takes a step specified in the order within the period specified in the order, the case may be determined in favour of the other party.

(2) The Secretary shall give written notification of the order to the party to whom it is addressed and to the other party and shall inform him of the effect of paragraph (3).

(3) If a party fails to comply with an order addressed to him under this regulation, the Chairman may determine the case in favour of the other party.

(4) If, in the opinion of the Chairman, the party to whom an order referred to in paragraph (1) is addressed has acted unreasonably in failing to comply with an order addressed to him under this regulation, the Chairman may make an order for costs (“a costs order”) pursuant to regulation 25 requiring that party (“the paying party”) to make a payment to the other party (“the receiving party”) to cover costs incurred by the receiving party and, in such a case, the references in regulation 25 to “the Care Tribunal” shall have effect as if they were references to “the Chairman”.

(5) Where, in accordance with paragraph (3), the Chairman has determined the case in favour of the other party, the party to whom the order was addressed may apply to the Chairman (as the case may be), for that determination to be set aside.

(6) An application under paragraph (5) must –

- (a) be made not later than 10 working days after the date upon which the notice of determination was sent to the party to whom the order was addressed; and
- (b) must be in writing stating the grounds in full.

(7) In the case of an application under paragraph (5), the Chairman, may, if he considers that it is appropriate to do so, direct that the determination, and any costs order made pursuant to paragraph (4), be set aside and may give such directions in exercise of his powers under this Part as he considers appropriate.

(8) Before making a direction setting aside the determination, or any costs order, the Chairman may invite the parties to make representations on the matter within such period as he may direct.

(9) Where the determination, or any costs order, is set aside, the Secretary shall alter the relevant entry in the records.

Copies of documents

12.—(1) The Chairman may give a direction as to the number of copies of relevant material, which each party must send to the Care Tribunal and relevant material means, all documents, witness statements and other material on which the parties intend to rely or which they have been ordered by the Chairman to send to the Care Tribunal under this Part.

(2) The Chairman may, if he considers it appropriate to do so, direct the form and order in which relevant material shall be supplied to the Care Tribunal.

Disclosure of information and documents

13.—(1) Subject to paragraphs (3) to (5), the Chairman may give directions –

- (a) requiring a party to send to the Care Tribunal any document or other material which he considers may assist the Care Tribunal in determining the case and which that party is able to send, and the Care Tribunal shall take such steps as the Chairman may direct, to supply copies of any information or document obtained under this paragraph to the other party;

- (b) granting to a party the right to inspect and take copies of any document or other material which it is in the power of the other party to disclose, and appointing the date, time and place at which any such inspection and copying is to be done.
- (2) Subject to paragraphs (3) to (5), the Chairman may give a direction on the application of either party, requiring a person who is not a party to the proceedings to disclose any document or other material to the party making the application, if he is satisfied that –
- (a) the documents or other material sought are likely to support the applicant’s case or adversely affect the case of the other party;
 - (b) it is within the power of the person subject to the direction to disclose any document or other material; and
 - (c) disclosure is necessary for the fair determination of the case.
- (3) It shall be a condition of the supply of any document or material under paragraph (1) or (2) that a party shall use it only for the purpose of the proceedings.
- (4) Paragraphs (1) and (2) do not apply in relation to any document or material which the party could not be compelled to produce in legal proceedings in a county court.
- (5) Before making a direction under paragraph (1) or (2), the Chairman shall take into account the need to protect any matter which relates to intimate personal or financial circumstances, is commercially sensitive, or was communicated or obtained in confidence.

Expert evidence

- 14.**—(1) The Chairman may, if he thinks that any question arises in relation to the case on which it would be desirable for the Care Tribunal to have the assistance of an expert, appoint a person having appropriate qualifications to enquire into and report on the matter.
- (2) The Secretary must supply the parties with a copy of any written report received under paragraph (1) in advance of the hearing (or, if the case is to be determined without an oral hearing, before the case is determined).
- (3) If the Chairman sees fit, he may direct that the expert shall attend the hearing, and give evidence.
- (4) The Care Tribunal shall pay such reasonable fees as the Chairman may determine to any person appointed under this regulation.

Evidence of witnesses

- 15.**—(1) The Chairman may direct that the parties send to each other by the date specified in the direction a copy of a witness statement in respect of each witness on whose evidence he wishes to rely.
- (2) A witness statement must contain the words “I believe that the facts stated in this witness statement are true”, and be signed by the person who makes it.
- (3) The Chairman (before the hearing or, if the case is to be determined without an oral hearing, before the case is determined) or the Care Tribunal may direct that a document or the evidence of any witness other than the applicant shall be excluded from consideration because –
- (a) it would be unfair in all the circumstances to consider it;
 - (b) the party wishing to rely on the document or evidence has failed to submit the document, or witness statement containing it, in compliance with any direction; or
 - (c) it would not assist the Care Tribunal in determining the case.

(4) Instead of excluding evidence under this regulation the Chairman or the Care Tribunal may permit it to be considered on such terms as he or it thinks fit, including, subject to regulation 25, the making of a costs order.

(5) The Chairman may direct that a witness (other than the applicant) shall not give oral evidence.

Withholding medical report from disclosure in exceptional circumstances

16.—(1) This regulation applies where the respondent wishes the Care Tribunal, in determining the case, to consider a medical report and the Chairman is satisfied –

- (a) that disclosure to the applicant of all or any part of the contents of the report would be so harmful to his health or welfare that it would be wrong to disclose it to him; and
- (b) that in all the circumstances it would not be unfair if the report or that part of it is considered by the Care Tribunal.

(2) The Chairman may appoint a person having appropriate skills or experience to –

- (a) assess whether disclosure of the report to the applicant would be harmful to the applicant’s health or welfare; and
- (b) report on the matter to the Chairman.

(3) The Chairman may direct that –

- (a) the report may be considered by the Care Tribunal; and
- (b) all or any part of its contents must not be disclosed to the applicant.

Summoning of witnesses

17.—(1) The Chairman may, on the application of either party or on his own initiative, issue a summons requiring any person –

- (a) to attend as a witness at the hearing, at the date, time and place set out in the summons; and
- (b) to answer any questions or produce any documents or other material in his possession or under his control which relate to any matter in question in the case.

(2) The summons must –

- (a) explain that it is an offence under Article 44(5) of the Order to fail, without reasonable excuse, to comply with it; and
- (b) explain the right to apply under this regulation to have it varied or set aside.

(3) A person summoned under this regulation may apply in writing to the Care Tribunal for the summons to be varied or set aside by the Chairman, and –

- (a) the Chairman may do so if he sees fit; and
- (b) the Secretary must notify him and the parties in writing of the decision.

(4) No person shall be required to attend, answer questions or produce any document in obedience to a summons issued under this regulation unless –

- (a) he has been given at least 5 working days’ notice of the hearing or has consented to a shorter period of notice; and
- (b) the necessary expenses of his attendance are paid or tendered to him by the party who requested his attendance or by the Care Tribunal, as the Chairman shall direct.

(5) No person shall be required under this regulation to give any evidence or produce any document or other material that he could not be required to produce in legal proceedings in a county court.

Child and vulnerable adult witnesses

- 18.**—(1) A child shall only give evidence in person where –
- (a) the Chairman has given the parties an opportunity to make written representations before the hearing or representations at the hearing; and
 - (b) having regard to all the available evidence, and the representations of the parties, the Chairman considers that the welfare of the child will not be prejudiced by so doing.
- (2) If he directs that a child shall give evidence in person, the Chairman shall –
- (a) secure that any arrangements he considers appropriate (such as the use of a video link) are made to safeguard the welfare of the child; and
 - (b) appoint for the purpose of the hearing a person with appropriate skills or experience in facilitating the giving of evidence by children.
- (3) Where the Chairman believes that it might not be in the best interests of a vulnerable adult for the vulnerable adult to give oral evidence to the Care Tribunal, the Chairman shall –
- (a) give the parties the opportunity to make written representations before the hearing or representations at the hearing; and
 - (b) having regard to all the available evidence, including any written representations made by the parties consider whether it would prejudice the vulnerable adult’s welfare to give oral evidence to the Care Tribunal –
 - (i) in any circumstances; or
 - (ii) otherwise than in accordance with paragraph (5).
- (4) If the Chairman considers that –
- (a) it would prejudice the vulnerable adult’s welfare to give oral evidence to the Care Tribunal in any circumstances, he shall direct that the vulnerable adult shall not do so; or
 - (b) it would prejudice the vulnerable adult’s welfare to give oral evidence to the Care Tribunal otherwise than in accordance with paragraph (5) he shall direct that paragraph (5) shall apply in relation to the vulnerable adult.
- (5) If he directs that this paragraph shall apply in relation to the vulnerable adult, the Chairman shall –
- (a) secure that any arrangements he considers appropriate (such as the use of a video link) are made to safeguard the welfare of the vulnerable adult; and
 - (b) appoint for the purpose of the hearing a person with appropriate skills or experience in facilitating the giving of evidence by vulnerable adults.
- (6) The Chairman shall pay such fees as he may determine to any person appointed under this regulation.

Restricted reporting orders

- 19.**—(1) If it appears appropriate to do so, the Chairman (or, at the hearing, the Care Tribunal) may make a restricted reporting order.
- (2) A restricted reporting order is an order prohibiting the publication (including by electronic means) in a written publication available to the public, or the inclusion in a relevant programme for reception in Northern Ireland, of any matter likely to lead members of the public to identify the applicant, any child, any vulnerable adult or any other person who the Chairman or the Care Tribunal considers should not be identified.

(3) An order that may be made under this regulation may be made in respect of a limited period and may be varied or revoked by the Chairman before the hearing (or by the Care Tribunal at the hearing).

Exclusion of press and public

20.—(1) Where paragraph (2) applies, the Chairman (or, at the hearing, the Care Tribunal) may on his (or its) own initiative, or on a written request by either party that the hearing or any part of it should be conducted in private, direct that –

- (a) any member of the public specified in the direction;
- (b) members of the public generally; or
- (c) members of the press and members of the public,

be excluded from all or part of the hearing.

(2) This paragraph applies where the Chairman (or, at the hearing, the Care Tribunal) is satisfied that a direction under paragraph (1) is necessary in order to –

- (a) safeguard the welfare of any child or vulnerable adult;
- (b) protect a person's private life; or
- (c) avoid the risk of injustice in any legal proceedings.