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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 571**

**The Scottish Charity Appeals Panel Rules 2006**

**PART III**

**Hearing**

**Notice of hearing**

**8.—**(1) The Panel must, with due regard to the convenience of the parties, fix the date, time and place of the hearing of the appeal and, where appropriate, set a timetable for the hearing.

(2) The Secretary shall, not less than 14 days before the date fixed by the Panel, send to both parties a notice of hearing.

(3) The notice of hearing must state—

- (a) the date, time and place of the hearing;
- (b) the members of the Panel; and
- (c) the manner and order of proceeding, having regard to any applicable burden and standard of proof and rules of evidence.

(4) The notice of hearing should, where appropriate—

- (a) provide information and guidance as to attendance at the hearing of the parties and witnesses, the bringing of documents, the right of representation or assistance by another person and the procedure applicable to the hearing, having regard to any applicable rules of evidence and burden and standard of proof;
- (b) explain the right of the parties to receive reasons in writing for a decision of the Panel;
- (c) explain the possible advantages of attendance, consequences of non-attendance, and the right of the appellant and of OSCR, if not present and not represented, to make representations in writing; and
- (d) specify the date by which the appellant and OSCR must inform the Panel whether or not they intend to be present or represented at the hearing, and that date must not be later than 7 days before the hearing.

(5) The notice must include a request to inform the Panel of any special needs which any party may have which are relevant to the attendance of that party at the hearing.

**Hearing in absence of a party**

**9.—**(1) Where either party to the appeal informs the Panel that it does not intend to appear at the hearing, the Panel shall determine a date by which that party may provide further written submissions to be considered at the Hearing.

(2) The Secretary shall advise both parties to the appeal of the date determined by the Panel in terms of paragraph (1).

(3) Where both parties inform the Panel that they do not intend to appear or be represented at the hearing, the Panel may proceed to decide the appeal at any time after the date determined by the Panel in terms of paragraph (1).

#### **Absence of member of the Panel**

**10.** If, after the commencement of any hearing, a member other than the Chair is absent, the appeal may, with the consent of the parties, be heard by the other two members and, in that event, the Panel shall be deemed to be properly constituted.

#### **Representation**

**11.—**(1) At any hearing a party may conduct his or her case or may be represented by any person whether or not legally qualified but if in any particular case the Panel is satisfied that there is a good reason, it may refuse to permit a particular person to assist or represent a party at the hearing.

(2) Where a party attends a hearing and is not represented by another person, the Panel may assist any party who seems to it to be unable to make the best of his or her own case without advocating the course that party should take.

#### **Failure of parties to attend**

**12.—**(1) If a party fails to be present or represented at a hearing, the Panel may, if it is satisfied that the party was duly notified of the hearing and that there is no good reason for such absence—

- (a) hear and decide the appeal in the absence of the party; or
- (b) adjourn the hearing and may give such directions as it considers necessary (including an order for expenses under rule 21).

(2) Before deciding to dispose of any appeal in the absence of a party, the Panel must consider any representations in writing submitted by that party.

(3) Where an appellant has failed to be present or represented at a hearing of which the appellant was duly notified, and the Panel has disposed of the appeal, no fresh appeal may be made by the appellant to the Panel in relation to the same decision.

#### **Hearings in public or in private**

**13.—**(1) Without prejudice to any other rule of law, all hearings by the Panel must be in public unless the Panel on an application by the parties or on its own cause directs otherwise to ensure a fair hearing.

(2) A direction of the Panel under paragraph (1) may require only part of a hearing of an appeal to be in private.

(3) Without prejudice to any other rule of law, the Panel may prohibit photography, audio recording, visual recording or any other recording at any hearing if satisfied that such a prohibition is desirable in order to ensure a fair hearing.

#### **Exclusion of persons disrupting proceedings**

**14.—**(1) Without prejudice to any other powers it may have, the Panel may exclude from any hearing, or part of it, any person (including a party to the appeal or a representative of a party) whose conduct has disrupted the hearing or whose conduct has otherwise interfered with the administration of justice.

(2) In deciding whether to exercise the power conferred by paragraph (1) the Panel must, apart from other considerations, have regard to—

- (a) the interests of the parties; and
  - (b) in the case of the exclusion of a party or a representative of a party, whether the party will be adequately represented.
- (3) If the Panel decides to exclude a party it must allow the representative of that party sufficient opportunity to consult the party.

### **Directions**

**15.—**(1) At any stage of the proceedings the Panel may, either on its own cause or on the application of a party, make such direction as it considers necessary for the hearing of the appeal and in particular may direct—

- (a) a party to provide any further particulars, supplementary statements or documents which may reasonably be required;
- (b) a party which has access to information which is not reasonably available to the other party, to prepare and file a document recording the information;
- (c) a party to set out the issues upon which the Panel requires to hear evidence;
- (d) that evidence should be excluded if the evidence is irrelevant, unnecessary or improperly obtained;
- (e) a party to lodge, before the hearing, an outline argument.

(2) An application by a party for a direction under paragraph (1) (otherwise than during a hearing) must, not later than 7 days before the hearing, be made to the Panel in writing and must set out the direction which the party is seeking to have made together with the reasons for the application.

(3) If a party objects to the direction sought, the Panel must consider the objection and, if it considers it necessary for deciding the application, must give the parties an opportunity of being present or represented before the Panel.

(4) For the purposes of this rule, a party is not obliged to produce a document which that party would be entitled to refuse to produce in civil proceedings before the Court of Session.

(5) In giving effect to this rule, the Panel must take into account the need to protect any matter that relates to intimate personal or financial circumstances, is commercially sensitive or consists of information communicated or obtained in confidence.

### **Alteration of arrangements for hearing and adjournments**

**16.—**(1) The Panel may, with due regard to the convenience of the parties and prior to commencement of the hearing, alter the date, time or place of any hearing and the Panel must give the parties not less than 14 days notice of any such alteration unless—

- (a) a shorter period of notice is agreed by the parties; or
- (b) the requirement to alter the date of the hearing is due to the illness of a member of the Panel or other exceptional circumstance which affects the availability of a member of the Panel to attend the hearing.

(2) If the Panel alters the date of the hearing under paragraph (1), that date must not, unless the parties agree, be before the date fixed in terms of rule 8(1).

(3) The Panel may from time to time adjourn the hearing and, if the date, time and place of the adjourned hearing are announced before the adjournment, no further notice shall be required.

**Persons entitled to be present**

17.—(1) Subject to rule 14 the following persons shall be entitled to attend a hearing and the Panel’s deliberations on the hearing, whether or not it is in private:

- (a) a member of the Panel not forming part of the Panel for the purpose of the hearing;
- (b) a member of the Scottish Committee of the Council on Tribunals;
- (c) the Secretary; and
- (d) any other person permitted by the Panel with the consent of the parties.

(2) None of the persons specified above who are present at the Panel’s deliberations may take any part in those deliberations.

(3) Where the Panel sits in private it may admit persons to the hearing on such terms and conditions as it considers appropriate.