
STATUTORY INSTRUMENTS

2001 No. 2476

The Financial Services and Markets Tribunal Rules 2001

**PART III
HEARINGS**

Determination without oral hearing

16.—(1) The Tribunal may determine a reference, 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 14(3) applies.

(2) Where a reference or an issue is determined in accordance with this rule, the Tribunal shall consider whether there are circumstances making it undesirable to make a public pronouncement of the whole or part of its decision and may in consequence take any steps, including any one or more of the steps specified in paragraph (3), but any such step shall be taken with a view to ensuring the minimum restriction on public pronouncement that is consistent with the need for the restriction.

(3) The steps referred to in paragraph (2) are—

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

(4) Before reaching a decision under paragraph (2), the Tribunal shall invite the parties to make representations on the matter.

Hearings in public

17.—(1) In this rule, “hearing” means any hearing under these Rules but does not include any determination under rule 16(1) or 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 shall be in public.

(3) The Tribunal may direct that all or part of a hearing shall 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 morals, public order, national security or the protection of the private lives of the parties; or
 - (ii) any unfairness to the applicant or prejudice to the interests of consumers that might result from a hearing in public,

if, in either case, 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 shall give the other party an opportunity to make representations.

(5) Before giving a direction under paragraph (3) that the entire hearing should be in private, the Tribunal shall consider whether only part of the hearing should be heard in private.

(6) The following persons shall be entitled to attend any hearing of the Tribunal whether or not it is in private—

- (a) the parties and their representatives;
- (b) the President or any member of the panel of chairmen or of the lay panel notwithstanding that they are not members of the Tribunal for the purpose of the reference to which the hearing relates;
- (c) the Secretary and any member of the Tribunal’s staff appointed under paragraph 6 of Schedule 13; and
- (d) a member of the Council on Tribunals or the Scottish Committee of that Council.

(7) The Tribunal may permit any other person to attend a hearing which is held in private.

(8) The persons mentioned in paragraph (6)(b) and (d) shall be entitled to attend the deliberations of the Tribunal but shall take no part in those deliberations.

(9) 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.

(10) Subject to any direction under paragraph (11), the Secretary shall provide for the public inspection at the Tribunal’s offices of a daily list of all hearings which are to be held together with information about the time and place fixed for the hearings.

(11) 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) shall not be made public, and such a direction may provide for the information (if any) that is to be entered in the register or removed from it.

Representation at hearings

18.—(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

19.—(1) Subject to the Act and these Rules, the Tribunal shall 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 shall be entitled—

- (a) to give evidence (and, with the consent of the Tribunal, to bring expert evidence);
- (b) to call witnesses;
- (c) to question any witnesses; and

- (d) to address the Tribunal on the evidence, and generally on the subject matter of the reference.
- (3) Evidence may be admitted by the Tribunal whether or not it would be admissible in a court of law and whether or not it was available to the Authority when taking the referred action.
- (4) If a party fails to attend or be represented at any hearing of which it has been duly notified, the Tribunal may, if it is satisfied that there is no good and sufficient reason for the absence—
 - (a) in the case of the hearing of the reference, hear and determine the reference in the party's absence; or
 - (b) in the case of any other hearing, give any direction, determine any issue or adjourn the hearing.

Decisions of Tribunal

20.—(1) Subject to paragraph (2) and to rule 16(2), the Tribunal shall make arrangements for the public pronouncement of its decisions, whether by giving its decisions orally in open court or by publishing its decisions in writing.

(2) Where the whole or any part of any hearing under these Rules was in private, the Tribunal shall 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 make a public pronouncement of the whole or part of its decision and may in consequence take any steps, including one or more of the steps specified in paragraph (3), but any such step shall be taken with a view to ensuring the minimum restriction on public pronouncement that is consistent with the need for the restriction.

(3) The steps referred to in paragraph (2) are—

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

(4) Before reaching a decision under paragraph (2), the Tribunal shall invite the parties to make representations on the matter.

(5) The Secretary shall as soon as may be practicable enter every decision (and the reasons for the decision) in the register, but this is subject to any steps taken under paragraph (2) or under rule 16(2) and to any direction given under rule 17(11).

(6) Every notification of a decision determining a reference which is sent to the parties shall be accompanied by a notification of any provision of the Act relating to appeals from the Tribunal and of the time within which and the place at which such appeal or application for permission to appeal may be made.

Costs

21.—(1) In this rule, “costs order” means an order under paragraph 13 of Schedule 13 (power of Tribunal to order payment of costs) that a party pay the whole or part of the costs or expenses incurred by another party, and “the paying party” and “the receiving party” mean, respectively, the parties against whom and in whose favour the Tribunal makes, or (as the case may be) considers making a costs order.

(2) The Tribunal shall not make a costs order without first giving the paying party an opportunity to make representations against the making of the order.

- (3) Where the Tribunal makes a cost order it may order—
- (a) that an amount fixed by the Tribunal shall be paid to the receiving party by way of costs or (as the case may be) expenses; or
 - (b) that the costs shall be assessed or (as the case may be) expenses shall be taxed on such basis as it shall specify—
 - (i) in England and Wales, by a costs official;
 - (ii) in Scotland, by the Auditor of the Court of Session;
 - (iii) in Northern Ireland, by the Taxing Master of the Supreme Court of Northern Ireland.

Review of Tribunal's decision

- 22.**—(1) If, on the application of a party or of its own initiative, the Tribunal is satisfied that—
- (a) its decision determining a reference was wrongly made as a result of an error on the part of the Tribunal staff; or
 - (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 of or foreseen,

the Tribunal may review and, by certificate signed by the Chairman, set aside the relevant decision.

(2) An application for the purposes of paragraph (1) may either be made immediately following the decision at the hearing of the reference or shall be filed (stating the grounds in full) not later than 14 days after the date on which notification of the decision was sent to the parties.

(3) Where the Tribunal proposes to review its decision of its own initiative, it shall 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 shall have an opportunity to make representations on any application or proposal for review under this rule and the review shall be determined either by the same members of the Tribunal who decided the case or by a differently constituted Tribunal appointed by the President.

(5) If, having reviewed the decision, the decision is set aside, the Tribunal shall substitute such decision as it thinks fit or order a re-hearing before either the same or a differently constituted Tribunal.

(6) The certificate of the Chairman as to the setting aside of the Tribunal's decision under this rule shall be sent to the Secretary who shall immediately make such correction as may be necessary in the register and shall send a copy of the entry so corrected to each party.